

XXth INTERNATIONAL CONFERENCE OF THE RED CROSS

Vienna, October 1965

**RESPECT OF THE GENEVA CONVENTIONS
MEASURES TAKEN TO REPRESS VIOLATIONS**

(Item 4 a of the provisional agenda of the
International Humanitarian Law Commission)

**Report submitted
by the International Committee of the Red Cross**



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Collection**



**The Judge Advocate General's
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Charlottesville, Virginia**

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RESPECT OF THE GENEVA CONVENTIONS
MEASURES TAKEN TO REPRESS VIOLATIONS

The Council of Delegates, meeting in Geneva in 1963 on the occasion of the Red Cross Centenary, adopted the following Resolution :

Repression of Violations of the Geneva Conventions

The Council of Delegates,

recommends that the International Committee of the Red Cross collect information on legislation introduced in all countries to repress violations of the Geneva Conventions, and that it submit a report on the subject to the XXth International Conference of the Red Cross.

The ICRC already had a considerable amount of data on the penal legislative measures taken by quite a large number of States. However, in deference to the Council of Delegates' wish, it felt it should request supplementary information from all the National Societies. On April 20th, 1964, it therefore sent out a circular letter, asking that they forward any laws or regulations showing how violations of the Geneva Conventions are repressed in their countries.

The twenty-two countries which responded to this request are listed below in French alphabetical order :

South Africa - Germany (Democratic Republic), Germany (Federal Republic) - Austria - China - United States of America - Hungary - India - Iraq - Ireland - Luxemburg - Norway - New Zealand - Pakistan - Netherlands - Philippines - United Kingdom - Sierra Leone - Sweden - Syria - Trinidad and Tobago - Yugoslavia.

The ICRC warmly thanks them for their assistance.

The legislative texts which the ICRC had in its possession or received after its circular letter referred to above, are annexed. They are arranged in French alphabetical order of the countries to which they relate. The texts from English or French speaking countries are reproduced in the original language. There are either French or English translations of the remainder, depending on the language in which they were sent to the ICRC. In some cases, no special legislation exists, but the National Societies have described how their country's penal system is applied to repress violations of the Geneva Conventions, and information thereon is reproduced in this Report.

On examining the various legislative measures for applying the Geneva Conventions, we find they are often very different and that the problem is by no means tackled everywhere in a similar manner. The ICRC had already observed this some years ago. Between 1954 - 1956, it endeavoured to draw up a model law for the repression of violations of the Geneva Conventions, which could provide Governments with a basis. After convening a meeting of experts, it was obliged to relinquish this idea because of the variety of penal systems which exist in the different countries. It declared, however, that it would be at the disposal of any National Society or Government desiring to consult it on the legislative measures to be taken for repressing violations of the Geneva Conventions. On several occasions it has been able to give advice, and, in the future, it will gladly do its best to respond to any similar requests.

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Although 103 States are at present bound by the 1949 Geneva Conventions, the information in the Annex is confined to some forty. It is therefore difficult to draw valid conclusions from these texts. As a whole, however, it is to be admitted that in many countries the regulations for the repression of violations of the Geneva Conventions are not adequate. Should the XXth International Conference wish to make a recommendation, it could request the States which have not already done so, to complete their legislation on this point or enact "special legislation".

P.S. : When this Report had already been completed, the ICRC received further data from the French and Czechoslovak Red Crosses, which will be found in the Annex.

At the last moment, we also received legislation which has just been adopted in Canada.

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EXTRACT FROM THE LETTER OF THE SOUTH AFRICAN RED CROSS SOCIETY

December 18th, 1964

REPRESSION OF VIOLATIONS OF THE GENEVA CONVENTIONS

With reference to your circular No. Fr. 866b dated 20th April, 1964, I have to advise you that the Society invited legal opinion on this matter and have pleasure in enclosing a copy of the opinion.

I am directed to add that offences committed by members of the South African Defence Force against civilian populations of occupied countries are punishable under Sections 47, 56 and 91 of the S.A. Military Discipline Code, which provide as follows:-

Section 47. Any person who beyond the borders of the Union commits or omits to do any act in circumstances under which he would, if he had committed or omitted to do that act in the Union, have been guilty of a civil offence, shall be guilty of an offence under this Code and liable on conviction to such penalty applicable in respect of that civil offence as could be imposed under section 91 of this Code.

Section 56. A person subject to this Code may be tried by a military court having jurisdiction for any civil offence (other than treason, murder, rape or culpable homicide committed by him within the Union), and may in respect of such offence be sentenced to any penalty within the jurisdiction of the court convicting him.

Section 91. (1) Whenever a court martial convicts any person of any offence it may subject to the maximum punishment provided in this Code for that offence, the limits of its own penal jurisdiction, and the provisions of section 32 and 93 impose upon the person convicted a penalty of -

- (a) in the case of an officer -
 - (i) death;
 - (ii) imprisonment;
 - (iii) cashiering;
 - (iv) dismissal from the South African Defence Force;
 - (v) reduction to any lower commissioned rank;

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- (vi) reduction in seniority in rank;
- (vii) a fine not exceeding two hundred pounds; or
- (viii) reprimand; or
- (b) in the case of a warrant officer or non-commissioned officer:-
 - (i) death;
 - (ii) imprisonment;
 - (iii) discharge with ignominy from the South African Defence Force;
 - (iv) detention for a period not exceeding two years;
 - (v) reduction to any lower rank, to non-commissioned rank or to the ranks;
 - (vi) discharge from the South African Defence Force;
 - (vii) a fine not exceeding £50 or
 - (viii) reprimand; or
- (c) in the case of a private -
 - (i) death;
 - (ii) imprisonment;
 - (iii) discharge with ignominy from the S.A. Defence Force;
 - (iv) detention for a period not exceeding two years;
 - (v) field punishment for a period not exceeding three months;
 - (vi) discharge from the S.A. Defence Force;
 - (vii) a fine not exceeding £25; or
 - (viii) reprimand.
- (2) Any penalty provided for in any sub-paragraph of paragraph (a), (b) or (c) of subsection (1), shall for the purposes of this code be deemed to be less severe and less serious in its consequences than any penalty provided for in any preceding sub-paragraph of the applicable paragraph.

Afrique du Sud

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12th November, 1964

We have now perused and considered the four volumes of the Geneva Conventions which you forwarded to us relative to the question of the repression of violations of them and we set out below the material requested by the I.C.R.C. on page 2 of its letter of 20th April, 1964:-

- (a) There is no special legislation in South Africa on the Geneva Conventions.
- (b) In all four Conventions 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 Convention concerned as defined therein.

The definition of "grave breaches" is fairly similar in all four Conventions. The fourth Convention covers the definitions in the first three Conventions and is a little wider than all of them. It reads as follows - "Grave breaches to which the preceding Article relates shall be those including any of the following acts, if committed against persons or property protected by the present Convention: Wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly". As protected persons and protected property as defined in the Convention receive no special recognition in South African law it is necessary to consider whether South African law considers any of the breaches

mentioned above to be violations of the law and whether penal sanctions are provided for persons committing or ordering to be committed any of such breaches.

Wilful Killing. This is covered by the South African law on murder and homicide. In South African law murder is the unlawful killing of a human being, with intent to kill. Where this intent is absent, the offence is culpable homicide. To constitute murder there must be an intention to kill or, as it is sometimes put, there must be malice. Intention is generally proved by inference from the circumstances. The intention to kill is not restricted to a positive wish to bring about the death of the person attacked. If one person commits an act upon another, knowing that this is likely to cause death but reckless whether death results or not, he is held in law to intend to kill. It would seem therefore that "intention" in South African law is the equivalent of "wilfulness" as used in the Conventions - see for example page 597 of the fourth Convention.

Homicide may be justifiable in certain cases in South African law. The relevant cases are killing in warfare or at the order of a superior officer, killing in self-defence, killing in defence of others, killing in defence of goods. In more detail the law is as follows -

Killing an enemy in the course of warfare is lawful. And even though the killing is not in the course of an engagement, a private soldier is protected from liability if, in obedience to the orders of a superior officer, he kills another person, provided that the orders are not so manifestly illegal that the soldier must or ought to have known them to be so, and provided that the soldier honestly believed that he is doing his duty in obeying them.

For self-defence to operate as a complete excuse on a charge of murder or culpable homicide the accused must have been unlawfully attacked, the means used in self-defence must not have been excessive in relation to the danger apprehended and the use of these means must have been the only method, or the least dangerous method, whereby the accused could have reasonably thought that he could avoid the threatened danger.

A person has the same right to use force in the defence of another from a present danger as he would have to defend himself if he were the person threatened.

Defence of goods is not by itself a good answer to a charge of homicide. An attempted theft may be the occasion giving

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rise to circumstances wherein it becomes lawful to kill the thief, but it is these circumstances and not the theft, which must justify the homicide. Killing merely in order to prevent the goods from being stolen where there is no reason to apprehend danger to a person, and no necessity to kill so as to prevent a criminal from escaping arrest, is not justifiable.

Torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health. Where these breaches are of a physical nature they fall to a large extent under the crime of assault which is defined as the act of intentionally and unlawfully applying force to the person of another directly or indirectly, or attempting or threatening by act or gesture to apply such force to the person of another if the person making the threat has, or causes the other to believe upon reasonable grounds, that he has, the present ability to effect his purpose.

Where the breach produces purely moral suffering (such as causing grave injury to the human dignity of civilian internees which could conceivably be considered as inhuman treatment - vide commentary on fourth Geneva Convention page 598) such breach would be considered in South Africa law to be the crime of criminal injuria. A criminal injuria is a wrongful act designedly done in contempt of another, which infringes his personal rights of safety, security or privacy or his dignity or reputation.

Unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power. Except in so far as such acts involve force or the threat of force and may be classed as assault there is no penal sanction laid down for any of these breaches. Also, as stated at page 600 of the fourth Convention the fact that coercion is exercised by the authorities puts a rather different complexion on the case.

Wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention. A person convicted of any offence by an inferior Court in South Africa has the right of appeal. Where the conviction was before a superior Court, the right of appeal is limited. As a general rule, an appeal or a review at the instance of the accused lies only where he has been convicted.

Closely linked with the question of appeal is the question of excessive sentence. In the commentary on the Geneva Conventions (see for example page 602 of the commentary on the fourth Convention) it is suggested that if it is impossible to

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enact a special law defining the breaches and providing an adequate penalty for each it will be necessary to avert to a simpler system which will include as a minimum special clauses passing certain of the breaches as offences with a definite penalty attached to each and a general clause providing that other breaches of the Convention will be punished by an average sentence in so far as they do not constitute offences or crimes to which more severe penalties are attached in the ordinary military penal clause. Maximum penalties for statutory offences are usually laid down. The Court bears in mind that the main purpose of the penalty is the reformation of the offender and the deterring of persons who may be disposed to similar misconduct.

The previous history of the accused is given serious consideration. The sentence should not be excessive. A maximum penalty is intended for the worst offenders of the class for which the punishment is provided and something must be kept in reserve for the greater offender. Subject to the principles already stated and certain others not mentioned it has been held that effort should constantly be directed to the elimination of lack of uniformity in sentences, particularly in cases where the legislature has fixed a maximum penalty. In a prosecution under common law in respect of conduct which is also an offence under statute, the penalty prescribed by the statute will often provide a guide in respect of the sentence.

On the question of excessive sentence, the Court will regard the sentence as a whole and consider whether it is so severe that no reasonable Court could have imposed it; only to that extent will the Court interfere.

Thus it will be seen that the general considerations of the South African Courts in regard to sentence and appeal cover to a large extent the general clause considered necessary by the commentators of the fourth Convention.

Taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. The taking of hostages might constitute the offence of assault or criminal injuria or both depending on the circumstances though, as in the case of homicide, the taking of hostages may often be sought to be justified when done in the course of warfare.

Where the destruction of property is by fire it will be classed as the crime of arson where it is committed by a person who wilfully and with intent to injure or defraud sets on fire an immovable structure. The wider crime of malicious injury to

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property is punishable in South Africa law. The word "injury" is used in this connection in its ordinary non-legal sense to denote the loss or destruction of the property in question, whether such loss or destruction be complete or merely partial amounting to detriment, damage or diminution of value. To constitute this crime the action must have been committed with a malicious intention to do unlawful harm.

We trust that what we have said above will be of assistance to you. It will be appreciated that this summary covers a large area of law and we have exercised our discretion in referring to what we consider to be the salient points only. If you feel that you require a more detailed exposition of any particular points or of the whole field covered, we would suggest your instructing us to brief Counsel to draw up a comprehensive survey.

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(Original allemand
traduction par les
soins du CICR)

Allemagne
(Rép. démocratique)

LETTRE DE LA CROIX-ROUGE ALLEMANDE DANS
LA REPUBLIQUE DEMOCRATIQUE ALLEMANDE
Dresde, le 22 décembre 1964

Répondant au voeu exprimé dans votre lettre-circulaire du 20 avril 1964, je vous communique ci-dessous les dispositions contenues dans la législation de la République démocratique allemande qui assurent d'une manière générale, ou à titre spécial, la répression des infractions graves aux Conventions de Genève.

Il y a lieu tout d'abord de se référer à la loi du 30.8.56 sur l'accession de la République démocratique allemande aux quatre Conventions de Genève pour la protection des victimes de la guerre du 12 août 1949; l'art. 2, par. 1, de cette loi prévoit que ces Conventions, compte tenu des réserves faites par la République démocratique allemande, doivent être reconnues comme ayant force de loi dans le droit interne (voir Recueil des lois de la République démocratique allemande No 95/1956, partie 1). Ceci est en accord avec l'art. 5, par.1, de la Constitution de la République démocratique allemande du 7 octobre 1949, selon lequel les règles généralement reconnues du droit des gens lient les pouvoirs publics et chaque citoyen.

En ce qui concerne les dispositions législatives qui ont pour objet les infractions spéciales contre les Conventions de Genève, il faut mentionner l'art. 7, alinéa 1, de la 2ème Ordonnance relative à la Croix-Rouge allemande du 20 août 1949 (Recueil des lois I, No 50, page 667). Selon cette Ordonnance, est puni de l'emprisonnement jusqu'à 2 ans, ou de l'amende ou d'une réprimande publique "celui qui utilise abusivement le signe ou le nom de la croix rouge, du croissant rouge, ou du lion et soleil rouge, ou des signes ou des désignations pouvant prêter à confusion".

Le Code pénal militaire du 24 janvier 1962 (Recueil des lois, partie I, No 2, page 25), bien qu'il ne se réfère pas expressément aux Conventions de Genève, comporte des mesures d'application de celles-ci, à savoir :

"Art. 22 Dépouillement des cadavres et des blessés

Celui qui, pendant ou après un combat, dérobe à des morts ou à des blessés des choses, sera puni de la réclusion.

Art. 23 Violence et pillage dans la zone des combats

Celui qui, profitant de la situation qui règne dans

Allemagne

(Rép. démocratique)

militaires, prend illégalement à la population civile des objets, détruit des biens, ou qui d'une autre manière, emploie la violence, sera puni de la réclusion.

Art. 24 Violation des droits des prisonniers de guerre

Celui qui viole les dispositions reconnues du droit des gens sur le traitement des prisonniers de guerre sera puni de l'emprisonnement.

Art. 25 Non-respect et abus du signe de la croix rouge

Celui qui, dans la zone des combats, ne respecte pas le signe reconnu internationalement de la croix rouge, ou qui emploie ce signe d'une manière illégale, sera puni de la prison jusqu'à 2 ans".

Conformément à l'art. 26, les délits énumérés dans les articles 22 et 23 peuvent être, dans les cas particulièrement graves, punis de la réclusion à vie ou de la peine de mort.

A ce sujet, il faut mentionner aussi l'alinéa 3 de l'article 10 de la loi pénale militaire, selon lequel la non-exécution de l'ordre d'un supérieur n'entraîne aucune punition "quand l'exécution de l'ordre irait contre les règles reconnues du droit des gens ou contre les lois pénales".

Le Code pénal général en particulier, et d'autres lois pénales, prévoient la répression de délits qui, selon les conditions d'application dans le temps et dans l'espace des Conventions de Genève, peuvent représenter des violations graves de celles-ci. Il y a lieu de mentionner les dispositions suivantes :

L'art. 211 et l'article 212, meurtre, respectivement homicide. En outre, l'art. 221 punit également celui qui abandonne intentionnellement sans soins une personne sans défense qui était placée sous sa garde ou pour laquelle il devait fournir le logement, le transport ou l'accueil.

Les articles 223, 223 a et 224 jusqu'à 226, punissent les atteintes à l'intégrité corporelle. Des formes qualifiées du délit sont prévues : atteinte grave et dangereuse à l'intégrité corporelle, atteinte à l'intégrité corporelle entraînant la mort. Ils prévoient également la punition de ceux qui torturent ou maltraitent brutalement les personnes qui dépendent d'eux ou de ceux qui, négligeant avec intention le devoir qu'ils ont de veiller sur des personnes, nuisent à la santé de celles-ci.

Allemagne

(Rép. démocratique)

L'art. 229 prévoit un délit spécial pour ceux qui mêlent aux aliments du poison ou d'autres substances nuisant à la santé.

L'art. 234 prévoit la réclusion pour celui qui par ruse, menace ou violence, force une personne à entrer dans une armée ou une marine étrangères; en outre, l'art. 239 punit celui qui intentionnellement et illégalement prive une personne de la jouissance de sa liberté; de même, se rend coupable d'un délit, celui qui, par la force ou la menace, contraint une autre personne à faire un acte, à le tolérer, ou à omettre de le faire.

La prise par la force d'objets appartenant à autrui est punie par les art. 229 à 231 de graves peines de réclusion.

La destruction illicite de bâtiments, de ponts, de routes, de lignes de chemin de fer, est punissable par l'art. 305; de même, l'art. 321 punit la destruction ou l'endommagement de conduites d'eau et autres ouvrages hydrauliques qui peuvent mettre en danger la vie ou la santé des personnes.

Celui qui provoque des inondations mettant en péril la vie humaine est puni d'une façon spécialement sévère par l'art. 312; il en va de même, selon les art. 306 à 308, pour ceux qui provoquent des incendies.

Selon l'art. 324, celui qui introduit intentionnellement du poison ou d'autres matières nuisibles à la santé dans des sources ou dans des réservoirs d'eau, se rend coupable d'un délit.

L'art. 343 punit de la réclusion celui qui, dans l'exercice d'une fonction officielle, à l'occasion d'une enquête, emploie des moyens de contrainte ou laisse employer de tels moyens contre une personne pour obtenir d'elle des aveux ou des déclarations.

(Original allemand
traduction par les
soins du CICR)

Allemagne
(Rép.fédérale)

LETTRE DE LA CROIX-ROUGE ALLEMANDE DANS
LA REPUBLIQUE FEDERALE D'ALLEMAGNE

Bonn, le 2 septembre 1964

Concerne votre lettre-circulaire du 20 avril 1964.

A propos de cette question, nous avons reçu une lettre du Ministère fédéral de la Justice du 14 août 1964 et un extrait d'un projet provisoire d'une loi portant complément et modification du droit pénal militaire établi par un groupe d'experts. Je vous envoie une copie de ces deux pièces.

.....

lère Annexe

Ministère fédéral de la Justice

Bonn, le 14 août 1964

Croix-Rouge allemande

Bonn

En réponse à votre lettre du 5 mai 1964 et aux questions posées par le Comité international de la Croix-Rouge dans sa circulaire du 20 avril 1964, je vous donne les indications suivantes :

1. Presque toutes les infractions graves aux Conventions de Genève du 12 août 1949 peuvent être punies par le droit pénal allemand en vigueur; pour la plupart de ces violations, une répression appropriée est possible. Pour plus de détails, je renvoie à l'étude que le prof. Dr Hans-Heinrich Jescheck a établie pour le VIème Congrès de droit pénal international à Rome. Elle a paru dans le "Zeitschrift für die gesamte Strafrechtswissenschaft", volume 65 (1953) pages 458 et ss.

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(Rép.fédérale)

2. Il a été prévu de proposer au Parlement fédéral d'inclure dans le droit pénal militaire en vigueur un chapitre relatif aux délits contre les lois et coutumes de la guerre. Jusqu'à présent, il n'existe qu'un projet provisoire, établi par des experts, qui peut encore subir des modifications importantes au cours de la procédure législative. En annexe, figurent les dispositions extraites de ce projet. Elles prévoient la répression non seulement des infractions graves aux Conventions de Genève, mais aussi la répression d'autres violations du droit des gens. Dans le projet, figurent aussi des actes qui peuvent déjà être punis selon le droit en vigueur. On a voulu rassembler autant que possible dans une seule disposition pénale toutes les formes possibles d'une violation grave du droit des gens, souligner spécialement que le délit a le caractère d'une violation du droit des gens, assurer pour chaque cas une répression suffisante; on a voulu aussi enlever tout doute sur le point de savoir si une violation du droit des gens est entièrement couverte par le droit en vigueur.

3. La procédure relative à la poursuite et au jugement des violations des Conventions de Genève est réglée par l'Ordonnance de procédure pénale du 1er février 1877 sous la forme de sa publication du 12 septembre 1950 (Recueil des lois, page 455); cette Ordonnance a été modifiée en dernier lieu par la loi du 26 juillet 1957 (Recueil des lois I, p. 861). Il n'existe pas encore, jusqu'à présent, de dispositions spéciales pour la procédure en cas de conflit armé.

Allemagne
(Rép. fédérale)

2ème Annexe

Extrait du projet provisoire de loi portant complément
et modification du droit pénal militaire établi par un
groupe d'experts

Etat au 15 mai 1964

Art. 61 - Pillage

- 1) Celui qui aura soustrait à un mort une chose mobilière pour se procurer ou procurer à un tiers un enrichissement illégitime sera puni de l'emprisonnement pour au moins trois mois.
- 2) La tentative est punissable.
- 3) Dans les cas de très peu de gravité, la peine sera la prison jusqu'à deux ans ou les arrêts répressifs.
- 4) Dans les cas particulièrement graves, la peine sera la réclusion jusqu'à dix ans.

Art. 62 - Personnes protégées

- 1) Les articles 64 à 71 s'appliquent aux actes commis contre des personnes qui sont protégées par une Convention de Genève (art. 2 No 4 - Personnes protégées).
- 2) La personne qui n'est pas couverte par une Convention de Genève parce qu'elle, ou l'auteur du délit, n'appartiennent pas à un Etat Partie à la Convention, ou ne dépendent pas d'un tel Etat, est également personne protégée au sens du par. 1.

Art. 64

Lésions physiques et morales

- 1) Celui qui a causé à une personne protégée un dommage corporel ou moral considérable, ou des souffrances considérables, sera puni de la prison pour au moins un mois, pour autant que d'autres dispositions ne prévoient pas une peine plus sévère.

Allemagne
(Rép. fédérale)

2) La tentative est punissable.

3) Celui qui commet ce délit contre une personne protégée dont il a la charge ou la garde, ou qui en raison des circonstances particulières du combat ou d'un danger extérieur dépend de lui, sera puni de la prison pour six mois au moins.

Art. 65

Traitement inhumain

1) Celui qui traite une personne protégée d'une manière inhumaine en portant atteinte à sa dignité sera puni de la prison pour un mois au moins.

2) Celui qui commet ce délit contre une personne protégée dont il a la charge ou la garde, ou qui en raison des circonstances particulières du combat ou d'un danger extérieur dépend de lui, sera puni de la prison pour six mois au moins.

Art. 66

Expériences interdites

1) Celui qui entreprend sur une personne protégée des expériences biologiques, médicales ou d'autres expériences scientifiques qui peuvent causer un dommage physique ou moral considérable ou des souffrances considérables sera puni de la prison pour trois mois au moins.

2) Les interventions ou autres traitements qui selon les connaissances et les expériences de la science médicale et les principes de la conscience médicale, sont pratiqués sur une personne protégée, et qui ont pour but de prévenir, de reconnaître, de guérir, ou de soulager des maladies, des souffrances, des maux corporels ou des troubles psychiques, ne sont pas punissables selon l'alinéa 1.

3) Si l'acte est commis sans l'accord de la personne protégée, la peine sera la prison pour six mois au moins.

4) La tentative est punissable.

5) Dans les cas particulièrement graves, la peine sera la réclusion. On considérera dans la règle comme cas particulièrement graves, ceux qui ont entraîné la mort ou des dommages corporels importants (art. 224 du Code pénal).

Allemagne
(Rép. fédérale)

Art. 67 - Déportation

1) Celui qui par la force transfère ou déporte à l'intérieur ou à l'extérieur du territoire occupé une personne protégée par la IVème Convention de Genève (art. 2 No 4 d) appartenant à la population du territoire occupé sera puni de l'emprisonnement pour six mois au moins.

2) La tentative est punissable.

3) Dans les cas de particulièrement peu d'importance, la peine sera la prison pour un mois au moins, dans les cas particulièrement graves la réclusion jusqu'à dix ans.

4) Les faits énumérés dans les alinéas 1 à 3 ne sont pas punissables pour autant qu'ils sont autorisés par l'art. 49, alinéa 2 et l'art. 78, alinéa 1, de la IVème Convention de Genève.

Art. 68

Contrainte au service militaire dans
l'armée ennemie

1) Celui qui contraint une personne protégée au service dans les forces armées ennemies sera puni de la prison pour six mois au moins.

2) La tentative est punissable.

3) Dans les cas de particulièrement peu d'importance, la peine sera la prison pour un mois au moins, dans les cas particulièrement graves la réclusion jusqu'à dix ans.

Art. 69

Prise d'otages

1) Celui qui arrête ou garde une personne protégée pour l'employer ou la faire employer comme otage, ou qui l'emploie effectivement comme otage, sera puni de la prison pour six mois au moins.

2) La tentative est punissable.

3) Dans les cas particulièrement graves, la peine sera la réclusion jusqu'à dix ans.

Allemagne
(Rép. fédérale)

Art. 70

Refus de garanties judiciaires

- 1) Celui qui prive une personne protégée accusée des garanties essentielles auxquelles les personnes protégées ont droit, celui qui refuse ces garanties ou qui les retire, sera puni de la prison pour six mois au moins. Si l'accusé a été acquitté ou si la procédure a été suspendue, le Tribunal peut atténuer la peine ou exempter de toute peine.
- 2) La tentative est punissable.
- 3) Dans les cas particulièrement graves, la peine sera la réclusion jusqu'à dix ans.

Art. 71

Travaux interdits

- 1) Celui qui force une personne protégée à des travaux qui sont nuisibles à la santé, dangereux ou déshonorants, ou qui servent à des buts directement militaires, et auxquels selon les Conventions de Genève elle ne peut pas être contrainte, sera puni de la prison.
- 2) La tentative est punissable.

Art. 72

Actes hostiles contre des représentants
de la Puissance protectrice ou d'organisations humanitaires

Sera puni de la prison jusqu'à trois ans pour autant qu'aucune autre prescription ne prévoit une peine plus sévère :

- 1) Celui qui aura volontairement empêché des représentants de la Puissance protectrice, du CICR, ou d'autres organisations humanitaires impartiales, d'accomplir les tâches qui leur incombent en vertu des Conventions de Genève,
- 2) Celui qui se sera livré à des voies de fait contre eux, les aura injuriés ou menacés.

Allemagne
(Rép. fédérale)

Art. 73

Emploi abusif au cours des combats du
signe de la croix rouge ou du signe
prévu pour les biens culturels

1) Celui qui emploie abusivement le signe protecteur de la croix rouge ou un signe qui lui est assimilé, ou le signe prévu pour les biens culturels, pour préparer des actes d'hostilité, ou pour se protéger contre l'action de l'ennemi, sera puni de la prison pour un mois au moins.

2) Celui qui emploie le signe de la croix rouge, ou un signe qui lui est assimilé, pour commettre des actes d'hostilité sera puni de la réclusion jusqu'à dix ans; dans les cas de peu de gravité, de la prison pour six mois au moins. Dans les cas graves, il sera puni comme un franc-tireur (art. 80, alinéa 2).

3) Les signes qui peuvent être confondus avec ceux qui sont nommés dans les alinéas 1 et 2 leur sont assimilés.

GENEVA CONVENTIONS Act 1957

Part I. - Preliminary

- Short title. 1. This Act may be cited as the Geneva Conventions Act 1957.
- Commence-
ment. 2. This Act shall come into operation on a date to be fixed by Proclamation, not being earlier than six months after the deposit on behalf of Australia of instruments of ratification of the Conventions referred to in this Act.
- Parts. 3. This Act is divided into Parts, as follows : -
Part I. - Preliminary (Sections 1-6).
Part II. - Punishment of Offenders against the Conventions (Sections 7-10).
Part III. - Legal Proceedings in respect of Protected Persons (Sections 11-14).
Part IV. - Abuse of the Red Cross and other Emblems (Section 15)
Part V. - Regulations (Section 16).
- Repeal. 4. The Geneva Convention Act 1938 is repealed.
- Interpretation. 5. (1) In this Act -
"the First Convention" means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on the twelfth day of August, One thousand nine hundred and forty-nine, a copy of which Convention (not including the annexes to that Convention) is set out in the First Schedule to this Act :
"the Second Convention" means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on the twelfth day of August, One thousand nine hundred and forty-nine, a copy of which Convention (not including the annex to that Convention) is set out in the Second Schedule to this Act;

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"the Third Convention" means the Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on the twelfth day of August, One thousand nine hundred and forty-nine, a copy of which Convention (not including the annexes to that Convention) is set out in the Third Schedule to this Act;

"the Fourth Convention" means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on the twelfth day of August, One thousand nine hundred and forty-nine, a copy of which Convention (not including the annexes to that Convention) is set out in the Fourth Schedule to this Act;

"the Conventions" means the First Convention, the Second Convention, the Third Convention and the Fourth Convention.

(2) In this Act, unless the contrary intention appears -

"Australia" includes the Territories of the Commonwealth;

"court" does not include a court-martial or military court;

"protected internee" means a person protected by the Fourth Convention and interned in Australia;

"protected prisoner of war" means a person protected by the Third Convention;

"the protecting power", in relation to a protected prisoner of war or a protected internee, means the power or organization which is carrying out, in the interests of the power of which he is a national, or of whose forces he is, or was at any material time, a member the duties assigned to protecting powers under the Third Convention or the Fourth Convention, as the case may be.

(3) If the ratification on behalf of Australia of any of the Conventions is subject to a reservation or is accompanied by a declaration, that Convention shall, for the purposes of this Act, have effect and be construed subject to and in accordance with that reservation or declaration.

Application 6. (1) This Act extends to every Territory of the Commonwealth of Act.

(2) This Act has extra-territorial operation according to its tenor.

Australie

Part II. - Punishment of Offenders against the
Conventions.

- Punishment
of grave
breaches of
Conventions.
7. (1) A person who, in Australia or elsewhere, commits, or aids, abets or procures the commission by another person of, a grave breach of any of the Conventions is guilty of an indictable offence.
- (2) For the purposes of this section -
- (a) a grave breach of the First Convention is a breach of that Convention involving an act referred to in Article 50 of that Convention committed against persons or property protected by that Convention;
- (b) a grave breach of the Second Convention is a breach of that Convention involving an act referred to in Article 51 of that Convention committed against persons or property protected by that Convention;
- (c) a grave breach of the Third Convention is a breach of that Convention involving an act referred to in Article 130 of that Convention committed against persons or property protected by that Convention; and
- (d) a grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in Article 147 of that Convention committed against persons or property protected by that Convention.
- (3) This section applies to persons regardless of their nationality or citizenship.
- (4) The punishment for an offence against this section is -
- (a) where the offence involves the wilful killing of a person protected by the relevant Convention - death or imprisonment for life or for any less term; and
- (b) in any other case - imprisonment for a term not exceeding fourteen years.
- (5) A sentence of death passed by a court in pursuance of this section shall be carried into execution in accordance with the law of the State or Territory of the Commonwealth in which the offender is convicted or, if the law of that State or Territory does not provide for the execution of sentences of death, as the Governor-General directs.

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(6) An offence against this section shall not be prosecuted in a court except by indictment in the name of the Attorney-General.

(7) The provisions of section twelve of this Act (other than subsection (2)), apply in relation to the trial of a person for an offence against this section in like manner as they apply in relation to the trial of a protected prisoner of war.

Proof of application of Convention. 8. If, in proceedings under this Part in respect of a grave breach of any of the Conventions, a question arises under Article 2 of that Convention (which relates to the circumstances in which the Convention applies), a certificate under the hand of the Minister of State for External Affairs certifying to any matter relevant to that question is evidence of the matter so certified.

Offences in Australia not triable by court-martial. 9. A person subject to naval, military or air force law is not liable to trial in Australia by court-martial in respect of an act or omission if he would not have been so liable if this Part and section one of the Geneva Conventions Act, 1957 of the United Kingdom had not been passed.

Jurisdiction of courts. 10. (1) Subject to the succeeding provisions of this section and without prejudice to the original jurisdiction of the High Court-

- (a) the Supreme Court of each State is invested with federal jurisdiction in trials of offences against section seven of this Act, other than offences committed in another State; and
- (b) jurisdiction is conferred on the Supreme Court of each Territory of the Commonwealth in trials of offences against section seven of this Act committed in that Territory.

(2) The trial on indictment of an offence against this Act, not being an offence committed within Australia, may be held in any State and the trial on indictment of such an offence committed in a Territory of the Commonwealth may be held in any State or in that Territory.

(3) The jurisdiction with which the Supreme Court of a State is invested by this section is subject to the conditions and restrictions specified in paragraphs (a) and (c) of sub-section (2) of section thirty-nine of the Judiciary Act 1903-1955.

(4) Subject to this section and to the regulations, the Judiciary Act 1903-1955 applies in relation to offences against this Act.

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(5) A person shall not be tried for an offence against this Act by a court other than the High Court or a Supreme Court referred to in this section.

Part III - Legal Proceedings in respect of Protected
Persons

Notice of trial of protected prisoners of war and internees to be served on protecting power, &c.

11. (1) The court before which-
- (a) a protected prisoner of war is brought up for trial for an offence; or
 - (b) a protected internee is brought up for trial for an offence for which that court has power to sentence him to death or to imprisonment for a term of two years or more,

shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in the next succeeding sub-section, so far as they are known to the prosecutor, has been served not less than three weeks previously on the protecting power (if there is a protecting power) and, if the accused is a protected prisoner of war, on the accused and the prisoners' representative.

(2) The particulars referred to in the last preceding sub-section are -

- (a) the full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and his army, regimental, personal or serial number;
- (b) his place of detention, internment or residence;
- (c) the offence with which he is charged; and
- (d) the court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section, a document purporting-

- (a) to be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and
- (b) to be an acknowledgment of the receipt by that power, representative or person on a specified day of a notice described in the document as a notice under this section,

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shall, unless the contrary is shown, be sufficient evidence that the notice required by sub-section (1) of this section was served on that power, representative or person on that day.

(4) In this section, the expression "prisoners' representative", in relation to a particular protected prisoner of war at a particular time, means the person by whom the functions of prisoners' representative within the meaning of Article 79 of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.

(5) A court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other law, remand the accused for the period of the adjournment.

Legal representation of prisoners of war. 12. (1) The court before which a protected prisoner of war is brought up for trial for an offence shall not proceed with the trial unless-

- (a) the accused is represented by counsel; and
- (b) it is proved to the satisfaction of the court that a period of not less than fourteen days has elapsed since instructions for the representation of the accused at the trial were first given to the solicitor by whom that counsel was instructed,

and if the court adjourns the trial for the purpose of enabling the requirements of this sub-section to be complied with, then, notwithstanding anything in any other law, the court may remand the accused for the period of the adjournment.

(2) In the absence of counsel accepted by the accused as representing him, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (b) of the last preceding sub-section, be regarded for the purposes of that sub-section as representing the accused.

(3) If the court adjourns the trial in pursuance of sub-section (1) of this section by reason that the accused is not represented by counsel, the court shall direct that a solicitor and counsel be assigned to watch over the interests of the accused at any further proceedings in connexion with the offence, and at any such further proceedings, in the absence of counsel either accepted by the accused as representing him or instructed as mentioned in the last preceding

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sub-section, counsel assigned in pursuance of this sub-section shall, without prejudice to the requirements of paragraph (b) of sub-section (1) of this section, be regarded for the purposes of that last-mentioned sub-section as representing the accused.

(4) In relation to any proceedings before a court before which the accused may be represented by a solicitor, the foregoing provisions of this section shall be construed, with any necessary modifications, as if references in those provisions to counsel were references to counsel or a solicitor; and for the purposes of any such proceedings the court, in giving a direction under the last preceding sub-section, may, if the court is satisfied that the nature of the charge and the interests of justice do not require that the interests of the accused should be watched over by counsel, direct that a solicitor only shall be assigned as mentioned in that sub-section.

(5) A solicitor or counsel shall be assigned in pursuance of sub-section (3) of this section in such manner as is provided by the regulations or, in the absence of provision in the regulations, as the court directs, and the fees and costs of any solicitor or counsel so assigned shall be paid by the Commonwealth.

Appeals by 13. (1) Where a protected prisoner of war or a protected internee has
protected
prisoners of
war and
internees. been sentenced by a court to death or to imprisonment for a term of two years or more, any time allowed in relation to the institution of an appeal against the conviction or sentence shall be deemed to continue to run until the day on which the convicted person receives a notice given -

- (a) in the case of a protected prisoner of war - by an officer in the Defence Force; or
- (b) in the case of a protected internee- by or on behalf of the governor or other person in charge of the prison or place in which he is confined,

that the protecting power has been notified of his conviction and sentence, and for such further time as would have been within the time allowed if the conviction or sentence had taken place or been pronounced on that day.

(2) Where, after an appeal against the conviction or sentence by a court of a protected prisoner of war or a protected internee has been determined, the sentence remains a sentence of death, or remains or has become a sentence of imprisonment for a term of two years or more, any time allowed in relation to a further appeal in respect of the conviction or sentence as confirmed or varied upon the previous

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appeal shall be deemed to continue to run until the day on which the convicted person receives a notice given by a person referred to in paragraph (a) or (b) of the last preceding sub-section, as the case may require, that the protecting power has been notified of the decision of the court upon the previous appeal, and for such further time as would have been within the time allowed if that decision had been pronounced on that day.

(3) Where sub-section (1) of this section applies in relation to a convicted person, then, unless the court otherwise orders, an order of the court relating to the restitution of property or the payment of compensation to an aggrieved person shall not take effect, and a provision of a law relating to the revesting of property on conviction shall not take effect in relation to the conviction, while an appeal by the convicted person against his conviction or sentence is possible without an extension of time other than the extension provided by the last preceding sub-section.

(4) In relation to a protected prisoner of war, the Courts-Martial Appeals Act 1955 shall be deemed to have effect as if -

- (a) the expression "military court-martial" in that Act included a military court convened under a law of the Commonwealth relating to prisoners of war; and
- (b) the expression "military law" in that Act included the laws of the Commonwealth relating to prisoners of war.

(5) Sub-sections (1), (2) and (3) of this section do not apply in relation to an appeal against a conviction or sentence, or against the decision of a court upon a previous appeal, if, at the time of the conviction or sentence, or of the decision of the court upon the previous appeal, as the case may be, there is no protecting power.

Reduction 14.
of sentence
and custody
of protected
prisoners of
war and
internees.

(1) When a protected prisoner of war or a protected internee is convicted of an offence, the court shall -

- (a) in fixing a term of imprisonment in respect of the offence, deduct from the term which it would otherwise have fixed any period during which the convicted person has been in custody in connexion with that offence before the trial; and
- (b) in fixing any penalty other than imprisonment in respect of the offence, take that period of custody into account.

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(2) Where the Minister is satisfied that a protected prisoner of war accused of an offence has been in custody in connexion with that offence, while awaiting trial, in a place other than a camp or place in which protected prisoners of war are detained, for an aggregate period of not less than three months, the Minister may direct that the prisoner shall be transferred from that custody to the custody of an officer of the Defence Force and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the court at the time appointed for his trial.

Part IV - Abuse of the Red Cross and other Emblems

Use of Red Cross and other emblems. 15. (1) Subject to this section, a person shall not, without the consent in writing of the Minister or of a person authorized in writing by the Minister to give consents under this section, use for any purpose whatsoever any of the following: -

- (a) the emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground or the designation "Red Cross" or "Geneva Cross";
- (b) the emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent";
- (c) the following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun";
- (d) the emblem of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation;
- (e) a design or wording so nearly resembling any of the emblems or designations specified in the preceding paragraphs of this subsection as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.

Penalty: Fifty pounds.

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- (2) The Minister or a person authorized by the Minister to give consents under this section shall not refuse to give such a consent, and shall not withdraw such a consent, except for the purpose of giving effect to the provisions of the Conventions.
- (3) An authority given under section four of the Geneva Convention Act 1938 and in force immediately before the commencement of this section shall be deemed to be a consent to the like effect given by the Minister under this section.
- (4) Where a person is convicted of an offence against sub-section (1) of this section, the court may, in addition to any fine, order the forfeiture to the Commonwealth of any goods upon or in connexion with which the emblem, designation, design or wording was used by that person.
- (5) In the case of a trade mark registered before the day on which this Act received the Royal Assent, the preceding provisions of this section do not apply by reason only of its consisting of or containing an emblem or designation specified in paragraph (b) or (c) of sub-section (1) of this section or a design or wording resembling such an emblem or designation; and where a person is charged with using such an emblem, designation, design or wording for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark so registered, it is a defence for him to prove -
- (a) that he lawfully used that emblem, designation, design or wording for that purpose before the day on which this Act received the Royal Assent; or
 - (b) in a case where he is charged with using the emblem, designation design or wording upon goods, that the emblem, designation, design or wording had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the emblem, designation, design or wording upon similar goods before the day on which this Act received the Royal Assent.
- (6) Where an offence against this section committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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- (7) This section extends to the use in or outside Australia of an emblem, designation, design or wording referred to in sub-section (1) of this section on any ship or aircraft registered in Australia.
- (8) Proceedings under this section shall not be instituted without the consent in writing of the Attorney-General.

Part V - Regulations

Regulations. 16. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Autriche

(Original allemand
traduction par les soins du CICR)

LETTRE DE LA CROIX-ROUGE AUTRICHIENNE

29 juillet 1964

En réponse à la circulaire du CICR du 20 avril 1964 concernant les mesures que l'Autriche a prises pour assurer la répression des violations des Conventions de Genève, nous nous permettons de vous communiquer ce qui suit :

1) La seule loi d'application des Conventions de Genève qui ait été prise en Autriche est la loi intitulée "loi pour la protection de la Croix-Rouge" (Recueil fédéral des lois No 196 du 20 juillet 1962). Cette loi d'application se réfère principalement aux dispositions des art. 44 et 53 de la Ière Convention et aux articles correspondants d'autres Conventions sur l'emploi du signe de la croix rouge. Cette loi a pour objet de rendre possible la punition des personnes qui emploient abusivement le signe de la croix rouge. Les différents cas d'emploi du signe de la croix rouge énumérés dans les Conventions de Genève ne sont pas répétés dans cette loi, mais simplement mentionnés d'une manière générale, de telle manière que tout emploi du signe de la croix rouge contraire aux Conventions de Genève est interdit. La loi contient les dispositions pénales correspondantes. La répression a été confiée aux autorités administratives. Cependant, en ce qui concerne les personnes militaires, les autorités militaires, dans l'exercice de leur pouvoir disciplinaire, peuvent punir les militaires qui agissent contrairement aux dispositions des Conventions de Genève sur l'emploi du signe de la croix rouge.

Le CICR a déjà reçu un exemplaire de cette loi. Si cela était nécessaire, nous sommes volontiers disposés à mettre à disposition un nouvel exemplaire.

2) Comme il n'existe pas d'autres lois d'application relatives à la répression des violations des Conventions de Genève, il est nécessaire de traiter d'une manière générale

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la question des relations entre le droit des gens et le droit interne, conformément aux dispositions de la Constitution fédérale autrichienne.

La Constitution fédérale autrichienne, dans son article 9, reconnaît comme partie intégrante du droit fédéral, les règles généralement reconnues du droit des gens. Donc, pour autant qu'il s'agit de normes du droit des gens "généralement reconnues", elles font directement partie du droit interne. Aussi bien les autorités, les tribunaux, que tous les citoyens sont obligés de suivre ces règles généralement reconnues du droit des gens.

L'art. 9 de la Constitution fédérale autrichienne n'a cependant que peu de signification en ce qui concerne les Conventions de Genève, car cet article se limite principalement dans son application pratique au droit des gens coutumier. Les dispositions de l'art. 50 de la Constitution fédérale autrichienne sont particulièrement importantes pour déterminer jusqu'à quel point les Conventions de Genève font directement partie du droit interne autrichien. Selon l'art. 50 de la Constitution fédérale, chaque traité international doit recevoir l'approbation du Parlement. L'approbation par le Parlement se fait sous la forme d'une décision législative, de telle manière que le traité conclu devient directement du droit interne. C'est pourquoi, lorsqu'il s'agit d'un traité qui a été approuvé par le Parlement, il est inutile de rechercher si les règles contenues dans ce traité sont des "règles généralement reconnues du droit des gens". Il en résulte très clairement qu'en Autriche, les dispositions des Conventions de Genève font partie directement du droit interne. Le manque de dispositions pénales a cependant pour conséquences que des interdictions sont proclamées, sans que soient fixées les peines à appliquer à ceux qui les violent.

Au sujet de cette question non résolue, les dispositions de l'art. 145 de la Constitution fédérale sont importantes. Cet article prévoit qu'en cas de violation du droit des gens, c'est la Cour constitutionnelle qui doit en connaître, selon les dispositions d'une loi fédérale spéciale. Cependant, cette loi n'a pas été promulguée jusqu'à présent. Les violations du droit des gens étant réservées à la Cour constitutionnelle, selon la Constitution, il en résulte que non seulement les violations commises par des personnes privées, mais toutes violations du droit des gens, c'est-à-dire également celles qui sont commises par des organes de l'Etat, éventuellement par le moyen de dispositions législatives, peuvent être portées devant cette Cour.

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On peut dire donc que d'une manière générale, les dispositions des Conventions de Genève sont directement du droit interne et lient directement tous les organes internes de l'Etat et les citoyens. Cependant, la Cour constitutionnelle ne peut pas encore poursuivre les infractions, comme le prévoit la Constitution fédérale, parce que la loi fédérale correspondante qui devrait assurer l'application de ces dispositions n'existe pas encore.

3) Le Code pénal autrichien ne contient aucune disposition particulière au sujet de la répression des infractions aux Conventions de Genève.

Pour autant qu'il s'agit des infractions contre les dispositions des Conventions de Genève indiquées dans l'art. 50 de la Ière Convention, elles peuvent, d'une manière générale, être poursuivies en vertu des dispositions du Code pénal autrichien. Il apparaît donc superflu d'adopter des lois particulières d'application qui iraient au-delà du cadre du Code pénal autrichien.

Comme l'article 49 de la Ière Convention n'oblige les parties contractantes qu'à des mesures législatives pour la répression des graves infractions à la Convention, il n'y a donc aucune obligation pour l'Autriche dans ce domaine. Ceci est valable pour la répression des infractions aux Conventions de Genève commises par des individus.

Résumé

Les dispositions des Conventions de Genève font partie en Autriche directement du droit interne. La répression des "infractions graves" aux Conventions de Genève est assurée par le droit pénal. Donc, toutes les autorités et les personnes sont liées par les dispositions des Conventions de Genève.

Pour autant qu'il s'agit de punir d'autres violations que les violations graves des Conventions de Genève, une loi d'application, la loi de "protection de la Croix-Rouge" mentionnée ci-dessus a été promulguée.

Bulgarie

LOI PORTANT MODIFICATION ET COMPLEMENT
DE LA LOI PENALE, DONT LE NOM DANS LA
REPUBLIQUE POPULAIRE DE BULGARIE A ETE
CHANGE EN "CODE PENAL"

Chapitre XIV

Crimes contre les Conventions Internationales

371. Le Militaire, traitant cruellement des prisonniers de guerre, ou remplissant négligemment les obligations, dont il est chargé concernant le traitement ou les soins à donner aux prisonniers de guerre malades ou blessés, est passible d'une peine privative de liberté allant jusqu'à 3 ans.

372. Le Militaire qui, dans le rayon des opérations de guerre porte l'insigne de la croix rouge ou du croissant rouge sans en avoir le droit, ainsi que le chef qui donne des ordres pour cela, est passible d'une peine privative de liberté allant jusqu'à 2 ans.

373. Le Militaire qui, en temps de guerre, abuse du drapeau ou de l'insigne de la croix rouge ou du croissant rouge, ou bien de la couleur appropriée aux moyens de transports de l'évacuation sanitaire, est passible d'une peine privative de liberté allant jusqu'à 2 ans.

Canada

An Act respecting the Geneva Conventions, 1949.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE.

Short title.

1. This Act may be cited as the Geneva Conventions Act.

CONVENTIONS APPROVED.

Geneva Conventions of 1949 approved.

2. The Geneva Conventions for the Protection of War Victims, signed at Geneva on the 12th day of August, 1949 and set out in Schedules I to IV, are approved.

PART I.

GRAVE BREACHES OF THE CONVENTIONS.

Grave breaches of Geneva Conventions of 1949.

3. (1) Any grave breach of any of the Geneva Conventions of 1949, as therein defined, that would, if committed in Canada, be an offence under any provision of the Criminal Code or other Act of the Parliament of Canada, is an offence under such provision of the Criminal Code or other Act if committed outside Canada.

Jurisdiction.

(2) Where a person has committed an act or omission that is an offence by virtue of this section, the offence is within the competence of and may be tried and punished by the court having jurisdiction in respect of similar offences in the place in Canada where that person is found in the same manner as if the offence had been committed in that place, or by any other court to which jurisdiction has been lawfully transferred.

Canada

Consent. (3) No proceedings in respect of an act or omission that is an offence by virtue of this section shall be instituted without the consent in writing of the Attorney General of Canada.

PART II.

LEGAL PROCEEDINGS IN RESPECT OF PROTECTED PERSONS.

- Definitions
"Court." 4. In this Part,
(a) "court" includes a General Court Martial, a Disciplinary Court Martial and a Standing Court Martial convened or established pursuant to the National Defence Act;
- "Offence." (b) "offence" means any act or omission that is an offence under the Criminal Code or any other Act of the Parliament of Canada or that is, by virtue of section 3, an offence under any such Act;
- "Prisoners' representative." (c) "prisoners' representative" in relation to a protected prisoner of war means the person elected or recognized as that prisoner's representative pursuant to Article 79 of the Geneva Convention set out in Schedule III;
- "Protected internee." (d) "protected internee" means a person interned in Canada who is protected by the Geneva Convention set out in Schedule IV;
- "Protecting power." (e) "protecting power" means
(i) in relation to a protected prisoner of war, the country or organization that is carrying out, in the interests of the country of which that prisoner is a national or of whose forces he is or was a member at the time of his being taken prisoner of war, the duties assigned to protecting powers under the Geneva Convention set out in Schedule III, and
(ii) in relation to a protected internee, the country or organization that is carrying out, in the interests of the country of

Canada

which that internee is or was a national at the time of his internment, the duties assigned to protecting powers under the Geneva Convention set out in Schedule IV; and

"Protected prisoner of war." (f) "protected prisoner of war" means a prisoner of war who is protected by the Geneva Convention set out in Schedule III.

Notice of trial of protected persons to be served on protecting power.

5. (1) The Court before which
(a) a protected prisoner of war is brought for trial for an offence, or
(b) a protected internee is brought for trial for an offence for which that court has power to sentence him to death or to imprisonment for a term of two years or more, shall not proceed with the trial until it is proved to the satisfaction of the court that written notice of the trial containing, where known to the prosecutor, the information mentioned in subsection (2) has been given to the accused and his protecting power, not less than three weeks before the commencement of the trial, and where the accused is a protected prisoner of war, to his prisoners' representative.

Contents of notice.

(2) The notice referred to in subsection (1) shall state
(a) the full name of the accused and a description of him, including the date of his birth, his profession or trade and, if the accused is a protected prisoner of war, his rank and army, regimental, personal or serial number;
(b) the accused's place of detention, internment or residence;
(c) the offence with which the accused is charged; and
(d) the court before which the trial of the accused is to take place and the time and place appointed for the trial.

Canada

Time for appeal from sentence of death or imprisonment for more than two years.

6. (1) Where a protected prisoner of war or a protected internee has been sentenced by a court to death or to imprisonment for a term of two years or more, the time allowed for an appeal against the conviction or sentence or against the decision of a court of appeal not to allow, dismiss or quash the conviction or sentence shall run from the day on which the protecting power has been notified of the conviction and sentence by

- (a) an officer of the Canadian Forces, in the case of a protected prisoner of war; or
- (b) the Secretary of State for External Affairs, in the case of a protected internee.

Sentence of death not to be executed before notice given protecting power.

(2) Notwithstanding anything in this or any other Act, where a protected prisoner of war or a protected internee has been sentenced to death by a court, the sentence shall not be executed before the expiration of six months from the date on which the protecting power is given notice in writing thereof by the appropriate person referred to in paragraph (a) or (b) of subsection (1), which notice shall contain

- (a) a precise wording of the finding and sentence;
- (b) a summary of any preliminary investigation and of the trial and, in particular, of the elements of the prosecution and defence; and
- (c) a copy of any order denying pardon or reprieve to that person.

Prisoner of war subject to Code of Service Discipline.

7. (1) Every prisoner of war is subject to the Code of Service Discipline as defined in the National Defence Act and every prisoner of war who is alleged to have done or omitted to do anything that is, by virtue of section 3, an offence under the Criminal Code or any other Act of the Parliament of Canada shall be deemed to have been subject to the Code of Service Discipline at the time the offence was alleged to have been committed.

Canada

Dealt with
by Service
having
custody.

(2) A prisoner of war described in subsection (1) may be charged and tried within the Service of the Canadian Forces in which he is held in custody and, for the purposes of the Code of Service Discipline, he shall be deemed to be under the command of the commanding officer of such unit or other element of the Service as may be holding him in custody.

Regulations
respecting
prisoners
of war.

8. Subject to this Act, the Minister of National Defence may make such regulations as he deems necessary respecting prisoners of war held by Canadian Forces, including regulations to carry out and give effect to the provisions of the Geneva Convention set out in Schedule III respecting protected prisoners of war.

PART III.

GENERAL.

Certificate
of Secretary
of State.

9. A certificate of the Secretary of State for External Affairs stating that on the date or dates specified therein a state of war or armed conflict existed between the states named therein shall be received in evidence in a prosecution for an act or omission that is an offence under the Criminal Code or any other Act of the Parliament of Canada, or that is, by virtue of section 3, an offence under any such Act, and shall be conclusive proof of the statements contained therein.

China

LETTER OF THE RED CROSS SOCIETY OF CHINA

January 27th, 1965

We have received your letter of April 20, 1964, requesting us to send you information on legislation introduced in China to repress violations of the Geneva Conventions.

I have the pleasure to inform you that at present, no such special legislation is enacted in China. Nevertheless, our laws and regulations in force and our practice can fully insure the realization of the spirit of the Geneva Conventions and are adequate to prevent and suppress any breach of these Conventions that may occur.

We are glad to know that you are making a study on this subject. We shall be grateful if you would keep us informed by sending us the relevant material.

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Chypre

Voir ROYAUME UNI, Geneva Conventions Act,
Order in Council, 1959.

Etats-Unis

LETTER OF THE AMERICAN NATIONAL RED CROSS

December 14th, 1964

This is in reference to your circular of April 20, 1964 concerning "Repression of Violations of the Geneva Conventions."

This entire matter has been carefully discussed with the appropriate sections of our Government, and it is their opinion that existing legislation is adequate to enable punishment of persons convicted of acts which constitute "grave breaches" of the Conventions. Furthermore, in the unlikely event that a person committing a grave breach might not be punishable under the laws of the United States because of lack of jurisdiction of a competent court, it is the U. S. Government's opinion that such person could be turned over to another High Contracting Party under the authority of the Conventions.

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Dispositions du Code pénal éthiopien de 1955
applicables à la répression des infractions
contre le droit des gens

Art. 15. Infractions commises à l'étranger par des militaires

1) Lorsqu'un militaire éthiopien commet, à l'étranger, une infraction de droit commun, il est soumis à la loi et à la juridiction territoriales ordinaires s'il est arrêté et jugé dans le pays du lieu de commission de l'infraction.

S'il est réfugié en Ethiopie, il y sera jugé d'après le présent code, à défaut d'extradition (art. 20, chif.2).

2) En cas d'infractions contre le droit des gens et d'infractions spécifiquement militaires, prévues aux titres II et III du Livre III de la Partie spéciale, le militaire reste soumis à la loi nationale et sera jugé selon le présent code et par les tribunaux militaires éthiopiens.

Si l'auteur a déjà été condamné par un tribunal étranger et a subi en tout ou en partie sa peine, le juge la déduira, dans la mesure subie, de celle qu'il a lieu de prononcer.

Art. 16. Infractions commises à l'étranger contre le droit des gens ou l'ordre universel

Pourra être jugé et puni subsidiairement, d'après les dispositions du présent code et aux conditions générales qui suivent (art. 18), quiconque se sera rendu coupable, en quelque qualité et en quelque lieu que ce soit, d'une infraction contre le droit des gens ou d'une infraction internationale prévue par une disposition de la législation éthiopienne, d'un traité ou d'une convention internationale, si l'auteur n'a pas été poursuivi de ce fait à l'étranger et se trouve en Ethiopie.

Art. 72. Ordre hiérarchique. Responsabilité de l'ordre

En cas d'infraction commise sur l'ordre exprès d'un supérieur hiérarchique, administratif ou militaire, l'auteur de l'ordre est responsable de l'acte exécuté par le subalterne, et punissable dans la mesure où cet acte ne dépasse pas l'ordre qu'il a donné (art. 60, chif.3).

Art. 73. Responsabilité de l'exécutant

1) L'exécutant est également punissable s'il s'est rendu compte du caractère illégitime de l'ordre, notamment à défaut de compétence de son auteur, et du caractère criminel et répréhensible de l'acte, notamment en cas d'homicide, de viol, d'incendie ou d'une autre infraction manifestement grave contre l'intégrité des personnes ou des biens, les intérêts publics essentiels ou le droit des gens.

Le juge atténuera librement la peine (art.197) lorsque le sentiment d'un devoir de discipline ou d'obéissance a déterminé l'exécutant à accomplir l'acte ordonné; il tiendra compte, ce faisant, du caractère plus ou moins impérieux de ce devoir.

2) Le juge pourra aller jusqu'à l'exemption de la peine si, dans les circonstances du cas particulier, et notamment du fait d'exigences spécialement strictes de la discipline étatique ou militaire, l'exécutant étant placé dans des conditions telles qu'il ne lui était pratiquement pas possible de discuter l'ordre reçu et d'agir autrement qu'il n'a fait.

3) En cas de dépassement intentionnel de l'ordre reçu, l'exécutant est seul et pleinement responsable de son excès.

Livre III. Infractions contre l'Etat et les
intérêts nationaux et internationaux

Titre II. Infractions contre le droit des gens

Chapitre 1 - Infractions fondamentales

Art. 293. Génocide; crimes contre l'humanité

Celui qui, dans le dessein de détruire totalement ou partiellement un groupe national, ethnique, racial, confessionnel ou politique, aura organisé, ordonné ou pratiqué, que ce soit en temps de paix ou de guerre,

a) des homicides, des lésions corporelles ou des atteintes graves à la santé physique ou mentale de membres du groupe, sous quelque forme que ce soit,

b) des mesures en vue d'empêcher la procréation ou la survie de la descendance de ses membres,

c) le déplacement ou la dispersion forcés de populations ou d'enfants, ou leur placement dans des conditions de vie telles qu'elles doivent aboutir à leur mort ou leur disparition,

encourt la réclusion, de cinq ans à perpétuité ou, dans les cas le plus graves, la peine de mort.

Art. 294. Crimes de guerre contre la population civile

Celui qui, en temps de guerre, de conflit armé ou d'occupation, aura organisé, ordonné ou pratiqué à l'égard de la population civile, en violation des règles du droit des gens et des conventions internationales humanitaires,

a) des homicides, des actes de torture ou de traitement inhumain-, expériences biologiques comprises, ou des actes entraînant de graves souffrances ou dommages à l'intégrité corporelle ou à la santé physique ou mentale,

b) la réduction volontaire à la famine, à la misère, à la ruine générale par la dépréciation, la contrefaçon ou l'avilissement systématique de la monnaie,

c) le déplacement ou la dispersion forcés de la population, sa déportation ou son envoi et sa détention systématiques dans des camps de concentration ou de travail forcé,

d) l'enrôlement forcé dans les armées de l'ennemi, dans ses services de renseignements ou d'administration,

e) la dénationalisation ou la conversion religieuse forcées,

f) la contrainte à des actes de prostitution, de débauche ou de viol,

g) des mesures d'intimidation ou de terreur, la prise d'otages et l'imposition de peines ou de représailles massives,

h) la confiscation du patrimoine, la destruction ou l'appropriation de biens, les contributions ou réquisitions contraires au droit, arbitraires, ou dans une proportion non commandée par des nécessités militaires absolues,

encourt la réclusion, de cinq ans à perpétuité ou, dans les cas les plus graves, la peine de mort.

Art. 295. Crimes de guerre contre les blessés, malades et naufragés.

Celui qui, dans les mêmes conditions que ci-dessus, aura organisé, ordonné ou pratiqué :

a) des homicides, des actes de torture ou de traitement inhumain, ou des actes entraînant de graves souffrances ou dommages physiques ou psychiques envers des blessés, malades ou naufragés, ou envers le personnel du service sanitaire ou de secours,

b) la destruction, la mise hors d'usage ou l'appropriation du matériel, des installations ou des réserves des institutions sanitaires ou de secours, de manière contraire au droit, arbitraire, ou dans des circonstances ou des proportions non commandées par une nécessité militaire absolue,

encourt les mêmes peines qu'aux articles précédents.

Art. 296. Crimes de guerres contre les prisonniers et internés

Celui qui, dans les mêmes conditions que ci-dessus,

a) aura organisé, ordonné ou pratiqué envers des prisonniers de guerre ou des internés, des homicides, des actes de torture ou de traitement inhumain, ou des actes entraînant de graves souffrances ou dommages,

b) les aura contraints de s'enrôler dans les forces armées ou dans les services de renseignements ou d'administration ennemis,

est passible des mêmes peines qu'aux articles précédents.

Art. 297. Pillage, piraterie et brigandage de guerre

Celui qui aura organisé, ordonné ou pratiqué le brigandage, la piraterie, le pillage, la spoliation, la destruction et l'enlèvement illégaux de biens sous prétexte de nécessités militaires,

est passible des mêmes peines qu'aux articles précédents.

Art. 298. Provocation et préparation

Celui qui, en vue d'accomplir, de permettre ou de soutenir l'un des actes prévus dans les articles précédents,

Ethiopie

a) y provoque publiquement, par la parole, l'image ou l'écrit,

b) s'entend ou complotte avec autrui, pousse à former ou forme une bande ou un groupement, y adhère ou s'associe à ses menées ou se conforme à ses instructions,

encourt la réclusion, qui peut aller jusqu'à cinq ans.

Art. 299. Violation des devoirs envers l'ennemi

Celui qui, en temps de guerre et contrairement au droit des gens et aux conventions humanitaires,

a) aura tué ou blessé un ennemi qui se rendait, avait mis bas les armes, ou de toute autre manière était incapable ou avait cessé de se défendre,

b) aura mutilé un mort,

c) ou aura, sur le champ de bataille, porté la main ou exercé des violences sur un blessé, un malade ou un mort, pour le voler ou le dépouiller,

d) celui qui aura ordonné un de ces actes,

encourt la réclusion ou, dans les cas les plus graves, la peine de mort.

Art. 300. Emploi de moyens de combat illicites

Celui qui emploie ou ordonne d'employer contre l'ennemi des moyens ou des procédés de combat expressément interdits par les conventions internationales reconnues ou par les règlements de l'armée éthiopienne,

encourt l'emprisonnement pour trois mois au moins ou, selon la gravité du fait, la réclusion, qui peut aller de trois ans à perpétuité; dans les cas les plus graves, la peine de mort peut être prononcée.

Art. 301. Rupture d'armistice ou de paix

Celui qui, après avoir officiellement eu connaissance d'un armistice ou de la paix régulièrement conclus, aura continué les hostilités ou, de toute autre manière, violé sciemment une des conditions convenues,

encourt les mêmes peines qu'à l'article précédent.

Art. 302. Activité de franc-tireur

Celui qui, en temps de guerre et contrairement au droit des gens, se livre à des actes d'hostilité contre l'armée éthiopienne, ses services ou ses moyens de transports ou de communications, sans appartenir à la force armée ou aux forces armées auxiliaires reconnues par les autorités de l'Empire,

encourt la réclusion pour trois ans au moins jusqu'à perpétuité ou, dans les cas les plus graves, la peine de mort.

Art. 303. Sévices et manquements envers les blessés, malades et prisonniers

Celui qui, en violation des règles du droit des gens, aura traité avec cruauté un malade, un blessé, un prisonnier ou un interné de guerre, aura exercé sur lui des sévices, ou l'aura empêché ou mis dans l'impossibilité d'user des droits qui lui sont garantis par ces règles, ou celui qui en aura donné l'ordre,

encourt l'emprisonnement, qui peut aller jusqu'à cinq ans.

Art. 304. Dénî de justice

Celui qui, en temps de guerre ou d'occupation, aura privé ou ordonné de priver un civil, un blessé, un prisonnier ou un interné, en violation des règles du droit des gens, du droit d'être jugé selon une procédure régulière garantissant son traitement humain et l'exercice de sa défense,

encourt l'emprisonnement.

Chapitre 2. - Infractions envers les institutions

protectrices

Art. 305. Actes d'hostilité envers les organismes humanitaires internationaux

Celui qui :

a) se sera livré à des actes d'hostilité, des menaces ou des outrages envers des personnes qui appartiennent à la Croix-Rouge ou aux organisations humanitaires de secours correspondantes (Croissant, Lion ou Soleil Rouge), les représentent ou se

trouvent placées sous leur protection,

b) aura détruit ou endommagé volontairement à l'occasion d'hostilité, du matériel, des installations ou des dépôts appartenant à une telle organisation ou placés sous sa protection,

encourt l'emprisonnement.

Art. 306. Abus des emblèmes et insignes internationaux

Celui qui,

a) aura porté ou arboré sans autorisation l'emblème ou les insignes d'une organisation internationale humanitaire ci-dessus,

b) ou aura abusé d'un tel emblème ou insigne, ou de toute autre marque de protection reconnue par le droit des gens, notamment du drapeau blanc, en vue de préparer ou de commettre des actes d'hostilité,

encourt l'emprisonnement ou, dans les cas graves, la réclusion qui peut aller jusqu'à cinq ans.

Art. 307. Actes d'hostilité envers un parlementaire

Celui qui aura maltraité, menacé, outragé ou retenu indûment un parlementaire ou négociateur ennemi ou une personne l'accompagnant,

encourt l'emprisonnement.

France

LETTRE DE LA CROIX-ROUGE FRANCAISE
du 1er mars 1965
avec annexe

CROIX - ROUGE FRANCAISE

Paris, le 1er mars 1965

Le 20 avril 1964, vous nous avez exprimé le désir de recevoir communication des textes qui, en France, répriment les infractions aux Conventions de Genève.

J'ai soumis votre requête aux Services compétents du Gouvernement français, qui, après étude, m'ont remis, à votre intention, l'exposé que vous voudrez bien trouver annexé à ma lettre.

Je suppose que vous détenez déjà le texte de la loi du 24 juillet 1913, modifiée par la loi du 4 juillet 1939. Par ailleurs, le document se réfère à de nombreux articles du Code pénal et du Code de justice militaire, qui ne visent pas spécifiquement des infractions aux Conventions de Genève, mais permettent d'assurer la répression des crimes et délits que celles-ci interdisent.

Au cas où vous désireriez recevoir le texte de certains de ces articles, nous ne manquerions pas de vous en faire établir des copies, dès que vos services nous l'auraient demandé.

Annexe

REPRESSION DES INFRACTIONS PREVUES
PAR LES CONVENTIONS DE GENEVE DU 12 AOUT 1949

LES QUATRE CONVENTIONS DE GENEVE DU 12 AOUT 1949 :

- I - Convention pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne.
- II - Convention pour l'amélioration du sort des blessés, des malades et des naufragés des forces armées sur mer.
- III - Convention relative au traitement des prisonniers de guerre.
- IV - Convention relative à la protection des personnes civiles en temps de guerre

contiennent trois catégories de dispositions :

- I - La première catégorie prévoit les infractions qui sont visées aux articles 53 et 54 de la Convention I et 44 et 45 de la Convention II. Elles se rapportent à la protection des emblèmes de la Croix-Rouge et peuvent être commises aussi bien en temps de guerre qu'en temps de paix. Leur répression est assurée en France par la loi du 24 juillet 1913 (modifié par la loi du 4 juillet 1939) et par les dispositions de l'article 241 du Code de Justice Militaire-Terre.
- II - La seconde catégorie comprend les infractions dites "graves" prévues aux articles 49 et 50 de la Convention I, 50 et 51 de la Convention II, 129 et 130 de la Convention III et 146 et 147 de la Convention IV, commises en cas de guerre déclarée ou de conflit armé même si l'état de guerre n'est pas reconnu et en cas d'occupation même sans résistance militaire. Ces infractions paraissent devoir être le plus souvent imputables à des militaires ou assimilés qui, aux termes de l'article 125 bis du Code de Justice militaire, relèvent en temps de guerre des Tribunaux permanents des Forces armées.

La procédure à suivre à l'égard de ces inculpés est, en l'absence des textes spéciaux, celle fixée par les Codes de Justice militaire dans le cadre des compétences prévues par les articles 159 et 163 à 165 (armée de terre) et 152 (armée de mer) ainsi que par les articles 7 et 8 de la loi du 9 août 1849 sur l'état de siège et par l'article 12 (alinéa I^o) de la loi du 3 avril 1955 instituant un état d'urgence.

Dans l'hypothèse où ces infractions seraient portées devant les juridictions de droit commun les dispositions du Code de procédure pénale seraient applicables. Il convient de rappeler à cet égard que la compétence des juridictions de jugement est fixée en fonction des peines encourues. Ces peines sont en principe celles prévues par le Code pénal. Il a en effet été estimé qu'à défaut de textes spéciaux les infractions aux conventions de Genève précitées constituaient les infractions suivantes :

A/ Infractions communes aux quatre Conventions. -

I - L'homicide intentionnel est puni par les articles 295 et suivants du Code pénal de la peine de mort ou de la réclusion criminelle perpétuelle selon les cas.

2 - La torture, dans les conditions prévues par l'article 303 du même Code, est punie de mort. Elle peut également donner lieu à l'application des articles 309 et suivants dudit Code (notamment si elle a été suivie de mutilation, de cécité ou d'autres infirmités permanentes). Si elle a été commise à l'égard de personnes séquestrées, détenues ou arrêtées illégalement, elle est punie de mort par l'article 344.

3 - Les traitements inhumains, le fait de causer intentionnellement de grandes souffrances ou de porter des atteintes graves à l'intégrité physique ou à la santé sont sanctionnés par les dispositions des articles 309 et suivants précités. Il en est de même des expériences biologiques qui pourraient, en outre, être qualifiées, dans certaines hypothèses, d'empoisonnement (article 301 du Code pénal).

B/ Infractions spéciales à certaines Conventions. -

I - La destruction et l'appropriation des biens, non justifiées par des nécessités militaires et exécutées sur une grande échelle de façon illicite et arbitraire (Conventions I, II et IV) paraissent concerner plus spécialement les militaires qui encourent les peines prévues par l'article 214 du Code de Justice militaire (Terre). En outre sous réserve de l'application de la loi du 11 juillet 1938 et de l'ordonnance no 59-63 du 6 janvier 1959 relatives aux réquisitions de biens et de services qui contiennent des incriminations propres à la réquisition illégale (réprimée notamment par les peines de l'article 174 du Code pénal), les faits incriminés tombent sous le coup des pénalités des articles 434 et suivants du Code pénal (incendie, pillage, destruction) et 400 et suivants (vols, extorsion de fonds sous violence) du même Code, à défaut pour les intéressés d'apporter la preuve de l'ordre de la loi ou du commandement de l'autorité légitime.

2 - La déportation et le transfert illégaux de personnes protégées par la Convention IV impliquent, semble-t-il, la détention illégale et la séquestration, crimes prévus et punis par les articles 341 et 344 du Code pénal..

En outre lorsque ces infractions sont commises par des fonctionnaires ou agents investis de l'autorité publique, les pénalités prévues par les articles 114 et suivants du Code pénal sont applicables.

3 - La prise d'otages (Convention IV) est sanctionnée par l'article 344-2^o précité du Code pénal (arrestation, détention ou séquestration avec menaces de mort).

4 - Le droit des prisonniers de guerre et des personnes protégées par la Convention IV d'être jugés régulièrement et impartialement est reconnu de la manière suivante :

a) l'application du principe de la non-rétroactivité de la loi pénale est garantie en droit français par l'article 4 du code pénal.

b) le respect des droits de la défense est assuré tant par les Codes de Justice militaire que par le Code de Procédure pénale. En ce qui concerne plus spécialement le Code de Procédure pénale, les dispositions concernant le choix

et l'assistance d'un défenseur (articles 114, 118, 274, 417), la nomination d'un interprète (articles 344 et 407), l'utilisation des voies de recours (articles 496 et suivants, 567 et suivants) paraissent conformes aux exigences de la Convention IV précitée.

III- La troisième catégorie des dispositions des Conventions de Genève prévoient diverses interdictions ou obligations qui pourraient être sanctionnées comme suit :

- l'absence de soins à une personne protégée (Conventions III et IV, articles 14 et 38) tomberait sous le coup de l'article 63 du Code pénal;

- les représailles visées par la Convention IV (article 33) seraient réprimées par les articles du Code pénal déjà cités à propos des tortures et traitements inhumains et par l'article 265 du Code pénal;

- l'emploi par la contrainte et au péril de leur vie des personnes protégées (Conventions III, IV articles 51 et 52) serait réprimé par les articles 341 et suivants précités du Code pénal;

- l'imposition de peines collectives (Convention IV article 33) pourrait être réprimée par les articles 221 du Code de Justice militaire-Terre et 400 du Code pénal;

- les actes de pillages (prévus par le même article de cette Convention) seraient punis également en application des articles 221 et suivants du Code de Justice militaire ainsi que par les articles 379 et suivants du Code pénal;

- l'attaque d'installations sanitaires (Convention IV article 18) pourrait être réprimée par les articles 295 et suivants du Code pénal;

- l'absence de dispositions pour assurer la protection des formations sanitaires (articles 21 et 56 de la même Convention) pourrait entraîner l'application de l'article 230 du Code de Justice militaire-Terre.

Enfin le dépouillement d'un militaire blessé, malade ou mort et les violences exercées sur un militaire blessé ou malade (Convention I, article 15) sont prévus par l'article 216 du Code de Justice militaire-Terre.

Il y a lieu d'ajouter que certaines des incriminations précitées visent à la fois ceux qui ont commis les infractions et ceux qui ont donné l'ordre de les commettre comme il est prévu dans l'ensemble des Conventions de Genève.

Dans les autres cas, les règles générales de la complicité (notamment celles fixées par l'article 60, alinéa I du Code pénal) permettent de satisfaire aux prescriptions de ces Conventions.

Gambie

Voir ROYAUME UNI, Geneva Conventions Act,
Order in Council, 1959.

Hongrie

LETTRÉ DE LA CROIX-ROUGE HONGROISE

22 juillet 1964

avec annexe

CROIX-ROUGE HONGROISE

BUDAPEST, le 22 juillet 1964.

En nous référant à la circulaire du 20 avril 1964 du Comité international de la Croix-Rouge concernant des informations sur les mesures législatives en rapport avec les violations des Conventions de Genève de tous les pays, nous avons l'honneur de vous faire parvenir ci-inclus une rédaction des principales règles juridiques de la législation hongroise touchant ces principes.

Nous espérons que la matière assemblée vous sera utile, afin d'avoir une vue d'ensemble plus large sur l'application législative des Conventions dans le monde, ainsi que séparément dans les pays.

(Annexe)

La République populaire hongroise avait ratifié par la loi 32/1954 les Conventions de Genève, elles sont devenues, en conséquence des règles juridiques obligatoires sur le territoire du pays.

Les sanctions pénales frappant les genres d'infractions aux Conventions de Genève se trouvent fixées, en partie dans une règle juridique spéciale, en partie dans le Code pénal de la République populaire hongroise. /V. loi/1961/

La règle juridique spéciale est une convention internationale conclue le 9 décembre 1948, au sujet de la prévention et de la punition de génocide, codifiée par la loi 16/1955 et qui se trouve sanctionnée dans le Code pénal comme suit :

Hongrie

- 1./" Qui, dans le but d'extermination globale ou partielle d'un groupe, national ethnique, racial ou religieux
- a/ tue un membre du groupe
 - b/ contraint le groupe à des conditions d'existence lesquelles menacent de dépérissement le groupe ou individuellement les membres particuliers du groupe
 - c/ prend des mesures, dont le but est d'empêcher les naissances au sein du groupe
 - d/ transfère des enfants appartenant au groupe dans un autre groupe, est punissable d'une détention de 10 à 15 ans ou de peine capitale.
- 2./ Qui fait acte préparatoire de génocide est punissable d'une détention de 2 à 8 ans.

Le Code pénal de la République populaire hongroise sanctionne dans certains cas expressément les crimes offensant les prescriptions des Conventions de Genève, dans d'autres cas, il sanctionne de tels crimes en général /p. ex. : homicide/. En dernier lieu, il y a de tels états de fait de législation criminelle que défendent les Conventions de Genève pour lesquels le Code pénal ne renferme pas de sanctions /p. ex. : transfert forcé/ mais lesquels peuvent être punis par l'interprétation étendue d'autres règlements du Code pénal, respectivement, par l'application de l'analogie.

Nous énumérons quelques faits criminels comme exemples, qui figurent dans le Code pénal, applicables au cas d'infractions aux Conventions de Genève.

Violence contre la population civile /Code pénal 335/ § /

- 1./ Qui, sur un territoire d'opération militaire ou occupé emploie de la violence contre une personne appartenant à la population civile ou abuse grièvement d'une autre manière de son pouvoir - si un crime plus grave ne s'accomplit pas - est punissable d'une détention de 6 mois à 5 ans.
- 2./ Qui, sur un territoire d'opération militaire ou occupé pille les biens de la population, les détruit sans nécessité militaire, resp. endommage gravement la population par l'extorsion de prestations illégitimes ou d'autres manières, est punissable d'une détention de 2 à 8 ans.

Hongrie

3./ La peine de détention s'élève de 5 à 12 ans si le crime est commis :

- a/ par trois ou plus de personnes en commun,
- b/ s'il était commis en se servant d'armes.

Pillage sur le champ de bataille /Code pénal 336 § /

1./ Qui, sur le champ de bataille pille les tombés, les blessés ou les malades, est punissable d'une détention de 2 à 8 ans.

Traitement brutal envers le prisonnier de guerre /Code pénal 339 § /

1./ Qui, envers le prisonnier de guerre manifeste un traitement brutal ou manque aux soins obligatoires - si un crime plus grave ne s'accomplit pas - est punissable jusqu'à un an de détention.

2./ La peine s'élève à une détention de 6 mois à 5 ans si le crime est commis :

- a/ régulièrement
- b/ avec une cruauté particulière
- c/ contre un prisonnier blessé ou malade."

Crime contre un groupe national, ethnique, racial ou religieux /Code pénal 138 § /

Qui cause une grave lésion physique ou psychique au membre de quelque groupe national ethnique, racial ou religieux pour son appartenance à ce groupe, est punissable d'une détention de 2 à 8 ans.

Cruauté en guerre /Code pénal 139 § /

1./ Qui, en temps de guerre, en offensant les règles juridiques internationales, emploie un traitement inhumain contre la population civile sans défense, contre les réfugiés, les blessés, les malades et ceux des membres des forces armées lesquels avaient déjà déposé les armes, ainsi que contre les prisonniers de guerre, est punissable d'une détention de 5 à 12 ans.

Hongrie

2./ La punition s'élève à une détention de 10 à 15 ans ou à la peine capitale si le crime a causé la mort.

Destruction en guerre /Code pénal 140 § /

Qui, au temps de guerre, sur le terrain d'opérations militaires, en offensant les règles juridiques internationales, détruit, sans nécessité militaire, un objet de biens, de valeur ou de quantité considérables, particulièrement si c'est une installation culturelle, scientifique ou sociale, s'il le/la rend inutilisable, l'endommagement, est punissable d'une détention de 2 à 8 ans.

Abus de la croix rouge /Code pénal 141 § /

Qui abuse de l'emblème de la croix rouge ou commet un acte de force contre une personne ou un objet étant sous sa protection, est punissable jusqu'à un an de détention, au temps de guerre, de 6 mois jusqu'à 5 ans.

Interrogatoire de force /Code pénal 146 § /

La personne officielle qui, afin d'extorquer un aveu ou une déclaration, emploie un moyen antilégal, est punissable d'une détention de 6 mois à 5 ans.

Maltraitement au cours de procédure officielle /Code pénal 145 § /

La personne officielle, qui, en exerçant son état, commet une insulte physique contre quelqu'un, est punissable jusqu'à un an de détention.

D'autres actes criminels contre individus : contrainte, calomnie, injures, diffamation d'un défunt, ou la mémoire d'un défunt, crime contre état de famille, crime contre la jeunesse. Les états de faits en sont rédigés de telle manière qu'ils sont applicables aux cas d'infractions aux dispositions des Conventions de Genève.

Hongrie

Une des exigences des Conventions est que personne ne peut être mis en cause que devant un tribunal établi conformément aux règles et fonctionnant à base de garanties judiciaires. A cet égard, nos lois de procédure criminelle et civile contiennent des prescriptions lesquelles excluent que quiconque soit autrement condamné que par devant un tribunal, établi conformément aux règles et fonctionnant à base de garanties judiciaires.

Assemblés et rédigés par
Dr Jules Tóth-Fodor
Juriste de la Croix-Rouge hongroise

Budapest, en juillet 1964.

THE GENEVA CONVENTIONS ACT, 1960

No. 6 of 1960

CHAPTER I

Preliminary

- Short title 1. (1) This Act may be called the Geneva Conventions Act, 1960.
extent and
commence- (2) It extends to the whole of India.
ment. (3) It shall come into force on such date as the Central Govern-
ment may, by notification in the Official Gazette, appoint.

Definitions. 2. In this Act, unless the context otherwise requires, -

- (a) "Conventions" means the Conventions set out in the Schedules; and the First Convention, the Second Convention, the Third Convention and the Fourth Convention mean the Conventions set out in the First, Second, Third and Fourth Schedules, respectively;
- (b) "court" does not include a court-martial or military court;
- (c) "Protected internee" means a person protected by the Fourth Convention and interned in India;
- (d) "protecting power", in relation to a protected internee or a protected prisoner of war, means the power or organisation which is carrying out, in the interests of the power of which he is a national or of whose forces he is or was at any material time a member, the duties assigned to protecting powers under the Third Convention or, as the case may be, the Fourth Convention;
- (e) "protected prisoner of war" means a person protected by the Third Convention.

CHAPTER II

Punishment of offenders against Conventions

Punishment 3. (1) If any person within or without India commits or attempts to of grave breaches of conventions, commit, or abets or procures the commission by any other person of, a grave breach of any of the Conventions he shall be punished, -

(a) where the offence involves the wilful killing of a person protected by any of the Conventions, with death or with imprisonment for life; and

(b) in any other case, with imprisonment for a term which may extend to fourteen years.

(2) Sub-section (1) applies to persons regardless of their nationality or citizenship.

(3) For the purposes of this section, -

(a) a grave breach of the First Convention is a breach of that Convention involving an act referred to in article 50 of that Convention committed against persons or property protected by that Convention;

(b) a grave breach of the Second Convention is a breach of that Convention involving an act referred to in article 51 of that Convention committed against persons or property protected by that Convention;

(c) a grave breach of the Third Convention is a breach of that Convention involving an act referred to in article 130 of that Convention committed against persons or property protected by that Convention; and

(d) a grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in article 147 of that Convention committed against persons or property protected by that Convention.

Liability of 4. When an offence under this Chapter is committed by any person persons for offences committed outside India. outside India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found.

- Jurisdiction** 5. No court inferior to that of a chief presidency magistrate or of court. a Court of Session shall try any offence punishable under this Chapter.
- Proof of application of Convention.** 6. If in any proceeding under this Chapter in respect of a grave breach of any of the Conventions a question arises under article 2 of that Convention (which relates to the circumstances in which the Convention applies), a certificate under the hand of a Secretary to the Government of India certifying to any matter relevant to that question shall be conclusive evidence of the matter so certified.
- Jurisdiction of courts martial.** 7. The Army Act, 1950, the Air Force Act, 1950, or the Navy Act, 1957, relating to trial by court-martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of courts-martial as if this Chapter had not been passed.

CHAPTER III

Legal proceedings in respect of protected persons

- Notice of trial of protected persons to be served on protecting power, etc.** 8. (1) The court before which -
- (a) a protected prisoner of war is brought up for trial for any offence; or
 - (b) a protected internee is brought up for trial for an offence for which that court has power to sentence him to death or to imprisonment for a term of two years or more,

shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in the next following sub-section, so far as they are known to the prosecutor has been served not less than three weeks previously on the protecting power (if there is a protecting power) and, if the accused is a protected prisoner of war on the accused and the prisoners' representative.

(2) The particulars referred to in the foregoing sub-section are

(a) the full name and description of the accused, including the date of his birth and his profession or trade, if any, and if the accused is a protected prisoner of war, his rank and arm, regimental, personal or serial number;

(b) his place of detention, internment or residence;

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(c) the offence with which he is charged; and

(d) the court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section a document purporting-

(a) to be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and

(b) to be an acknowledgment of the receipt by that power, representative or person on a specified day of a notice described therein as a notice under this section,

shall, unless the contrary is shown, be sufficient evidence that the notice required by sub-section (1) was served on that power, representative or person on that day.

(4) In this section, the expression "prisoners' representative" in relation to a particular protected prisoner of war at a particular time means the person by whom the functions of prisoners' representative within the meaning of article 79 of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.

(5) Any court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other law, authorise the detention of the accused in such custody as it may think fit for the period of the adjournment.

Legal repre-9. (1) The court before which-
sentation of
certain
persons

(a) any person is brought up for trial for an offence under section 3 of this Act; or

(b) a protected prisoner of war is brought up for trial for any offence,

shall not proceed with the trial unless-

(i) the accused is represented by a legal practitioner; and

(ii) it is proved to the satisfaction of the court that a period of not less than fourteen days has elapsed since instructions for the representation of the accused at the trial were first given to the legal practitioner,

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and if the court adjourns the trial for the purpose of enabling the requirements of this sub-section to be complied with, then, notwithstanding anything in any other law, the Court may authorise the detention of the accused in such custody as it may think fit for the period of the adjournment.

(2) Where the accused is a protected prisoner of war, in the absence of a legal practitioner accepted by the accused as representing him, the legal practitioner instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of clause (ii) of the foregoing sub-section, be regarded for the purposes of that sub-section as representing the accused.

(3) If the court adjourns the trial in pursuance of sub-section (1) by reason that the accused is not represented by a legal practitioner, the court shall direct that a legal practitioner be assigned to watch over the interests of the accused at any further proceedings in connection with the offence, and at any such further proceedings, in the absence of a legal practitioner either accepted by the accused as representing him or instructed as mentioned in the last foregoing sub-section, the legal practitioner assigned in pursuance of this sub-section shall, without prejudice to the requirements of clause (ii) of sub-section (1), be regarded for the purposes of that sub-section as representing the accused.

(4) A legal practitioner shall be assigned in pursuance of sub-section (3) in such manner as may be provided in the rules made under this Act or, in the absence of provisions in the rules, as the court directs, and the legal practitioner so assigned shall be entitled to such fees as may be provided in the rules made under this Act.

Appeals by 10. (1) Where a protected prisoner of war or a protected internee has
protected been sentenced by a court to death or to imprisonment for a term
prisoners of of two years or more, any time allowed in relation to the institution
war and of an appeal against the conviction or sentence shall be deemed to
internees. continue to run until the day on which the convicted person receives
a notice given, -

(a) in the case of a protected prisoner of war - by an officer in the Armed Forces; or

(b) in the case of a protected internee- by or on behalf of the governor or other person in charge of the prison or place in which he is confined,

that the protecting power has been notified of his conviction and sentence, and for such further time as would have been within the time allowed if the conviction or sentence had taken place or been pronounced on that day.

(2) Where, after an appeal against the conviction or sentence by a court of a protected prisoner of war or a protected internee has been decided, the sentence remains a sentence of death, or remains or has become a sentence of imprisonment for a term of two years or more, any time allowed in relation to a further appeal in respect of the conviction or sentence as confirmed or varied upon the previous appeal shall be deemed to continue to run until the day on which the convicted person receives a notice given by a person referred to in clause (a) or clause (b) of the last preceding sub-section, as the case may require, that the protecting power has been notified of the decision of the court upon the previous appeal, and for such further time as would have been within the time allowed if that decision had been pronounced on that day.

(3) Where sub-section (1) applies in relation to a convicted person, then, unless the court otherwise orders, an order of the court relating to the restitution of property or the payment of compensation to an aggrieved person shall not take effect, and a provision of any law relating to the reversion of property on conviction shall not take effect in relation to the conviction, while an appeal by the convicted person against his conviction or sentence is possible without an extension of time other than the extension provided by the last preceding sub-section.

(4) Sub-sections (1), (2) and (3) shall not apply in relation to an appeal against a conviction or sentence, or against the decision of a court upon a previous appeal, if, at the time of the conviction or sentence, or of the decision of the court upon the previous appeal, as the case may be, there is no protecting power.

Reduction of sentence and custody of protected prisoners of war and internees

11. (1) When a protected prisoner of war or a protected internee convicted of an offence, the court shall, -

(a) in fixing a term of imprisonment in respect of the offence, deduct from the term which it would otherwise have fixed any period during which the convicted person has been in custody in connection with that offence before the trial; and

(b) in fixing any penalty other than imprisonment in respect of the offence, take that period of custody into account.

(2) Where the Central Government is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, while awaiting trial, in a place other than a camp or place in which protected prisoners of war are detained, for an aggregate period of not less than three months; the Central Government may direct that the prisoner shall be transferred from that

custody to the custody of an officer of the Armed Forces of the Union and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the court at the time appointed for his trial.

CHAPTE. IV

Abuse of the Red Cross and other emblems

- Prohibition 12.** No person shall, without the approval of the Central Government, use for any purpose whatsoever -
- of use of Red Cross and other emblems**
- (a) the emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation "Red Cross" or "Geneva Cross";
 - (b) the emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent";
 - (c) the following emblem in red on, and completely surrounded by a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun";
 - (d) the emblem of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation; or
 - (e) any design or wording so nearly resembling any of the emblems or designations specified in the preceding clauses of this section as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.
- Penalty. 13.** If any person contravenes any of the provisions of section 12, he shall be punishable with fine which may extend to five hundred rupees, and be liable to forfeit any goods upon or in connection with which the emblem, designation, design or wording was used by that person.

Offences by companies 14. (1) If the person committing an offence under this Chapter is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

(a) "company" means any body corporate and includes a firm or other association of individuals, and

(b) "director" in relation to a firm means a partner in the firm.

Saving. 15. In the case of a trade mark registered before the coming into force of this Act, the foregoing provisions of this Chapter shall not apply by reason only of its consisting of or containing a design or wording which reproduces or resembles an emblem or designation specified in clause (b) or clause (c) of section 12; and where a person is charged with using such a design or wording for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark so registered, it shall be a defence for him to prove -

(a) that he lawfully used that design or wording for that purpose before the coming into force of this Act; or

(b) in a case where he is charged with using the design or wording upon goods, that the design or wording had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the design or wording upon similar goods before the coming into force of this Act.

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Use of Red Cross and other emblems on Indian ship or aircraft. 16. The provisions of this Chapter extend to the use in or outside India of any emblem, designation, design or wording as is referred to in section 12 on any Indian ship or aircraft.

CHAPTER V

Miscellaneous

Cognizance of offences. 17. No court shall take cognizance of any offence under this Act except on complaint by the Government or of such officer of the Government as the Central Government may, by notification in the Official Gazette, specify.

Power to make rules. 18. The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of the Act.

Rules to be laid before Parliament. 19. Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made or issued before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal. 20. (1) The Geneva Convention Implementing Act, 1936, is hereby repealed.
(2) The Geneva Convention Act, 1911, shall cease to have effect as part of the law of India.

Irak

LETTER OF THE IRAQI RED CRESCENT SOCIETY

August 3rd, 1964

with Annex

IRAQI RED CRESCENT SOCIETY
GENERAL HEADQUARTERS
BAGHDAD

August 3rd, 1964

With reference to your circular letter of 20th April, 1964, concerning legislation of the Government to prevent infringement of the Geneva Conventions.

The competent authorities whom we have consulted have informed us that the laws at present in force in Iraq are considered adequate to provide effective penal sanctions for persons committing or ordering to be committed any violations of the Geneva Conventions.

We are enclosing herewith extracts of texts from the Baghdad Penal Code (Part III) - offences against persons and property - and of the Military Penal Code Law No. 13 of 1940 by virtue of which the repression of serious breaches of the Geneva Conventions can be dealt with.

Irak

THE BAGHDAD PENAL CODE

PART III

Offences against Persons and Property

Article 212. Wilful homicide shall be punished with penal servitude for life or for a term or with imprisonment.

WILFUL HOMICIDE
(0174)

213. Wilful homicide committed with premeditation shall be punished with death.

WILFUL HOMICIDE
WITH PREMEDITATION

There may be premeditation, whether the intention to commit the offence is directed against a particular individual, or against any person who may be found or encountered, and even though such intention be dependent on some circumstance or subject to some condition. (0169, 170)

214. Wilful homicide shall be punished with death.

WHEN WILFUL HOMICIDE SHALL BE
PUNISHED WITH
DEATH

- (I) if the death is caused by means of poison;
- (II) if the homicide, by the atrocity or wanton barbarity of its circumstances, reveals a cruelty of disposition or indifference to the life of others such as to constitute the author of the homicide a danger to society; (0174 Add.)
- (III) if the homicide has been accompanied by another wilful homicide or attempted homicide;
- (IV) if the homicide is committed in order to prepare, facilitate or accomplish an offence punishable with imprisonment for a year at least or with any more severe penalty, even if such offence is not committed or attempted; (0174 Add.)

Irak

- (V) if the homicide is committed in order to assist the escape or immunity from punishment of any person concerned, whether as principal or accessory, in the commission of an offence punishable with imprisonment for a year at least or with any more severe penalty; (0174 Add.)
- (VI) if the homicide is committed on the person of a public official while he is engaged in the performance of his duties, or by reason of his duties; (0174 Add.)
- (VII) if the killed person is ascendant of the killer. (0170 Add.)

215. The penalty for wilful homicide committed or even attempted by a convict under sentence of penal servitude for life, shall be death.

WILFUL HOMICIDE
COMMITTED OR
ATTEMPTED BY LIFE
CONVICT

221. Whoever wilfully inflicts a wound, deals a blow, administers a harmful substance or, with intent to cause bodily harm, does to any person any other illegal act and thereby causes:-

- (a) Amputation or permanent loss of use of a hand or foot, or
- (b) Permanent loss of the sight of an eye, the hearing of an ear, or the power of speech, or
- (c) Emasculation, or
- (d) Permanent insanity or mental infirmity, or
- (e) Permanent and serious disfiguration, or
- (f) Imminent danger to life,

shall be punished with penal servitude or imprisonment for a term not exceeding seven years.

If the offender intended to cause any of the consequences mentioned in paragraphs (a) to (e) the penalty shall be penal servitude or imprisonment for a term not exceeding fifteen years. (0177.)

222. Whoever wilfully causes to any person bodily injury, or an illness,

- (a) by means of any poison, or any explosive, corrosive, burning or scalding substances, or
- (b) by means of any firearm, or any weapon the primary purpose of which is that of offence, or
- (c) by means of any other instrument likely to cause death, if it shall be proved to have been carried for offence on the occasion in question,

shall be punished with penal servitude or imprisonment for a term not exceeding ten years.

223. Whoever wilfully inflicts a wound, deals a blow, administers a harmful substance, or, with intent to cause bodily harm does to a person any illegal act, and thereby causes fracture of a bone or renders the sufferer unable to follow his ordinary pursuits for a period of twenty days, shall be punished with imprisonment not exceeding three years or with fine or with both. (0178)

224. The same penalties shall apply when a bodily injury or an illness has been wilfully caused:-

- (a) by means of a stick or other instruments used by any members of a band or gathering of three or more persons acting in concert, or
- (b) by means of a knife or a club or any other instrument likely to cause death.

225. Whoever, in circumstances other than those specified in the four preceding sections, wilfully causes to any person a bodily injury or any illness, shall be punished with imprisonment not exceeding one year or with fine or with both. (0179)

226. If any of the offences mentioned in sections 223, 224 or 225 is committed with premeditation or in any of the circumstances specified in the last three paragraphs of section 214, the penalty in the case of an offence falling under sections 223 or 224 shall be penal servitude or imprisonment for a period not exceeding five years, or fine or both imprisonment and fine, and in the case of an offence falling under section 225 shall be imprisonment not exceeding three years or fine or both imprisonment and fine. (0179).

Irak

113. Every public official or employee, who subjects, or orders the subjection of, an accused person to torture, shall be punished with penal servitude or imprisonment for a term not exceeding fifteen years.

In the event of the victim succumbing to his injuries the penalty shall be that prescribed for wilful homicide (0103).

116. Every public official or employee who, in executing his functions, uses undue violence against any person in such a manner as to wound his honour or to occasion him bodily harm, shall be punished with imprisonment not exceeding one year or with fine or with both (0106).

Irak

MILITARY PENAL CODE LAW No. (13) OF 1940

Article 112.- (1) Every person who, taking the advantage of war panic or misusing military prestige, takes possession of other persons' property without any justification, or seizes such property by force, collects money or goods without being duly authorized to do so, or misuses his official position in making military requisitions for his own benefit, shall be considered looter and shall be punished with imprisonment for a period not exceeding five years.

Article 113.- (a) Every person who, while unnecessitated by war, damages or destroys movable or immovable property, cuts down trees, destroys agricultural crops or orders to commit such acts, shall be punished with imprisonment for a period not exceeding three years.

(b) The person who suffers the loss may, in the above cases, sue the person who has directly committed the offence or the commander who ordered the commission of such offence in civil courts for compensation. The court shall order the accused according to the chain of command to pay compensation for the damage that has been occasioned by them.

Article 114.- (1) If the acts mentioned in the two previous articles are committed by force the accused shall be punished with imprisonment for a period not exceeding ten years.

(2) If the use of force causes infirmity in the body of the person against whom the offence is committed, the penalty shall then be that of imprisonment for a period not exceeding fifteen years.

(3) If the use of force causes death, death shall be the penalty awarded to the accused.

Irak

(4) If many persons take part in looting, the organizer, the instigator and the ring-leader of the looting shall be condemned to death, while the other accused shall be awarded the penalty of imprisonment for a period not exceeding ten years.

(5) A penalty of imprisonment for a period not exceeding ten years shall be awarded to every person who takes part in the looting mentioned in the previous paragraph of this article but does not take any active part during the commission of the crime.

Article 115.- (a) Every person who, with the intent of appropriation to himself or unjustifiably, takes money or other things from the killed in the field of battle, or from the wounded while on the march or in hospital or during movements, or takes the property of the prisoner whom he is ordered to guard, shall be punished to imprisonment for a period not exceeding fifteen years.

(b) The same penalty shall be awarded to every person who destroys the medical establishments belonging to the Red Crescent or the Red Cross Societies or loots them or instigates others to commit such offences.

(c) Every person who abandons a wounded person whom he is ordered to take to his place of destination or injures him, shall be punished with imprisonment for a period not exceeding five years.

(d) Death shall be the penalty awarded to the person who harms or injures once more a wounded person for the purpose of looting the property which is in the possession of that wounded person.

Article 5.- Offences committed by military personnel in foreign countries when serving in a military force, or those committed by a military man deputed on an

Irak

official mission to a foreign country while performing his duties and offences committed by prisoners of war in internment camps shall be considered as if they were committed in Iraq. In such cases these persons may be tried whether they have already been tried and punished for these offences in foreign countries or not.

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GENEVA CONVENTIONS ACT 1962

- Short title. 1. This Act may be cited as the Geneva Conventions Act, 1962.
- Interpretation. 2. In this Act -
"court" does not include a court-martial;
"Minister" means the Minister for External Affairs;
"protected internee" means a person protected by the Convention set out in the Fourth Schedule to this Act and interned in the State;
"protected prisoner of war" means a person protected by the Convention set out in the Third Schedule to this Act;
"the protecting power", in relation to a protected prisoner of war or a protected internee, means the power or organisation which is carrying out, in the interests of the power of which he is a national, or of whose forces he is, or was at any material time, a member, the duties assigned to protecting powers under the Convention set out in the Third, or, as the case may be, the Fourth Schedule to this Act;
"the Scheduled Conventions" means the Conventions set out in the Schedules to this Act.
- Grave breaches of Scheduled Conventions. 3. (1) Any person, whatever his nationality, who, whether in or outside the State, commits, or aids, abets or procures the commission by any other person of, any such grave breach of any of the Scheduled Conventions as is referred to in the following Articles respectively of those Conventions, that is to say :
(a) Article 50 of the Convention set out in the First Schedule to this Act;
(b) Article 51 of the Convention set out in the Second Schedule to this Act;

Irlande

- (c) Article 130 of the Convention set out in the Third Schedule to this Act; or
- (d) Article 147 of the Convention set out in the Fourth Schedule to this Act;

shall be guilty of an offence and on conviction on indictment thereof:

- (i) in the case of such a grave breach as aforesaid involving the wilful killing of a person protected by the Convention in question, shall be sentenced to penal servitude for life or any less term;
 - (ii) in the case of any other such grave breach as aforesaid, shall be liable to penal servitude for fourteen years or any less term or imprisonment for a term not exceeding two years.
- (2) In the case of an offence under this section committed outside the State, a person may be proceeded against, indicted, tried and punished therefor in any place in the State as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.
- (3) Proceedings for an offence under this section shall not be instituted except by, or on behalf of, or with the consent of the Attorney General.
- (4) A person charged with an offence under this section shall be tried by the Central Criminal Court.

Minor
breaches of
Scheduled
Conventions.

4. (1) Any person, whatever his nationality, who, in the State, commits, or aids, or abets or procures the commission in the State by any other person of, any minor breach of any of the Scheduled Conventions shall be guilty of an offence.
- (2) Any citizen of Ireland who, outside the State, commits, or aids, or abets or procures the commission outside the State by any other person of, any minor breach of any of the Scheduled Conventions shall be guilty of an offence.
- (3) Any person who is guilty of an offence under this section shall be liable

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- (a) on summary conviction thereof to imprisonment for a term not exceeding six months, or, at the discretion of the court, to a fine not exceeding fifty pounds or to both such imprisonment and such fine; or
- (b) on conviction thereof on indictment to imprisonment for a term not exceeding two years, or to a fine not exceeding three hundred pounds, or, at the discretion of the court, to both such imprisonment and such fine.

(4) In this section "minor breach" means contravention of a provision of any of the Scheduled Conventions which is not any such grave breach of that Convention as is mentioned in the relevant Article thereof referred to in section 3 of this Act.

Proof of
Application of
Convention.

5. If, in proceedings under this Act in respect of any breach of any of the Scheduled Conventions, a question arises under Article 2 of that Convention (which relates to the circumstances in which the Convention applies), that question shall be determined by the Minister and a certificate purporting to set out any such determination and to be signed by or on behalf of the Minister shall be received in evidence and be deemed to be so signed, without further proof, unless the contrary is shown.

Notice of
trial of
protected
prisoners of
war and
internees to be
served on
protecting
power.

6. (1) The court before which -
- (a) a protected prisoner of war is brought up for trial for an offence; or
 - (b) a protected internee is brought up for trial for an offence for which that court has power to sentence him to death or to penal servitude or imprisonment,

shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in subsection (2) of this section, so far as they are known to the prosecutor, has been served not less than three weeks previously on the protecting power (if there is a protecting power) and, if the accused is a protected prisoner of war, on the accused and the prisoners' representative.

(2) The particulars referred to in subsection (1) of this section are -

- (a) the full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and his army, regimental, personal or serial number;

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- (b) his place of detention, internment or residence;
- (c) the offence with which he is charged; and
- (d) the court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section a document purporting-

- (a) to be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and
- (b) to be an acknowledgment of the receipt by that power, representative or person on a specified day of a notice described in the document as a notice under this section,

shall, unless the contrary is shown, be sufficient evidence that the notice required by sub-section (1) of this section was served on that power, representative or person on that day.

(4) In this section, "prisoners' representative", in relation to a particular protected prisoner of war at a particular time, means the person by whom the functions of prisoners' representative within the meaning of Article 79 of the Convention set out in the Third Schedule to this Act were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.

(5) A court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other enactment, remand the accused for the period of the adjournment.

Legal representation of certain persons. 7.

- (1) The Court before which :
 - (a) any persons is brought up for trial for an offence under section 3 or section 4 of this Act; or
 - (b) a protected prisoner of war is brought up for trial of any offence, shall not proceed with the trial unless :
 - (i) the accused is represented by counsel; and
 - (ii) it is proved to the satisfaction of the Court that a period of not less than fourteen days has elapsed since instructions for the representation of the accused at the trial were first given to the solicitor by whom that counsel was instructed,
- and if the court adjourns the trial for the purpose of enabling the

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requirements of this subsection to be complied with, then, notwithstanding anything in any other enactment, the court may remand the accused for the period of the adjournment.

(2) Where the accused is a protected prisoner of war, in the absence of counsel accepted by the accused as representing him, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (ii) of subsection (1) of this section, be regarded for the purposes of that subsection as representing the accused.

(3) If the court adjourns the trial in pursuance of subsection (1) of this section by reason that the accused is not represented by counsel, the court shall direct that a solicitor and counsel be assigned to watch over the interests of the accused at any further proceedings in connection with the offence, and at any such further proceedings, in the absence of counsel either accepted by the accused as representing him or instructed as mentioned in subsection (2) of this section, counsel assigned in pursuance of this subsection shall, without prejudice to the requirements of paragraph (ii) of subsection (1) of this section, be regarded for the purposes of that subsection as representing the accused.

(4) In relation to any proceedings before a court before which the accused may be represented by a solicitor, the foregoing provisions of this section shall be construed, with any necessary modifications, as if references in those provisions to counsel were references to counsel or a solicitor; and for the purposes of any such proceedings the court, in giving a direction under subsection (3) of this section may, if the court is satisfied that the nature of the charge and the interests of justice do not ^{require} that the interests of the accused should be watched over by counsel, direct that a solicitor only shall be assigned as mentioned in that subsection.

(5) A solicitor or counsel shall be assigned in pursuance of subsection (3) of this section in such manner as the Minister for Justice may by regulations prescribe, and any solicitor or counsel so assigned shall be entitled to be paid by the Minister for Justice out of moneys provided by the Oireachtas such sums in respect of fees and disbursements as the Minister for Justice may by regulations (made with the consent of the Minister for Finance) prescribe

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Appeals by 8.
protected
prisoners of
war and
internees
convicted of
offences
under
section 3.

- (1) Where a protected prisoner of war or a protected internee has been sentenced by the Central Criminal Court to death or to penal servitude or to imprisonment for an offence under section 3 of this Act, the time within which he must give notice of appeal, or notice of his application for leave to appeal to the Court of Criminal Appeal shall, notwithstanding anything in any other enactment or in any rules of court relating to such appeals, be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of ten days after the date on which he receives a notice given-
- (a) in the case of a protected prisoner of war, by an officer of the Defence Forces; or
 - (b) in the case of a protected internee, by or on behalf of the governor or other person in charge of the prison or place in which he is confined,

that the protecting power has been notified of his conviction and sentence.

(2) Where after an appeal to the Court of Criminal Appeal has been determined the sentence on a protected prisoner of war or a protected internee remains a sentence of death, or remains or has become a sentence of penal servitude or of imprisonment, an application to the Attorney General for a certificate authorising an appeal to the Supreme Court in respect of the conviction or sentence as confirmed or varied upon the previous appeal may be made at any time within the period from the date on which the decision by the Court of Criminal Appeal was given until seven days after the date on which the convicted person receives a notice by a person referred to in paragraph (a) or (b) (as the case may require) of subsection (1) of this section that the protecting power has been notified of the decision of the Court of Criminal Appeal.

(3) An order of the court relating to the restitution of property or the payment of compensation to an aggrieved person on any such conviction as aforesaid shall not take effect, and a provision of any enactment relating to the reversion of property on a conviction shall not apply in relation to the conviction while an appeal by the convicted person is pending in accordance with the foregoing provisions of this section.

(4) This section does not apply in relation to an appeal against a conviction or sentence by the Central Criminal Court, or against a decision on appeal of the Court of Criminal Appeal, if, at the time of that conviction or sentence, or of that decision, as the case may be, there is no protecting power:

Kenya

Voir ROYAUME UNI, Geneva Conventions Act,
Order in Council, 1959.

Luxembourg

LETTRE DE LA CROIX-ROUGE LUXEMBOURGEOISE

19 octobre 1964

avec annexe

CROIX-ROUGE LUXEMBOURGEOISE
Parc de la Ville
L U X E M B O U R G

Luxembourg, le 19 octobre 1964.

J'ai l'honneur de vous faire parvenir à l'annexe copie d'une lettre que je viens de recevoir du Ministère de la Justice du Grand-Duché de Luxembourg.

Annexe

MINISTERE DE LA JUSTICE

LUXEMBOURG, le 16 octobre 1964.

Comme suite à votre communication du 12 mai 1964 transmissive d'une circulaire du Comité international de la Croix-Rouge au sujet de la répression des violations des Conventions de Genève j'ai l'honneur de vous informer que jusqu'à présent aucune mesure législative n'a été prise dans ce domaine.

La question d'une adaptation éventuelle de la législation se trouve actuellement à l'étude.

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Malaisie

GENEVA CONVENTIONS ACT, 1962

Part I

PRELIMINARY

Short title and commencement. 1. This Act may be cited as the Geneva Conventions Act, 1962, and shall come into operation on such date as the Minister may by notification in the Gazette appoint.

Interpretation. 2. In this Act, unless the context otherwise requires- "court" does not include a court-martial;

"Minister" means the Minister charged with the responsibility for the administration of justice;

Fourth Schedule. "protected internee" means a person protected by the convention set out in the Fourth Schedule and interned in the Federation;

Third Schedule. "protected prisoner of war" means a person protected by the convention set out in the Third Schedule;

Third and Fourth Schedules. "the protecting power", in relation to a protected prisoner of war or a protected internee, means the power or organization which is carrying out, in the interests of the power of which he is a national, or of whose forces he is, or was at any material time, a member, the duties assigned to protecting powers under the convention set out in the Third or, as the case may be, Fourth Schedule;

"the scheduled conventions" means the conventions set out in the Schedules to this Act.

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Part II

PUNISHMENT OF OFFENDERS AGAINST CONVENTIONS

Grave breaches of scheduled conventions. 3. (1) Any person, whatever his citizenship or nationality, who, whether in or outside the Federation, commits, or aids, abets or procures the commission by any other person of any such grave breach of any of the scheduled conventions as is referred to in the following articles respectively of those conventions:

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- First Schedule. (a) article 50 of the convention set out in the First Schedule;
- Second Schedule. (b) article 51 of the convention set out in the Second Schedule;
- Third Schedule. (c) article 130 of the convention set out in the Third Schedule; or
- Fourth Schedule. (d) article 147 of the convention set out in the Fourth Schedule,
- shall be guilty of an offence and on conviction thereof-
- (i) in the case of such a grave breach as aforesaid involving the wilful killing of a person protected by the convention in question, shall be sentenced to imprisonment for life;
- (ii) in the case of any other such grave breach as aforesaid, shall be liable to imprisonment for a term not exceeding fourteen years.
- (2) In the case of an offence under this section committed outside the Federation, a person may be proceeded against, charged, tried and punished therefor in any place in the Federation as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.
- (3) No Magistrates' Court or Sessions Court shall have jurisdiction to try any offence under this section.
- (4) Proceedings for an offence under this section shall not be instituted except by or on behalf of the Public Prosecutor.
- (5) If in proceedings under this section in respect of a grave breach of any of the scheduled conventions any question arises under article 2 of that convention (which relates to the circumstances in which the convention applies), that question shall be determined by the Minister and a certificate purporting to set out any such determination and to be signed by or on behalf of the Minister shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.
- (6) The written law relating to the trial by court-martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of courts-martial convened in the Federation as if this section had not been passed.

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Notice of trial of protected person to be served on protecting power.

4. (1) The court before which-
- (a) a protected prisoner of war is brought up for trial for any offence; or
 - (b) a protected internee is brought up for trial for an offence for which that court has power to sentence him to death or to imprisonment for a term of two years or more,

shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in sub-section (2), so far as they are known to the prosecutor, has been served not less than three weeks previously on the protecting power and, if the accused is a protected prisoner of war, on the accused and the prisoners' representative.

(2) The particulars referred to in sub-section (1) are-

- (a) the full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and army, regimental, personal or serial number;
- (b) his place of detention, internment or residence;
- (c) the offence with which he is charged; and
- (d) the court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section a document purporting-

- (a) to be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and
- (b) to be an acknowledgment of the receipt by that power, representative or person on a specified day of a notice described therein as a notice under this section,

shall, unless the contrary is shown, be sufficient evidence that the notice required by sub-section (1) of this section was served on that power, representative or person on that day.

(4) In this section the expression "prisoners' representative" in relation to a particular protected prisoner of war at a particular time means the person by whom the functions of prisoners' representative within the meaning of article 79 of the convention set out in the Third Schedule were exercisable in relation to that prisoner at the camp or place at which that **prisoner** was, at or last before that time, detained as a protected prisoner of war.

Third Schedule.

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(5) Any court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other written law, remand the accused for the period of the adjournment.

Legal re-
presentation
of certain
persons.

5. (1) The court before which-
- (a) any person is brought up for trial for an offence under section 3; or
 - (b) a protected prisoner of war is brought up for trial for any offence,

shall not proceed with the trial unless-

- (i) the accused is represented by counsel; and
- (ii) it is proved to the satisfaction of the court that a period of not less than fourteen days has elapsed since instructions for the representation of the accused at the trial were first given to the counsel,

and if the court adjourns the trial for the purpose of enabling the requirements of this sub-section to be complied with, then, notwithstanding anything in any other written law, the court may remand the accused for the period of the adjournment.

(2) Where the accused is a protected prisoner of war, in the absence of counsel accepted by the accused as representing him, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (ii) of sub-section (1), be regarded for the purposes of that sub-section as representing the accused.

(3) If the court adjourns the trial in pursuance of sub-section (1) by reason that the accused is not represented by counsel, the court shall direct that a counsel be assigned to watch over the interests of the accused at any further proceedings in connection with the offence, and at any such further proceedings, in the absence of counsel either accepted by the accused as representing him or instructed as mentioned in sub-section (2), counsel assigned in pursuance of this sub-section shall, without prejudice to the requirement of paragraph (ii) of sub-section (1), be regarded for the purposes of that sub-section as representing the accused.

(4) Counsel shall be assigned in pursuance of sub-section (3) in such manner as the Minister may by order prescribe, and any counsel so assigned shall be entitled to be paid out of moneys provided by such sums in respect of fees and disbursements as the Minister may by regulations prescribe.

Appeals by 6. (1) Where a protected prisoner of war or a protected internee
protected persons. has been convicted and sentenced to death or to imprisonment for a term of two years or more, he may appeal against such conviction and sentence imposed upon him, and the time within which he must give notice of appeal shall, notwithstanding anything in the written law relating to such appeals, be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of ten days after the date on which he receives a notice given-

(a) in the case of a protected prisoner of war by an officer of the Armed Forces of the Federation;

(b) in the case of a protected internee, by or on behalf of the governor of the prison in which he is confined,

that the protecting power has been notified of his conviction and sentence; and in a case to which the foregoing provisions of this sub-section apply, a reference to the period aforesaid shall be substituted for any reference to the period of fourteen days after the date of such decision in sub-section (1) of section 20 of the Courts Ordinance 1948.

43 of 1948.

(2) Where after an appeal to the Court of Appeal the sentence on a protected prisoner of war or a protected internee remains a sentence of death, or remains or has become a sentence of imprisonment for a term of two years or more, the time within which he may apply for special leave to appeal to the Yang di-Pertuan Agong under sub-section (2) (c) of section 3 of the Appeals from the Supreme Court Ordinance, 1958, shall be six weeks from the date on which the convicted person receives a notice given in accordance with paragraph (a) or paragraph (b) of sub-section (1), as the case may be, that the protecting power is notified of the decision of the court.

16 of 1958.

Reduction 7. (1) It shall be lawful for the Minister in any case in which a protected
of sentence prisoner of war or a protected internee is convicted of an offence and
and custody sentenced to a term of imprisonment, to direct that there shall be
of protected deducted from that term a period not exceeding the period, if any,
persons. during which that person was in custody in connection with that offence, either on remand or after committal for trial (including the period of the trial), before the sentence began, or is deemed to have begun, to run.

(2) It shall be lawful for the Minister in a case where he is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, either on remand or after committal for trial (including the period of the trial), for an aggregate period of not less than three months, to direct that the prisoner shall be transferred from that custody to the custody of an officer of the Armed Forces of the Federation and thereafter remain in military custody at a camp or place in which protected prisoners of war are

detained, and be brought before the court at the time appointed by the remand or acquittal order.

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Part III

PREVENTION OF ABUSE OF RED CROSS AND OTHER
EMBLEMS.

Prohibition 8. It shall not be lawful for any person to use for the purpose of his trade or business, or for any other purpose whatsoever, in the Federation of use of emblem without authority. or business, or for any other purpose whatsoever, in the Federation without the authority of the Minister, the heraldic emblem of the red cross on a white ground formed by reversing the Federal Colours of Switzerland, or the words "Red Cross" or "Geneva Cross".

Prohibition 9. It shall not be lawful for any person without the authority of the Minister to use for the purposes of his trade or business or for any purpose whatsoever-

of use of certain words and designs.

- (a) any design consisting of a white or silver cross on a red ground, none of the limbs of which extends to the margin of the ground, being the cross comprised in the Arms of the Swiss Confederation; or
- (b) any design being a colourable imitation of the design mentioned in the last foregoing paragraph; or
- (c) any design being a colourable imitation of the heraldic emblem of the red cross on a white ground mentioned in section 8 or any words so nearly resembling the words "Red Cross" or "Geneva Cross" as to be capable of being understood as referring to the said emblem.

Penalty. 10. (1) If any person contravenes any of the provisions of this Part of this Act, he shall, subject to the provisions of section 11 be guilty of an offence and liable on conviction to a fine not exceeding one hundred dollars and to forfeit any goods upon or in connection with which the emblem, design or words, as the case may be, was or were used.

(2) Where an offence committed by a body corporate or society is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate or society, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be prosecuted and punished accordingly.

Saving. 11. Nothing in section 9 shall apply to a trade mark which before the 23rd day of December, 1931, was registered in the United Kingdom or lawfully used in the territories now comprised in the Federation and

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which consists of or contains any such design as is mentioned in paragraph (a) or paragraph (b) of section 9; and where a person is charged with using such a design for any purpose and it is proved that he used it otherwise than as or as part of a trade mark registered or lawfully used as aforesaid it shall be a defence for him to prove-

- (a) that he before the said 23rd day of December, 1931, lawfully used that design in the territories now comprised in the Federation or in the United Kingdom; or
- (b) in the case where he is charged with using the design upon goods, that the design had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and that the other person before the said 23rd day of December, 1931, lawfully used the design in the territories now comprised in the Federation or in the United Kingdom on similar goods.

Prosecution 12. Proceedings under this Part of this Act shall not be instituted of offences. without the consent of the Public Prosecutor.

Part IV

REPEAL

Repeal 13. The Geneva and Red Cross (Control of Use) Ordinance, 1959,
6 of 1959. is hereby repealed.

Malte

Voir ROYAUME UNI, Geneva Conventions Act,
Order in Council, 1959.

Nigeria

Voir ROYAUME UNI, Geneva Conventions Act,
Order in Council, 1959.

Norvège

LETTER OF THE NORWEGIAN RED CROSS

August 24th, 1964

with annex

NORGES RØDE KORS

OSLO, 24th August, 1964

Reference is made to your letter of 20th April, 1964 where you request as detailed as possible the legislative texts in the Norwegian Penal Codes concerning the Geneva Conventions.

Enclosed you will find an English translation of the articles 100 - 108 of the Norwegian Military Penal Code of 22nd May, 1902 with amendments. Article 108 is the Geneva Convention article and "the more severe penal provision is applicable" - sentence is referring to the other articles of the Military Penal Code which we have been referring to and to the Civil Penal Code chapters 22, 24 and 25 which you will find in an English translation of the Civil Penal Code which we have sent you by separate mail today.

Translation from Norwegian.

MILITARY PENAL CODE

Article 100 Imprisonment for a term of up to 6 years shall be imposed on any warrior who, for the purpose of obtaining unentitled gain for himself or others, illegally

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- 1) imposes war tax or compulsory contributions, or
- 2) increases legal requisitions, or
- 3) refuses to give a receipt for taken or requisitioned property, or is instrumental therein.

Article 101 Up to 6 years imprisonment shall be imposed on those who commit a crime according to paragraphs 255, 257, or 266 of the Civil Penal Code

- 1) whilst exploiting apprehensions of war and military superiority, or
- 2) against someone killed in war or against someone sick or wounded on the battlefield, during marching or transportation or in hospital or against a prisoner of war entrusted to his care.

If such crime be committed by more than one person after joint agreement, the instigators and ring-leaders are liable to imprisonment varying from 10 years up to life time, or to death penalty. Other partakers are liable to imprisonment for a term from 4 up to 10 years.

Article 102 Imprisonment from 3 years up to life time or death penalty shall be imposed on those who commit a crime according to paragraph 267 of the Civil Penal Code

- 1) under exploitation of the apprehensions of war and military superiority.
- 2) against someone sick or wounded during marching, transportation or in hospital, or a prisoner of war entrusted to his care.
- 3) on the battlefield.

Article 103 A person who, unnecessarily, destroys or damages property not one's own, or who is instrumental therein, is liable to imprisonment for a term of up to 6 years, and up to life imprisonment if occasioned by fire, collapse, blasting, flood, sea damage or railway accidents.

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- Article 104 A person who, according to sections 24 or 25 or paragraphs 275, 291, 292 (293), 318 and 393 of the Civil Penal Code, commits a punishable act in respect of any property serving military purposes, is liable to the punishments laid down in the said Code. However, confinement is substituted for fines and the limit of punishment stipulated for the category concerned may be increased by one-half.
- Article 105 Any person who commits a punishable act according to Article 104 with regard to spoils of war is liable to punishment as defined in the Civil Penal Code. However, confinement shall be substituted for fines.
- Article 106 A warrior who on his own tries to obtain spoils of war, or who is instrumental therein, is liable to imprisonment for a term of up to 1 year.
- Article 107 Imprisonment shall be imposed on persons who
- 1) against the enemy uses poison or such war implements which are prohibited according to any international agreement subscribed to by Norway, or
 - 2) kills an enemy who surrenders or has been made incapable of rendering resistance, or mutilates the dead, or who is instrumental in any such action.
- As regards the cases mentioned under 2) imprisonment for life or death penalty may be applied.
- Article 108 Anyone who violates, or is accessory to violating, provisions for protecting persons or property, laid down in the Geneva Conventions of August 12th, 1949, for the amelioration of the condition of the wounded and sick in armed forces in the field, for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, relative to the treatment of prisoners of war and relative to the protection of civilian persons in time of war, shall be punished with up to 4 years of imprisonment if not a more severe penal provision is applicable.

Norvège

NORGES RØDE KORS

OSLO, 14th September, 1964

With reference to your letter of September 11th with the question if there exists, in the Norwegian Penal Code, a provision granting to Norwegian Courts of law competence to deal with violations committed outside the national territory and by accused persons who are not of Norwegian nationality, we are pleased to inform you that such provision is granted through the Norwegian Military Penal Code par. 9 No. 5 and par. 11.

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Nouvelle-Zélande

NOUVELLE-ZELANDE - GENEVA CONVENTIONS ACT 1958

1. Short Title - This Act may be cited as the Geneva Conventions Act 1958.
2. Interpretation - (1) In this Act, unless the context otherwise requires, -

"The First Convention" means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on the twelfth day of August, nineteen hundred and forty-nine, a copy of which Convention (not including the annexes to that Convention) is set out in the First Schedule to this Act:

"The Second Convention" means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on the twelfth day of August, nineteen hundred and forty-nine, a copy of which Convention (not including the annex to that Convention) is set out in the Second Schedule to this Act:

"The Third Convention" means the Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on the twelfth day of August, nineteen hundred and forty-nine, a copy of which Convention (not including the annexes to that Convention) is set out in the Third Schedule to this Act:

"The Fourth Convention" means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on the twelfth day of August, nineteen hundred and forty-nine, a copy of which Convention (not including the annexes to that Convention) is set out in the Fourth Schedule to this Act:

"The Conventions" means the First Convention, the Second Convention, the Third Convention, and the Fourth Convention:

"Court" does not include a Court-martial:

"New Zealand aircraft" means any aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1948; and includes any aircraft belonging to or in the service of Her Majesty in right of New Zealand, whether a civil or a military aircraft:

"New Zealand ship" means a "New Zealand ship" or a "ship belonging to Her Majesty" as those terms are defined in the Shipping and Seamen Act 1952; and includes an unregistered ship which is by Part XII of that Act required to be registered in New Zealand or in some other Commonwealth country:

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"Protected internee" means a person protected by the Fourth Convention and interned in New Zealand:

"Protected prisoner of war" means a person protected by the Third Convention:

"The Protecting Power", in relation to a protected prisoner of war or a protected internee, means the Power or organisation which is carrying out, in the interests of the Power of which he is a national, or of whose forces he is, or was at any material time, a member, the duties assigned to Protecting Powers under the Third Convention or the Fourth Convention, as the case may be.

(2) If the ratification on behalf of New Zealand of any of the Conventions is subject to a reservation or is accompanied by a declaration, that Convention shall, for the purposes of this Act, have effect and be construed subject to and in accordance with that reservation or declaration.

Punishment of Offenders Against Conventions

3. Punishment for grave breaches of Conventions - (1) Any person who in New Zealand or elsewhere commits, or aids or abets or procures the commission by another person of, a grave breach of any of the Conventions is guilty of an indictable offence.
 - (2) For the purposes of this section -
 - (a) A grave breach of the First Convention is a breach of that Convention involving an act referred to in Article fifty of that Convention committed against persons or property protected by that Convention:
 - (b) A grave breach of the Second Convention is a breach of that Convention involving an act referred to in Article fifty-one of that Convention committed against persons or property protected by that Convention:
 - (c) A grave breach of the Third Convention is a breach of that Convention involving an act referred to in Article one hundred and thirty of that Convention committed against persons or property protected by that Convention:
 - (d) A grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in Article one hundred and forty-seven of that Convention committed against persons or property protected by that Convention.

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- (3) This section applies to persons regardless of their nationality or citizenship.
- (4) The punishment for an offence against this section shall be, -
 - (a) Where the offence involves the wilful killing of a person protected by the relevant Convention, the same as that for the time being for murder;
 - (b) In any other case, imprisonment for a term not exceeding fourteen years.
- (5) No one shall be prosecuted for an offence under this section without the leave of the Attorney-General.
- (6) The provisions of section five of this Act (other than subsection two) shall apply in relation to the trial of a person who is not a protected prisoner of war for an offence against this section in like manner as they apply in relation to the trial of a protected prisoner of war.
- (7) If in proceedings under this section in respect of a grave breach of any of the Conventions any question arises under Article two of that Convention (which relates to the circumstances in which the Convention applies), that question shall be determined by the Minister of External Affairs, and a certificate purporting to set out any such determination and to be signed by or on behalf of that Minister shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.
- (8) The enactments relating to the trial by Court-martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of Courts-martial convened in New Zealand as if this section had not been passed.

Provisions as to Certain Legal Proceedings

4. Notice of trial of protected persons to be served on Protecting Power, etc. - (1) The Court before which -
 - (a) A protected prisoner of war is brought up for trial for any offence;
or
 - (b) A protected internee is brought up for trial for an offence for which that Court has power to sentence him to death or to imprisonment for a term of two years or more -shall not proceed with the trial until it is proved to the satisfaction of the

Court that a notice containing the particulars mentioned in subsection two of this section, so far as they are known to the prosecutor, has been served not less than three weeks previously on the Protecting Power (if there is a Protecting Power), on the accused, and (if the accused is a protected prisoner of war) on the prisoners' representative.

(2) The particulars referred to in subsection one of this section are -

- (a) The full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and his army, regimental, personal, or serial number;
- (b) His place of detention, internment, or residence;
- (c) The offence with which he is charged; and
- (d) The Court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section a document purporting-

- (a) To be signed on behalf of the Protecting Power or by the prisoners' representative or by the person accused, as the case may be; and
- (b) To be an acknowledgment of the receipt by that Power, representative, or person on a specified day of a notice described therein as a notice under this section-

shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection one of this section was served on that Power, representative, or person on that day.

(4) In this section the expression "prisoners' representative" in relation to a particular protected prisoner of war at a particular time means the person by whom the functions of prisoners' representative within the meaning of Article seventy-nine of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.

(5) Any Court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other enactment or any rule of law, remand the accused for the period of the adjournment.

5. Legal representation of prisoners of war - (1) The Court before which a protected prisoner of war is brought up for trial for any offence shall not proceed with the trial, unless -

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- (a) The accused is represented by counsel; and
- (b) It is proved to the satisfaction of the Court that a period of not less than fourteen days has elapsed since instructions for the representation of the accused at the trial were first given to counsel for the accused;

and if the Court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding anything in any other enactment or rule of law, the Court may remand the accused for the period of the adjournment.

(2) In the absence of counsel accepted by the accused as representing him, counsel instructed for the purpose on behalf of the Protecting Power shall, without prejudice to the requirements of paragraph (b) of subsection one of this section, be regarded for the purposes of that subsection as representing the accused.

(3) If the Court adjourns the trial in pursuance of subsection one of this section by reason that the accused is not represented by counsel, the Court shall direct that a counsel be assigned to watch over interests of the accused at any further proceedings in connection with the offence; and at any such further proceedings, in the absence of counsel either accepted by the accused as representing him or instructed as mentioned in subsection two of this section, counsel assigned in pursuance of this subsection shall, without prejudice to the requirements of paragraph (b) of subsection one of this section, be regarded for the purposes of the said subsection one as representing the accused.

(4) A counsel shall be assigned in pursuance of subsection three of this section in such manner as may be prescribed by regulations made under this Act, and any counsel so assigned shall be entitled to receive, out of money appropriated by Parliament for the purpose, such remuneration and disbursements as may be in like manner prescribed. While there are no regulations for the purposes of this section or so far as any such regulations do not apply, the provisions of the Offenders Legal Aid Act 1954 and of any regulations made under that Act shall apply to the assignment, remuneration, and disbursement of counsel under this section.

6. Appeals by protected persons - (1) Where a protected prisoner of war or a protected internee has been sentenced by a Court to death or to imprisonment for a term of two years or more, the time allowed in relation to the institution of an appeal or an application for leave to appeal against the conviction or sentence shall, notwithstanding anything to the contrary in any other enactment, be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of twenty-eight days after the date on which the convicted person receives a notice that the Protecting Power has been notified of his conviction and sentence, being a notice given, -

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- (a) In the case of a protected prisoner of war, by an officer of the New Zealand armed forces; or
 - (b) In the case of a protected internee, by or on behalf of the person in charge of the prison or place in which he is confined.
- (2) In relation to a protected prisoner of war, the Courts-Martial Appeals Act 1953 shall be deemed to have effect as if the expressions "naval Court-martial", "army Court-martial", "air force Court-martial", and "Court-martial" in that Act included a Court-martial having jurisdiction over prisoners of war under New Zealand law.
 - (3) Where subsection one of this section applies in relation to a convicted person, then, unless the Court otherwise orders, an order of the Court relating to the restitution of property or the payment of compensation to an aggrieved person shall not take effect, and any provision of law relating to the revesting of property on conviction shall not take effect in relation to the conviction, while an appeal by the convicted person against his conviction or sentence is possible.
 - (4) Subsections one and two of this section shall not apply in relation to an appeal against a conviction or sentence if, at the time of the conviction or sentence, there is no Protecting Power.
 - (5) Notwithstanding anything to the contrary in any other Act, where a protected prisoner of war has been sentenced by a Court to death, the sentence shall not be executed before the expiration of six months from the date specified in Article one hundred and one of the Third Convention.
 - (6) Notwithstanding anything to the contrary in any other Act, where a protected internee has been sentenced by a Court to death, the sentence shall not be executed before the expiration of six months from the date specified in Article seventy-five of the Fourth Convention.
7. Reduction of sentence, and custody of protected prisoners of war and internees - (1) When a protected prisoner of war or a protected internee is convicted of an offence, the Court shall, -
- (a) In fixing a term of imprisonment in respect of the offence, deduct from the term which it would otherwise have fixed any period during which the convicted person has been in custody in connection with that offence before the trial; and
 - (b) In fixing any penalty other than imprisonment in respect of the offence, take that period of custody into account.

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(2) Where the Minister of Justice is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, while awaiting trial, in a place other than a camp or place in which protected prisoners of war are detained, for an aggregate period of not less than three months, that Minister may direct that the prisoner shall be transferred from that custody to the custody of an officer of the New Zealand armed forces and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the Court at the time appointed for his trial.

Prevention of Abuse of Red Cross and Other Emblems

8. Use of Red Cross and other emblems - (1) Subject to the provisions of this section, it shall not be lawful for any person, without the authority of the Minister of Defence or a person authorised by him in writing to give consent under this section, to use for any purpose whatsoever any of the following emblems, designations, designs, or wordings, that is to say :
- (a) The emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation "Red Cross" or "Geneva Cross" :
 - (b) The emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent":
 - (c) The following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun":
 - (d) Any design consisting of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation, or any other design so nearly resembling that design as to be capable of being mistaken for that heraldic emblem:
 - (e) Any design or wording so nearly resembling any of the emblems or designations specified in the foregoing provisions of this subsection as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.

(2) If any person contravenes the foregoing provisions of this section he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding fifty pounds and to forfeit any goods upon or in connection

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with which the emblem, designation, design, or wording was used.

(3) The Minister of Defence or a person authorised by that Minister to give consents under this section shall not refuse to give such a consent, and shall not withdraw such a consent, except for the purpose of giving effect to the provisions of the Conventions.

(4) In the case of a trade mark registered before the passing of this Act, the foregoing provisions of this section shall not apply by reason only of its consisting of or containing a design or wording which reproduces or resembles an emblem or designation specified in paragraph (b) or paragraph (c) of subsection one of this section.

(5) Where a person is charged with using a design or wording to which subsection four of this section applies for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark registered as aforesaid, it shall be a defence for him to prove -

(a) That he lawfully used that design or wording for that purpose before the passing of this Act; or

(b) In a case where he is charged with using the design or wording upon goods, that the design or wording had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the design or wording upon similar goods before the passing of this Act.

(6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(7) This section extends to the use in or outside New Zealand of an emblem, designation, design, or wording referred to in subsection one of this section on any New Zealand ship or New Zealand aircraft.

(8) No one shall be prosecuted for an offence under this section without the leave of the Attorney-General.

(9) Subsection two of section eighteen of the Trade Marks Act 1953 is hereby consequentially repealed.

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Miscellaneous

9. Regulations - (1) The Governor-General may from time to time, by Order in Council, make all such regulations as in his opinion may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.
- (2) All regulations made under this section shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session.
10. Application of Act to island territories and Western Samoa - (1) This Act shall be in force in the Cook Islands, the Tokelau Islands, and Western Samoa.
- (2) In this Act, except in this section, both in New Zealand and in the Cook Islands, the Tokelau Islands, and Western Samoa, the term "New Zealand" shall be construed as including the Cook Islands, the Tokelau Islands, and Western Samoa.
- (3) Every reference in this Act to the Attorney-General shall be construed, -
- (a) In the application of this Act to the Cook Islands, other than Niue, as including the Resident Commissioner of Rarotonga :
- (b) In the application of this Act to the Island of Niue, as including the Resident Commissioner of Niue:
- (c) In the application of this Act to the Tokelau Islands as including the Administrator of the Tokelau Islands:
- (d) In the application of this Act to Western Samoa, as including the High Commissioner of Western Samoa.
- (4) The other Ministers specified in this Act may exercise the powers conferred on them by this Act in the Cook Islands, the Tokelau Islands, and Western Samoa.
- (5) All Criminal jurisdiction conferred by this Act may be exercised by the High Court of the Cook Islands in the ordinary course of its criminal jurisdiction, or by the High Court of Western Samoa in the ordinary course of its criminal jurisdiction. For the purposes of this subsection, subsection one of section three of this Act shall apply as if the word "indictable" were omitted.

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(6) The Samoa Amendment Act 1957 is hereby amended by adding to the Second Schedule the words -

"1958, No 19-

The Geneva Conventions Act 1958. The whole Act."

11. Repeal and savings- (1) The Geneva Convention Act 1936 is hereby repealed.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

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THE GENEVA CONVENTIONS ACT, 1964

Date of Assent : 3rd October, 1964

Date of Commencement : 16th October, 1964.

Whereas with the accession of Uganda to the Conventions set out in the Schedules to this Act it is expedient to make certain amendments in the law :

Be it enacted by the President and the National Assembly, in this present Parliament assembled, as follows :

Grave
breach
of Con-
ventions.

1. (1) Any person, whatever his nationality, who, whether within or without Uganda commits or aids, abets or procures the commission by any other person of any grave breach of any of the Conventions as is referred to in the following articles respectively of those Conventions, that is to say,

First
Schedule

(a) article 50 of the Convention set out in the First Schedule to this Act,

Second
Schedule

(b) article 51 of the Convention set out in the Second Schedule to this Act,

Third
Schedule

(c) article 130 of the Convention set out in the Third Schedule to this Act,

Fourth
Schedule

(d) article 147 of the Convention set out in the Fourth Schedule to this Act,

commits an offence and on conviction thereof,

(i) in the case of a grave breach involving the wilful killing of the person protected by the Convention in question shall be sentenced to imprisonment for life ;

(ii) in the case of any other grave breach shall be liable to imprisonment for a term not exceeding fourteen years.

(2) Where an offence under this section is committed without Uganda a person may be proceeded against, indicted, tried and punished therefor in any place in Uganda as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the

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trial or punishment thereof, be deemed to have been committed in that place.

(3) Proceedings for an offence under this section shall not be instituted except by or on behalf of the Director of Public Prosecutions.

(4) Whenever in any proceedings under this section in respect of a grave breach of any of the Conventions any question arises under Article 2 of that Convention, that question shall be determined by the Minister and a certificate purporting to set out such determination and to be signed by or on behalf of the Minister shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

(5) Any enactment relating to the trial by court-martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of courts-martial convened in Uganda as if this section had not been passed.

Notice of 2.
trial of
protected
persons.

- (1) The court before which,
 - (a) a protected prisoner of war is brought up for trial for an offence, or
 - (b) a protected internee is brought up for trial or an offence for which that court has power to sentence him to death or to imprisonment for a term of two years or more,

shall not proceed with the trial unless it is proved to the satisfaction of the court that a notice containing the particulars mentioned in the next following subsection, so far as they are known to the prosecutor, has been served not less than three weeks previously on the protecting power and, if the accused is a protected prisoner of war, on the accused and the prisoner's representative.

(2) The particulars referred to in the preceding subsection are,

- (a) the full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and army, regimental, personal or serial number ;
- (b) his place of detention, internment or residence;

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- (c) the offence with which he is charged; and
- (d) the court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section a document purporting,

- (a) to be signed on behalf of the protecting power or by the prisoner's representative or by the person accused, as the case may be, and,
- (b) to be an acknowledgment of the receipt by that power, representative or person on a specified day of a notice described therein as a notice under this section,

shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection (1) of this section was served on that power, representative or person on that day.

(4) Any court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other enactment, remand the accused for the period of the adjournment.

Legal
representa-
tion of
certain
persons.

3. (1) The court before which,
- (a) any person is brought up for trial of an offence under section 1 of this Act, or
 - (b) a protected prisoner of war is brought up for trial for any offence,

shall not proceed with the trial, unless,

- (i) the accused is represented by an advocate, and
- (ii) it is proved to the satisfaction of the court that a period of not less than fourteen days has elapsed since instructions for the representation of the accused at the trial were first given to the advocate,

and if the court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding anything in any other enactment, the court may remand the accused for the period of the adjournment.

(2) Where the accused is a protected prisoner of war, in the absence of an advocate accepted by the accused as

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representing him, an advocate instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (ii) of the preceding subsection, be regarded for the purposes of that subsection as representing the accused.

(3) Where the court adjourns the trial in pursuance of subsection (1) of this section by reason that the accused is not represented by an advocate the court shall direct that an advocate be assigned to watch over the interests of the accused at any further proceedings in connection with the offence.

(4) At any such further proceedings, in the absence of an advocate, either accepted by the accused as representing him or instructed as mentioned in subsection (2) of this section, an advocate assigned in pursuance of the immediately preceding subsection shall, without prejudice to the requirements of paragraph (ii) of subsection (1) of this section, be regarded for the purposes of that subsection as representing the accused.

(5) An advocate shall be assigned in pursuance of subsection (3) of this section in such manner as the Minister may, by statutory instrument, prescribe and any advocate so assigned shall be entitled to be paid by the Minister out of moneys provided by Parliament, such sums in respect of fees and disbursements as the Minister may direct.

Appeal by 4. Where a protected prisoner of war or a protected protected internee has been sentenced to death or to imprisonment for a persons. term of two years or more, the time within which he may give notice of appeal or notice of his application for leave to appeal to the High Court of Uganda or the Court of Appeal for Eastern Africa, as the case may be, shall, notwithstanding anything contained in any enactment relating to such appeals, be the period from the date of his conviction or in the case of an appeal against sentence, of his sentence to the expiration of ten days after the date on which he receives a notice given,

- (a) in the case of a protected prisoner of war by an officer of the Armed Forces,
- (b) in the case of a protected internee, by or on behalf of the superintendent of the prison in which he is confined,

that the protecting power has been notified of his conviction and sentence.

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Reduction of sentence and custody of protected persons. 5. (1) It shall be lawful for the Minister in any case in which a protected prisoner of war or a protected internee is convicted of an offence and sentenced to a term of imprisonment, to direct that there shall be deducted from that term a period not exceeding the period, if any, during which that person was in custody in connection with that offence, either on remand or after committal for trial, including the period of the trial, before the sentence began or is deemed to have begun, to run.

(2) It shall be lawful for the Minister in a case where he is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, either on remand or after committal for trial, including the period of trial, for an aggregate period of not less than three months, to direct that the prisoner shall be transferred from that custody to the custody of an officer of the Armed Forces and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained and be brought before the court at the time appointed by the remand or committal order.

Inter-pretation No.19 of 1956

6. In this Act unless the context otherwise requires,

"advocate" means a person enrolled to practise as an advocate under the Advocates Ordinance, 1956;

"Conventions" means the Conventions set out in the Schedules to this Act ;

"court" does not include a court-martial ;

"Minister" means the Minister to whom functions under this Act are assigned ;

"prisoner's representative" means in relation to a protected prisoner of war at a particular time, the person by whom the functions of prisoner's representative within the meaning of Article 79 of the Convention set out in the Third Schedule to this Act were exercisable in relation to that prisoner at the camp or place at which the prisoner was, at or last before that time, detained as a protected prisoner of war;

Third Schedule

Fourth Schedule

"protected internee" means a person protected by the Convention set out in the Fourth Schedule to this Act and interned in Uganda ;

Third Schedule

"protected prisoner of war" means a person protected by the Convention set out in the Third Schedule to this Act ;

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Third
Schedule.
Fourth
Schedule.

"protecting power" means, in relation to a protected prisoner of war or a protected internee, the power or organisation which is carrying out, in the interests of the power of which he is a national, or of whose forces he is, or was at any material time, a member, the duties assigned to the protecting power under the Convention set out in the Third Schedule, or, as the case may be, in the Fourth Schedule to this Act.

Repeals 7. (1) The Geneva Convention Act, 1911; the Geneva Convention Act, 1937, and the Geneva Conventions Act, 1957, of the United Kingdom in so far as they form part of the law of Uganda are hereby repealed.

(2) Subsections (4) and (5) of section 326 of the Criminal Procedure Code are hereby repealed.

Pakistan

In its letters of May 15 and June 4, 1964,
the Pakistan Red Cross conveyed to the ICRC :

- 1) The Geneva Convention Implementing Act, 1936, and
- 2) The Geneva Convention Implementing (Amendment) Act, 1963.

These two acts are designed to repress misuse
of the signs of the red cross, red crescent and red lion
and sun, but they do not concern the repression of serious
breaches of the Geneva Conventions.

L O I

pour l'établissement de la Loi relative au droit pénal militaire ainsi que de quelques modifications sous ce rapport du Code pénal, de la Loi concernant le droit pénal militaire et de la Loi introductive du droit pénal et disciplinaire militaire.

No 408, du 10 juillet 1952
(Staatsblad van het Koninkrijk der Nederlanden)

Considérant qu'il est désirable de publier des dispositions relatives aux crimes commis en cas de guerre et à leur jugement, ainsi que de procéder à certains amendements dans le Code Pénal, le Code Pénal Militaire et dans la Loi introductive du droit pénal et disciplinaire militaire,

Nous ordonnons ce qui suit :

Art. I

Sont édictées les dispositions suivantes, qui peuvent être introduites comme Loi concernant le droit pénal militaire.

CHAPITRE I

Dispositions du droit pénal de fond

Art. 1

- 1) Les dispositions de cette Loi sont applicables aux crimes commis en cas de guerre ou punissables dès le cas de guerre seulement et qui sont définis :
 1. sous un des Titres I ou II du 2ème livre du Code pénal;
 2. dans le Code pénal militaire;
 3. dans les articles 4/9 de cette Loi;

4. dans les articles 131-134 bis, 189 et 416-417 bis du Code pénal si l'acte punissable ou le crime, au sens de ces articles, représente un délit nommé dans cet article.
- 2) En cas de conflit armé qui ne peut être qualifié de guerre et auquel les Pays-Bas seraient mêlés pour auto-défense individuelle ou collective, ou pour le rétablissement de l'ordre et de la sécurité internationaux, les articles 4-9 sont applicables par analogie, et nous pouvons décider par prescription administrative générale que les autres stipulations de cette Loi entreront en application en totalité ou en partie.
- 3) La notion de "guerre" inclut la guerre civile.

Art. 2

Pour autant que cette loi n'en dispose pas autrement, à l'égard des crimes mentionnés à l'article 1, sont applicables les dispositions du Code pénal militaire et les dispositions d'exécution correspondantes ainsi que, sous réserve des exceptions fixées par ce Code, les stipulations du droit commun, en ce sens que là où dans le Code pénal militaire ou dans les dispositions d'exécution il est question du juge militaire ou de la juridiction militaire il est entendu par là le juge, responsable sa juridiction nommé par cette Loi.

Art. 3

Nonobstant les dispositions existant à cet égard dans le Code pénal et le Code pénal militaire, la Loi pénale néerlandaise est applicable :

- 1) à toute personne se rendant coupable en dehors du Royaume en Europe, d'un des crimes énumérés aux articles 8 et 9;
- 2) à toute personne se rendant coupable en dehors du Royaume en Europe d'un des crimes énumérés aux articles 4-7, lorsque cet acte est commis contre - ou par rapport - à un Néerlandais ou à une personne juridique néerlandaise, ou si par cet acte des intérêts néerlandais sont ou peuvent être lésés;
- 3) à toute personne se rendant coupable en dehors du Royaume en Europe d'un des crimes énumérés aux articles 131-134 bis, 189 et 416-417 bis du Code pénal, si l'acte punissable ou le crime dont il est question dans ces articles est l'un de ceux mentionnés sous 1 et 2;
- 4) à des Néerlandais se rendant coupables en dehors du Royaume en Europe d'un des crimes énumérés à l'article 1.

Art. 4

Tout Néerlandais entrant volontairement au service de guerre d'une Puissance étrangère et qui sait que celle-ci est en guerre avec les Pays-Bas sera puni de mort, ou d'emprisonnement à vie ou à temps jusqu'à 20 ans.

Art. 5

- 1) Quiconque, en cas de guerre, expose volontairement une autre personne à des poursuites, persécutions, privation ou restriction de liberté, punitions ou mesures par, ou de la part de l'ennemi ou de ses auxiliaires, sera puni d'emprisonnement jusqu'à 10 ans.
- 2) L'emprisonnement à vie ou à temps jusqu'à 20 ans au plus sera prononcé lorsque l'acte aura eu pour conséquence la mort ou une disparition dont on peut inférer à juste titre la mort.

Art. 6

Quiconque commet un crime et fait pour cela usage du pouvoir, de l'occasion ou du moyen que l'ennemi met à sa disposition, ou tente d'en faire usage, sera puni :

1. du double de la peine prévue pour ce crime, si elle ne comporte pas plus de 10 ans de prison;
2. d'emprisonnement à vie ou à temps jusqu'à 20 ans si le crime est puni de plus de 10 ans, mais n'excédant pas 15 ans;
3. de mort, d'emprisonnement à vie ou à temps jusqu'à 20 ans au plus lorsqu'à ce crime est applicable une peine d'emprisonnement de plus de 15 ans.

Art. 7

Quiconque, en cas de guerre, fait usage intentionnellement de force, d'occasions ou moyens qui lui sont offerts par l'ennemi, ou qui essaie de le faire, pour porter préjudice à autrui dans ses biens, ou pour se procurer à lui-même, ou à une tierce personne, illégalement, des avantages, sera puni d'emprisonnement jusqu'à 15 ans.

Art. 8

- 1) Quiconque se rend coupable de violation des lois et coutumes de la guerre sera puni d'emprisonnement jusqu'à 10 ans.
- 2) Une peine d'emprisonnement jusqu'à 15 ans au plus sera infligée :

1. Lorsque par l'acte commis, la mort ou de graves lésions corporelles sont à craindre;
 2. lorsque l'acte constitue un traitement inhumain;
 3. lorsque l'acte consiste à contraindre une personne à faire quelque chose, à ne pas faire, ou à tolérer quelque chose;
 4. lorsque l'acte consiste en un pillage.
- 3) La peine de mort ou d'emprisonnement à vie ou à temps jusqu'à 20 ans au plus sera infligée :
1. lorsque l'acte a pour conséquence la mort ou une lésion corporelle grave d'un tiers, ou encore s'il s'agit d'un viol;
 2. lorsque l'acte consiste en un acte de violence avec forces conjuguées contre une ou plusieurs personnes ou un acte de violence contre un mort, un malade ou un blessé;
 3. lorsque l'acte consiste à détruire, endommager, rendre inutilisables ou emporter avec forces conjuguées des biens appartenant en totalité ou en partie à autrui;
 4. lorsque l'acte prévu dans la section précédente sous 3 ou 4 est exécuté avec des forces conjuguées;
 5. lorsque l'acte représente l'expression d'une politique systématique de terreur ou d'une attitude illégale envers toute la population ou envers un groupe déterminé de la population;
 6. lorsque l'acte consiste à ne pas tenir une promesse donnée ou à ne pas respecter un accord conclu avec la partie adverse comme telle;
 7. lorsque l'acte consiste en l'usage abusif d'un drapeau ou signe protégé par les lois et coutumes de la guerre, d'un signe distinctif militaire ou de l'uniforme de la partie adverse.

Art. 9

La même peine que celle prévue dans chaque cas pour les actes énumérés dans l'article précédent sera applicable à celui qui, à dessein, tolère ces actes de la part d'une personne qui lui est subordonnée.

Art. 10

Relativement aux actes énumérés aux articles 8 et 9, les articles 42 et 43 du Code pénal ne trouvent pas application.

Art. 11

Les actes déclarés punissables par les articles 4-9 sont considérés comme des crimes.

CHAPITRE II

Le Juge compétent

Art. 12

- 1) C'est le juge militaire qui prend connaissance des crimes nommés à l'article 1, sans considération de la personne qui les a commis, ceci toutefois sous réserve des stipulations figurant au 2ème alinéa.
- 2) Si la poursuite d'un crime nommé à l'article 1 a lieu après occupation ennemie du territoire du Royaume en Europe, ou d'une partie de ce territoire, les tribunaux spéciaux et la Haute Cour spéciale prennent connaissance de ce crime, à l'exclusion des crimes commis par des personnes militaires, selon l'article 1, No 1, sous 2, ou paraphrasés aux articles 131-134 bis, 189 ou 416-417 bis du Code pénal, si le crime mentionné dans ces articles est un crime au sens de l'article 1, No 1, sous 2.
- 3) Par des prescriptions administratives générales, nous pouvons prendre des dispositions pour le transfert de causes aux tribunaux spéciaux ainsi que pour la préparation de la poursuite avant que ces tribunaux soient institués.
- 4) Nous nous réservons d'arrêter, par mesure administrative générale, qu'ensuite du peu d'étendue ou de la courte durée de l'occupation la stipulation sous point 2 ne soit pas appliquée.
- 5) De même, nous nous réservons d'arrêter, par mesure administrative générale, qu'une fois la guerre passée, même si elle n'a pas été précédée d'une occupation ennemie du Royaume en Europe, ou d'une partie du Royaume, le 2ème alinéa, par rapport à l'étendue et au genre des actes à juger par les tribunaux, devra trouver application.

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Art. 13

- 1) Les tribunaux spéciaux et la Haute Cour spéciale sont institués et composés par nous.
- 2) La juridiction et le siège des tribunaux spéciaux et le siège de la Haute Cour spéciale seront fixés par nous-mêmes, par prescription administrative générale.

Art. 14

- 1) La Haute Cour spéciale et les tribunaux spéciaux sont formés d'un juriste comme Président et d'autant de juristes que nécessaire comme Vice-Présidents, juristes et membres militaires.
- 2) Dans le cas de la Haute Cour spéciale, il y aura un Procureur général et autant de procureurs que nécessaire; dans le cas des tribunaux spéciaux, un magistrat et autant de magistrats suppléants que nécessaire. Dans le cas de chaque Cour de justice, il y aura un greffier et le nombre nécessaire d'aides-greffiers.
- 3) Nous pouvons nommer des juristes suppléants et des militaires comme membres des tribunaux.

Art. 15

- 1) Pour les fonctions énumérées à l'article 14, à l'exception des membres militaires et de suppléants militaires, pourront être nommés :
 1. dans le cas d'une Haute Cour spéciale ceux qui sont éligibles comme conseillers (raadsheer) dans un tribunal, comme Procureurs généraux ou Procureurs auprès d'un tribunal ou comme greffiers ou greffiers suppléants d'un tribunal;
 2. pour les tribunaux spéciaux, les personnes respectivement nommables comme juges d'un tribunal de district, comme fonctionnaires ou suppléants auprès d'un tribunal de district ou comme greffiers ou greffiers suppléants auprès d'un tribunal de district.
- 2) Les membres juristes des Cours spéciales (Eijzondere colleges) chargés de la juridiction sont nommés par nous pour la durée d'existence d'une telle Cour; ils seront choisis de préférence parmi les membres de l'autorité judiciaire chargée de la juridiction.

- 3) Aux fonctions de membres militaires et de membres suppléants militaires sont susceptibles d'être nommés :
1. auprès de la Haute Cour spéciale, les officiers de l'Etat-Major général ou officiers amiraux, en tant qu'ils ne sont pas en service actif;
 2. auprès des tribunaux spéciaux, les officiers en tant qu'ils ne sont pas en service actif et qu'ils aient pour le moins le grade d'officier d'Etat-Major.

Art. 16

Les membres des collèges spéciaux reçoivent une solde, ceux qui sont membres des tribunaux spéciaux le tiers de la solde pour services correspondants auprès des tribunaux de district, et les membres de la Haute Cour spéciale le tiers de la solde pour services correspondants auprès de la Cour suprême du Royaume (Hoge-Rad) des Pays-Bas.

Art. 17

- 1) La Haute Cour spéciale rend son jugement avec cinq membres parmi lesquels se trouvent un ou au plus deux membres militaires; s'ils sont deux membres militaires, si possible l'un d'entre eux appartiendra aux forces navales et l'autre aux forces terrestres.
- 2) Les tribunaux spéciaux rendent leur jugement avec trois membres, dont un militaire.

Art. 18

- 1) Les jugements des tribunaux spéciaux ne sont pas susceptibles d'appel.
- 2) Contre ces jugements on peut, en vertu de l'article 19, former recours en cassation auprès de la Haute Cour spéciale.

Art. 19

Nonobstant les dispositions contenues à l'article 34, la Haute Cour spéciale déclare non-valables les jugements du tribunal spécial :

1. pour négligence de prescriptions de forme qui sont prescrites en cas de punition de la nullité, en ce sens qu'une omission de ce genre ne doit pas donner motif de

déclaration de nullité lorsqu'il peut être loyalement supposé que l'inculpé n'a pas été lésé dans ses intérêts par l'omission;

2. pour application ou transgression injuste de la loi à quoi est assimilée l'infliction d'une peine ou d'une mesure dont il ne peut pas être admis qu'elle correspond à la gravité du crime, aux circonstances dans lesquelles il a été commis ou à la situation personnelle du condamné.
3. pour dépassement des attributions du juge.

Art. 20

Les dispositions de la loi sur l'organisation du tribunal et les attributions de la justice, à l'exclusion des articles 8, al. 1; 15, 17 et 18, et des prescriptions édictées pour l'exécution de cette loi trouvent application analogue aux collèges spéciaux quand et en tant que cette loi ne s'écarte pas de ces dispositions, l'idée étant que par rapport aux tribunaux spéciaux les dispositions relatives aux tribunaux de districts et par rapport à la Haute Cour spéciale, les dispositions relatives à la Cour suprême du Royaume seront applicables; toutefois, à l'égard de la Haute Cour, les listes de propositions concernant les situations vacantes, qui seront à repourvoir après institution du tribunal devront être traitées de la manière prescrite pour les Cours de justice.

CHAPITRE III

Procédure des tribunaux spéciaux et de la Haute Cour spéciale

Section 1

Dispositions générales

Art. 21

En ce qui concerne la procédure devant les tribunaux spéciaux et devant la Haute Cour spéciale les dispositions du Code pénal seront applicables par analogie, lorsque et en tant

que cette loi ne s'écarte pas des dispositions du Code, en ce sens que :

1. ce qui y est prescrit au sujet du tribunal, son Président, les juges, les juges commis, les Procureurs et le greffier est également valable pour le tribunal spécial et les membres de cette Cour;
2. ce qui y est prescrit au sujet de la Cour suprême du Royaume, son Président et ses membres, du Procureur général et du greffier, est aussi valable pour la Haute Cour spéciale et les membres de cette Cour;
3. ce qui y est prescrit au sujet du tribunal de Ière Instance ou de la Cour de justice et les membres du tribunal de l'une de ces deux Cours n'y trouve pas d'application à l'égard de celles-ci.

Art. 22

Notre Ministre de la Justice peut disposer qu'en cas de crime à l'égard duquel cette loi est applicable, il pourra y avoir détention préventive dans le sens de l'article 57 du Code pénal pour une durée plus longue que celle de deux jours prévue à l'article 58, 2ème alinéa du dit Code, mais dans aucun cas de plus d'un an.

Section 2

La procédure simplifiée devant les tribunaux spéciaux

Art. 23

- 1) Notre Ministre de la Justice peut, lorsque la chose s'avère nécessaire pour la bonne marche de la procédure, décider que, par un tribunal spécial, un ou plusieurs juges peuvent être chargés de liquider des affaires pénales par voie de procédure simplifiée selon les prescriptions y relatives.
- 2) Ceux-ci seront désignés, sur proposition du Président, par notre Ministre de la Justice, pour la durée d'un an et choisis parmi les membres juristes ou suppléants du tribunal spécial.

Art. 24

Si, après jugement initial du Parquet, il est infligé dans un cas, à titre de punition principale, une peine de prison de six ans au plus, une peine de détention ou une amende, et si le cas, après jugement initial du Parquet, entre en considération pour la procédure simplifiée, le Parquet mettra dans ce but à la disposition du juge la documentation y relative, accompagnée d'une proposition écrite demandant l'application d'une peine déterminée.

Art. 25

Si le juge est d'avis que le cas n'entre pas en considération pour la procédure judiciaire simplifiée, il en donne connaissance au Parquet en lui restituant la documentation.

Art. 26

- 1) Si, en vertu des actes et de l'interrogatoire de l'inculpé, le juge acquiert la conviction que l'inculpé a commis un crime pour lequel les dispositions de cette loi sont applicables, et qu'il est par conséquent punissable, il peut infliger une peine à l'inculpé. Le juge n'est pas autorisé à infliger d'autres peines principales que l'emprisonnement pour six ans au plus, la détention ou une amende.
- 2) Si le juge n'a pas acquis la conviction que l'inculpé n'a pas commis un acte mentionné dans la demande du Parquet, il l'acquitte du chef de cet acte.
- 3) Si le juge a acquis la conviction que l'inculpé a commis un acte déterminé, mentionné dans la requête du Parquet, mais qu'il est d'avis que cet acte ne constitue pas un crime pour lequel les dispositions de cette loi sont applicables, ou que l'inculpé n'est pas punissable de ce fait, il se dira incompetent et déclarera l'inculpé exempt de toutes poursuites judiciaires du fait de cet acte.
- 4) Le juge signifie par ordre écrit la décision à laquelle fait allusion cet article.

Art. 27

- 1) Le juge ne lance pas l'ordre avant d'avoir entendu l'inculpé. Il assigne l'inculpé se trouvant en préventive. Si celui-ci est en liberté, il ordonne son assignation par voie judiciaire; si l'inculpé ne donne pas suite à son assignation, il l'assigne

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encore une fois; il pourra alors ordonner sa comparution ou délivrer plus tard un mandat d'amener.

- 2) Le Président du tribunal spécial attribue un défenseur à l'inculpé qui n'en a pas, au plus tard le dixième jour avant la date à laquelle l'interrogatoire doit avoir lieu. Cette attribution ainsi que la date de l'interrogatoire sont communiquées sans retard, par écrit, à l'inculpé et à son défenseur.
- 3) Le juge donne, sur demande, l'occasion à l'inculpé et à son défenseur, de prendre connaissance des actes.
- 4) Le Parquet et le défenseur de l'inculpé sont autorisés à assister à l'interrogatoire. Dans ce cas, l'occasion leur est offerte de prendre la parole.

Art. 28

- 1) L'ordonnance contient le nom du juge, du jour où elle a été expédiée et, autant que possible, les nom, prénoms, âge, lieu de naissance, profession et domicile ou lieu de résidence de l'inculpé.
- 2) L'ordonnance contient en outre la décision qui a été prise en vertu de l'article 26. En cas de décision dans le sens de l'al. 1 de cet article, l'ordonnance contient la peine infligée et l'acte punissable selon sa définition légale dans l'affaire pour laquelle la peine a été infligée, mention étant faite également du moment et du lieu auxquels l'acte punissable a été commis.

Art. 29

- 1) Le juge fait parvenir sans retard au Parquet l'ordonnance accompagnée des actes.
- 2) L'ordonnance est communiquée personnellement à l'inculpé s'il n'est pas en détention; autrement, il est donné copie de l'ordonnance à l'inculpé aussitôt après son interrogatoire. Dans ce dernier cas, le juge dresse procès-verbal de la remise du document. Lors de la remise ou de la communication de l'ordonnance à l'inculpé, il est rendu attentif aux droits que lui confèrent les articles 30 et 31.

Art. 30

- 1) L'inculpé a le droit, au plus pendant trois semaines après la date de l'ordonnance qui lui a été remise lors de son interrogatoire, ou alors dans l'espace de deux semaines à compter

de la date à laquelle l'ordonnance lui a été remise personnellement, de former recours en donnant une déclaration dans ce sens. Les articles 449-452 du Code pénal sont applicables par analogie.

- 2) Les mêmes droits appartiennent au Parquet endéans deux semaines après la date de l'ordonnance.

Art. 31

Le Parquet et l'inculpé peuvent renoncer à faire usage de la faculté de déposer une déclaration de recours. L'article 454 du Code pénal est applicable par analogie, en ce sens que le Parquet et l'inculpé peuvent aussi, immédiatement après réception de la copie de l'ordonnance à l'occasion de l'interrogatoire, renoncer à leur droit de déposer une déclaration de recours; dans ce cas, le document est confectionné par le juge.

Art. 32

- 1) La déclaration de recours annule l'ordonnance.
- 2) L'ordonnance est également annulée si elle n'est pas délivrée en copie ou communiquée dans les trois mois de sa date.
- 3) Lorsque le délai prévu à l'article 30 est passé sans qu'il y ait eu déclaration de recours, ou si, auparavant, le Parquet ainsi que l'inculpé ont renoncé à leur droit de déposer une déclaration de recours, l'ordonnance sera censée décision définitive du tribunal spécial contre laquelle il n'y aura pas de voie de recours ordinaire.

Section III

Procédure devant la Haute Cour spéciale

Art. 33

- 1) En audience devant la Haute Cour spéciale, l'inculpé peut être entendu au sujet de sa personne et de sa situation personnelle.

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- 2) Dans ce but, l'inculpé n'est pas présent au tribunal le jour de l'audience fixé, la Haute Cour spéciale peut ordonner, aussi bien au début que pendant la durée des débats au sujet du cas, qu'il se présente à un moment à fixer par la Cour pour l'audience et ordonner en même temps qu'il y soit amené.
- 3) Les dispositions de l'article 310 du Code pénal seront applicables par analogie dans le cas d'un pourvoi en cassation, en ce sens que les prescriptions relatives au tribunal et au Procureur seront valables pour la Haute Cour spéciale et le Procureur général.
- 4) Si la Haute Cour spéciale estime nécessaire une nouvelle enquête sur les circonstances dans lesquelles le crime a été commis, ou au sujet de la personne ou des circonstances personnelles de l'inculpé, les articles 316 et 317 du Code pénal seront applicables par analogie, en ce sens que ce qui y est prescrit quant au tribunal, au Procureur et aux juges commis, sera également valable pour la Haute Cour spéciale, le Procureur général auprès de cette Cour et au juge commis au tribunal spécial qui s'est prononcé en Ière Instance.

Art. 34

Si une enquête telle que prévue à l'article 33, al. 4, aboutit à la constatation que l'inculpé n'est pas punissable, la Haute Cour spéciale pourra faire suspendre la poursuite judiciaire contre lui.

Art. 35

Si l'inculpé seul se pourvoit en cassation, il peut relativement à ce qui a été déclaré prouvé en Ière Instance, être condamné seulement à l'unanimité à une peine plus grave que celle qui lui a été infligée par jugement du tribunal spécial.

Art. 36

- 1) En dérogation à la disposition de l'article 461, al. 1, du Code pénal, autant dans le cas mentionné dans cet article que dans le cas indiqué à l'article 465, al. 2 du dit Code, le transfert est fait à un tribunal spécial.
- 2) Ce qui est prescrit aux articles 470, 473 et 474 du Code pénal ainsi qu'aux articles auxquels il est renvoyé concernant le tribunal spécial, son président et le Procureur général, est applicable par analogie du tribunal spécial, à son président et au juge commis près ce tribunal.

Article II

Les modifications suivantes sont apportées au Code pénal :

- 1) A l'article 3, au lieu de "véhicule", il faudra lire "véhicule ou aéronef".
- 2) A l'article 4, chiffre 1, le chiffre 1 est supprimé et il sera inséré à la suite des dispositions figurant sous 1 :

2. à un des crimes mentionnés dans les articles 131-134 bis et 189, si l'acte punissable ou le crime, dont il est question dans ces articles, constitue un crime dans le sens du chiffre 1;

Les chiffres 2, 3 et 4 reçoivent les désignations 3, 4 et 5.

- 3) Après l'article 22 sera inséré un article 22 a) libellé comme suit :

Le Chef du Département de la Justice est autorisé, en des circonstances spéciales, dans l'intérêt de la sécurité de l'Etat, que des peines privatives de liberté soient exécutoires en dehors du Royaume en Europe.

- 4) A l'article 94, les mots "peine d'emprisonnement de 15 ans au plus" sont remplacés par les mots "Peine d'emprisonnement à vie ou à temps de 20 ans au plus".
- 5) L'article 95 sera libellé comme suit :

Quiconque, par force ou menaces, provoque la dissolution d'une assemblée du Conseil du Gouvernement, la contraint à l'adoption ou au rejet de résolutions, écarte un membre de cette assemblée ou empêche intentionnellement un membre d'assister à cette assemblée ou d'y remplir librement et sans entrave son devoir, sera puni d'emprisonnement à vie, ou à temps jusqu'à 20 ans au plus.

- 6) L'article 95 sera suivi d'un article 95 a) libellé comme suit :

Quiconque, par force ou par menaces, provoque la dissolution du Conseil des Ministres, le contraint à l'adoption ou au rejet de résolutions, écarte un membre du Conseil ou empêche intentionnellement un membre d'assister à ce Conseil ou d'y remplir librement et sans entraves son devoir, sera puni d'emprisonnement à vie, ou à temps jusqu'à vingt ans au plus.

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7) A l'article 96, al. 1, les mots "5 ans" seront remplacés par les mots "10 ans", et aux alinéas 1 et 2, les mots "92 à 95" par les mots "92 à 95a".

8) A l'article 97, al. 1, les mots "se met d'accord" sont remplacés par "se met en relations"; et les mots "peine d'emprisonnement jusqu'à 15 ans au plus", par "peine d'emprisonnement à vie, ou à temps de 20 ans au plus".

L'article 97, al. 3, sera libellé comme suit : "les actes commis pour la préparation d'un crime dans le sens de l'alinéa précédent seront punis d'emprisonnement jusqu'à 10 ans au plus".

9) L'article 97 a) est remplacé par la disposition suivante :

Art. 97a

Quiconque se met en relation avec une personne ou collectivité à l'étranger dans l'intention d'inciter cette personne ou collectivité à obtenir de l'appui dans la préparation, la promotion ou l'organisation d'une révolution, d'affermir une telle personne ou collectivité dans son projet à cette fin, en promettant ou accordant de l'aide à cette personne ou collectivité, ou de préparer, encourager, ou organiser une révolution, sera puni d'emprisonnement à vie, ou à temps jusqu'à 20 ans au plus.

Art. 97b

Sera puni d'emprisonnement pour 10 ans au plus :

- 1) Quiconque importe un objet propre à fournir appui matériel dans la préparation, la promotion ou l'organisation d'une révolution lorsqu'il sait ou a de sérieux motifs de supposer que cet objet est destiné à ces fins;
- 2) Quiconque a sous sa gouverne un objet, ou fait celui-ci l'objet d'une convention ayant pour but de procurer un appui matériel dans la préparation, la promotion ou l'exécution d'une révolution, s'il sait ou a de sérieux motifs de supposer que l'objet est destiné à cette fin, et que l'objet ou un autre objet qui l'a remplacé a été importé dans ce but ou est destiné à cela par, ou par l'entremise d'une personne ou collectivité à l'étranger.

Les objets au moyen desquels, ou par rapport auxquels les crimes mentionnés dans l'alinéa précédent ont été commis pourront être confisqués.

10) A l'article 99, les mct. "douze ans" sont remplacés par "quinze ans".

11) L'article 100 sera libellé comme suit :

Sera puni d'emprisonnement pour 10 ans au plus :

1. Quiconque, en cas de guerre à laquelle les Pays-Bas ne participent pas, commet intentionnellement des actes par lesquels naît le danger que l'Etat soit entraîné dans une guerre, ou quiconque contrevient à dessein à une prescription spéciale édictée et communiquée par le Gouvernement concernant le maintien ou la non participation à une guerre;
2. Quiconque contrevient à dessein, en temps de guerre, à une prescription gouvernementale édictée et communiquée dans l'intérêt de la sécurité de l'Etat.

12) L'article 101 sera libellé comme suit :

Un Néerlandais qui, en prévision d'une guerre avec une Puissance étrangère, entre volontairement au service militaire de cette Puissance, sera puni, si cette guerre éclate, d'emprisonnement jusqu'à 15 ans au plus.

13) L'article 102 sera libellé comme suit :

Sera puni d'emprisonnement à vie ou à temps pour 20 ans au plus, quiconque, en temps de guerre, prête son appui à l'ennemi ou préjudicie l'Etat vis-à-vis de l'ennemi.

14) L'article 103 sera libellé comme suit :

Le complot dans le but de la perpétration du crime mentionné à l'article 102 sera puni d'emprisonnement jusqu'à 10 ans au plus.

15) A l'article 103 sera ajouté un article 103 a) libellé comme suit :

N'est pas punissable quiconque a commis un des crimes mentionnés aux articles 102 et 103 avec la sincère conviction de ne pas nuire aux intérêts néerlandais.

16) A l'article 105, les mots "la flotte ou l'armée" sont remplacés par les mots "les forces armées".

17) A l'article 107 sera ajouté un article 107a libellé comme suit :

Les articles 100, al. 2, et 101-107 seront applicables par analogie dans le cas d'un conflit armé qui ne peut pas être considéré comme guerre et auquel les Pays-Bas sont mêlés, que ce soit pour défense propre individuelle ou collective, ou que ce soit pour le rétablissement de la paix et de la sécurité internationales.

- 18) L'article 121 sera libellé comme suit :

Quiconque, par force ou menaces, provoque la dissolution d'une réunion des deux Chambres des Etats Généraux, ou l'une des deux Chambres, les contraint à l'adoption ou au rejet d'une résolution, écarte un membre de la réunion ou l'empêche à dessein d'assister à la réunion ou d'y remplir librement et sans entrave son devoir, sera puni d'emprisonnement à vie ou à temps pour 20 ans au plus.

- 19) L'article 122 sera libellé comme suit :

Le complot ayant pour but le crime nommé à l'article 121 sera puni d'emprisonnement pour 10 ans au plus.

L'article 96, 2ème, 3ème et 4ème alinéas, sera applicable par analogie.

- 20) A l'article 124, les mots "deux ans" sont remplacés par les mots "neuf ans".
- 21) A l'article 135, les mots "les articles 92-95 ou 102" sont remplacés par "les articles 92-95 a, 102 ou 121".

Article III

- 1) L'article 9 du Code pénal militaire sera libellé comme suit :

Si l'accusé est déclaré coupable d'un crime puni de la peine de mort, cette peine ne sera infligée qu'en cas d'unanimité.

- 2) L'article 45 du Code pénal militaire sera libellé comme suit:

Si un crime puni de mort en droit ordinaire est commis en temps de guerre par une personne soumise à la justice militaire, la personne coupable ne pourra être condamnée à mort que par décision unanime.

- 3) Les articles 79, 91 bis, 93 et 154 du Code pénal militaire sont supprimés.

Pays-Bas

- 4) Au 1er alinéa de l'article 53 du Code pénal militaire sera ajouté, après remplacement du point par un point virgule;
- 5) Quiconque commet un vol sur un mort, un malade ou un blessé de guerre appartenant aux forces armées d'un des belligérants. Pour l'application de cette disposition, comptent comme faisant partie des forces armées d'un des belligérants, tous ceux qui sont en service auprès de ces forces armées ou qui s'y rallient, ou les suivent, avec l'assentiment de l'autorité militaire.

Article IV

A l'article 78 de la loi introductive du Code pénal et disciplinaire militaire, la disposition sous 1 est abrogée.

Les numéros 2 et 3 se liront : 1 et 2.

LOI MODIFIANT LE CODE PENAL MILITAIRE

No 214, du 19 mai 1954

(Staatsblad van het Koninkrijk der Nederlanden, 1954, p. 559)

Considérant qu'en corrélation avec la Convention de Genève relative au traitement des prisonniers de guerre, présentée à la signature le 12 août 1949, il devient nécessaire de modifier le Code pénal militaire.

Nous ordonnons ce qui suit :

Art. 1

La première phrase de l'article 65 du Code pénal militaire sera libellée comme suit :

"Les personnes militaires étrangères qui s'associent à une Puissance en conflit sur pied de guerre, ou la suivent, les prisonniers de guerre et les personnes internés qui, en vertu de l'article 4, lit. B, de la Convention de Genève relative au traitement des prisonniers de guerre du 12 août 1949, doivent être traitées comme prisonniers de guerre, y compris celles qui ont été libérées sur parole ou conditionnellement, compte tenu de leur grade, à égalité des personnes militaires néerlandaises en ce qui concerne les actes punissables dont elles se sont rendues coupables au sens du droit commun des articles 79 et 80, ou des Titres IV - VI du deuxième livre de ce Code".

Art. 2

La présente Loi entrera en vigueur à une date que nous spécifierons ultérieurement.

LOI RELATIVE A L'EXTRADITION POUR CRIMES DE GUERRE

No 215, du 19 mai 1954

(Staatsblad van het Koninkrijk der Nederlanden, 1954, p.560)

Considérant qu'en corrélation avec les Conventions de Genève présentées à la signature le 12 août 1949, relatives à l'amélioration du sort des blessés et des malades dans les forces armées en campagne, à l'amélioration du sort des blessés, des malades et des naufragés des forces armées sur mer, au traitement des prisonniers de guerre et à la protection des personnes civiles en temps de guerre, il est désirable de prendre des dispositions légales concernant l'extradition (à d'autres Puissances) de personnes soupçonnées d'avoir commis des crimes de guerre,

Nous ordonnons ce qui suit :

Art. Premier

Sans égard aux dispositions des Conventions passées avec d'autres Puissances au sujet de l'extradition d'étrangers, des étrangers pourront être livrés, aux fins de jugement, à une autre Puissance pour avoir commis l'un des crimes mentionnés aux articles 8 et 9 de la Loi sur le droit pénal militaire, si cet acte représente une infraction grave à l'une des Conventions de Genève du 12 août 1949, soit :

- a) la Convention pour l'amélioration du sort des blessés et des malades des forces armées en campagne;
- b) la Convention pour l'amélioration du sort des blessés, des malades et des naufragés des forces armées sur mer;
- c) la Convention relative au traitement des prisonniers de guerre;
- d) la Convention relative à la protection des personnes civiles en temps de guerre.

Art. 2

La remise à une autre Puissance ne pourra avoir lieu que si celle-ci est signataire de la Convention dont les dispositions ont été enfreintes.

Art. 3

- 1) Pour autant que nous n'en disposons pas autrement, l'extradition sera demandée par voie diplomatique.
- 2) Elle ne sera autorisée que si l'autre Puissance produit un acte d'accusation étayé par des preuves suffisantes, motivant une poursuite judiciaire.

Art. 4

- 1) Un étranger dont l'extradition est demandée par une autre Puissance, conformément à l'article 1, peut être arrêté en tant qu'il n'est pas déjà sous garde sûre.
- 2) Le mandat d'arrêt doit lui parvenir dans les 48 heures.
- 3) Les objets se trouvant sur lui et en sa possession pourront lui être confisqués.
- 4) Dans les 24 heures de l'arrestation, le Ministère de la Justice (het openbaar Ministerie) en sera informé par les soins du Tribunal compétent pour juger le crime qui a motivé la demande d'extradition.

Art. 5

- 1) Avant qu'il soit statué sur une demande d'extradition, le Tribunal auquel ressortit le crime ayant motivé la demande d'extradition devra être consulté.
- 2) Dans son rapport, le Tribunal décidera quels sont, parmi les objets confisqués, ceux qui seront restitués à la personne en question et ceux qui devront être remis comme pièces justificatives.
- 3) L'extradition n'aura lieu en aucun cas si le Tribunal est d'avis qu'il ne convient pas de l'autoriser.

Art. 6

Le Gouvernement peut permettre qu'un étranger dont l'extradition, du chef d'une infraction grave aux stipulations d'une des Conventions mentionnées à l'article 1, est accordée par une autre Puissance à une troisième Puissance, soit acheminé à travers le territoire néerlandais accompagné d'un fonctionnaire néerlandais, à condition que la Puissance à laquelle la personne est livrée ait signé la Convention enfreinte.

Pays-Bas

Art. 7

Les articles 3-7, 9-10, 13-19 et 21-23 de la Loi du 6 avril 1875 (Staatsblad No 66) pour le règlement des conditions générales auxquelles les accords peuvent être conclus avec des Puissances étrangères relativement à l'extradition d'étrangers, sont applicables par analogie.

Art. 8

L'extradition à d'autres Puissances, pour procédure judiciaire, de personnes soupçonnées d'avoir commis des crimes de guerre sera, pour nos territoires outre mer, mise si possible en harmonie avec cette Loi par des mesures administratives générales.

Art. 9

- 1) Cette Loi peut être introduite sous le titre de "Loi relative à l'extradition pour crimes de guerre".
- 2) Elle entrera en vigueur à une date qu'il nous reste à préciser.

LOI MODIFIANT L'ADMINISTRATION JUDICIAIRE DANS

L'ARMEE DE TERRE

No 217, du 19 mai 1954

(Staatsblad van het Koninkrijk der Nederlanden 1954, p. 561)

Considérant qu'en corrélation avec les Conventions de Genève relatives au traitement des prisonniers de guerre, soumises à la signature le 12 août 1949, il est nécessaire de modifier l'administration judiciaire dans l'armée de terre,

Nous ordonnons ce qui suit :

Art. Premier

Selon les dispositions complémentaires relatives au jugement de mineurs, il est ajouté à l'administration judiciaire dans l'armée de terre :

Dispositions complémentaires relatives au jugement de prisonniers de guerre et d'autres personnes internées qui, en vertu de l'article 65 du Code pénal militaire, sont en partie assimilés aux personnes militaires néerlandaises.

XIV

La détention préventive ne devra pas excéder trois mois.

XV

L'accusation sera signifiée à l'accusé dans une langue qu'il comprend. Copie de l'acte d'accusation sera remise au défenseur.

XVI

Il faudra qu'un défenseur soit à disposition pour les débats deux semaines au moins avant l'ouverture de l'instruction.

Pays-Bas

L'accusé pourra choisir librement son défenseur en tant que celui-ci est un officier au sens du par. 3 de l'article 116, un officier de sa nationalité prisonnier de guerre en mains néerlandaises, ou en internement néerlandais, un avocat au sens du par. 3 de l'article 116, ou un avocat de la nationalité de l'accusé.

Si l'accusé ne choisit pas de défenseur, il devra être donné l'occasion à la Puissance protectrice pendant une semaine au moins de désigner une personne choisie si possible parmi les membres du Conseil figurant sur la liste mise à disposition par le Président du Conseil de guerre.

Si ni l'accusé, ni la Puissance protectrice n'arrêtent leur choix, l'attribution d'un défenseur à l'accusé aura lieu de la manière prévue au par. 4 de l'article 116.

Art. 2

Cette Loi entrera en vigueur à une date que nous spécifierons ultérieurement.

LOI MODIFIANT L'ADMINISTRATION DE LA JUSTICE
DANS LES FORCES ARMEES SUR MER

No 218, du 19 mai 1954

(Staatsblad van het Koninkrijk der Nederlanden 1954, p. 562)

Considérant qu'en corrélation avec la Convention de Genève soumise à la signature le 12 août 1949 relative au traitement des prisonniers de guerre, il est nécessaire de modifier l'administration de la justice dans les forces armées sur mer,

Nous ordonnons ce qui suit :

Art. Premier

Selon les dispositions complémentaires relatives au jugement de mineurs, il est ajouté à l'administration de la justice dans les forces armées sur mer :

Dispositions complémentaires sur le jugement de prisonniers de guerre et d'autres personnes internées, qui, en vertu de l'article 65 du Code pénal militaire, sont en partie assimilés aux personnes militaires néerlandaises.

XV

La détention préventive n'excèdera en aucun cas la durée de trois mois.

XVI

L'accusation sera signifiée à l'accusé dans une langue qu'il comprend. Copie de l'acte d'accusation sera remise au défenseur.

XVII

Il faudra qu'un défenseur, pour l'accusé, soit à disposition pour les débats au minimum deux semaines avant l'ouverture de l'instruction.

Pays-Bas

L'accusé aura libre choix pour désigner son défenseur en tant que celui-ci est un officier au sens du par. 3 de l'article 114, un officier de sa nationalité prisonnier de guerre ou interné en mains néerlandaises, un avocat au sens du par. 3 de l'article 114 ou un avocat de la nationalité de l'accusé.

Si l'accusé ne choisit pas de défenseur, il devra être donné l'occasion à la Puissance protectrice pendant une semaine au moins de désigner une personne, choisie si possible parmi les membres du Conseil figurant sur la liste mise à disposition par le Président du Conseil de guerre.

Si ni l'accusé, ni la Puissance protectrice, n'arrêtent leur choix, l'attribution d'un défenseur à l'accusé aura lieu de la manière prévue au par. 4 de l'article 114.

Art. 2

Cette Loi entrera en vigueur à une date que nous spécifierons ultérieurement.

LOI MODIFIANT LA LOI SUR LA DISCIPLINE MILITAIRE

No 235, du 19 mai 1954

(Staatsblad van het Koninkrijk der Nederlande, 1954, p. 589)

Considérant qu'en coorélation avec la Convention de Genève relative au traitement des prisonniers de guerre soumise à la signature le 12 août 1949 il est nécessaire de modifier la loi sur la discipline militaire,

Nous ordonnons ce qui suit :

Art. Premier

Le paragraphe 2 de l'article 72 de la Loi sur la discipline militaire est supprimé.

Art. 2

L'article 72 de la Loi sur la discipline militaire sera suivi d'un :

Art. 72a)

Cette Loi s'applique également aux personnes militaires étrangères qui, avec l'assentiment de l'autorité militaire, se joignent aux forces d'une puissance militaire sur pied de guerre, ou la suivent.

Art. 72b)

Cette Loi s'applique également aux prisonniers de guerre et à d'autres personnes internés qui, en vertu de l'article 65 du Code pénal militaire, sont partiellement assimilées aux personnes militaires néerlandaises en ce sens que :

- 1) contre elles ne pourront être prononcées que les peines disciplinaires suivantes :
 - a) Retrait pour 30 jours des privilèges prévus dans la Convention de Genève du 12 août 1949 relative au traitement des prisonniers de guerre;
 - b) Retenue de 50 % au maximum de l'avance de la solde et de l'indemnité de travail pour une durée de 30 jours au plus;

Pays-Bas

- c) Travail commandé de 2 heures au maximum par jour pendant 30 jours au plus;
 - d) Arrêts de rigueur pendant un temps n'excédant pas 30 jours.
- 2) Les peines énumérées dans cet article sous 1), ne peuvent être prononcées que comme peine principale, et celles sous 1 c) seulement contre des non-officiers.
 - 3) En dérogation de l'article 15, le temps que le condamné passera en détention préventive, ou gardé provisoirement à titre de sûreté, avant de purger sa peine, sera déduit en totalité lorsque le condamné purgera sa peine.
 - 4) La durée de la détention préventive ne pourra en aucun cas excéder deux semaines.
 - 5) Les peines disciplinaires seront déterminées d'après l'ordre dans lequel elles figurent dans cet article 1, chaque peine mentionnée étant plus lourde que la précédente.
 - 6) L'article 43 ne sera pas applicable à ces personnes.
 - 7) Elles sont en droit d'entendre des témoins et de se faire assister d'un interprète avant d'être condamnées à une peine disciplinaire.
 - 8) Lorsqu'elles sont punies simultanément pour divers délits, la durée maximum de la peine à laquelle elles seront condamnées ne devra pas excéder 30 jours, et si après condamnation à une peine disciplinaire elles sont punies une deuxième fois, trois jours devront s'écouler avant qu'elles commencent à purger la deuxième peine, en tant que la durée de l'une comporte dix jours ou davantage.
 - 9) La condamnation sera communiquée non seulement à elles-mêmes, mais aussi à leur homme de confiance.
 - 10) Si elles sont condamnées à une peine disciplinaire, le droit de requérir une punition pour le délit relativement auquel la peine a été prononcée sera supprimé de ce fait.

Art. 3

Cette Loi entrera en vigueur à une date que nous spécifierons ultérieurement.

Pays-Bas

LOI MODIFIANT LE CODE PENAL

(Protection du signe de la Croix-Rouge)

No 216, du 19 mai 1954

(Staatsblad van het Koninkrijk der Nederlanden 1954, p. 561)

Considérant qu'en corrélation avec les Conventions de Genève soumises à la signature le 12 août 1949, pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne ainsi que pour l'amélioration du sort des blessés, malades et naufragés des forces armées sur mer, il est nécessaire de modifier le Code pénal,

Nous ordonnons ce qui suit :

Art. Premier

L'article 435 bis du Code pénal sera libellé comme suit:

"Quiconque fait emploi abusif du signe de la Croix-Rouge ou des mots "Croix-Rouge" ou "Croix de Genève", ou des signes et mots équivalents selon les Lois et Coutumes de la guerre, ou encore de signes et mots qui en sont une imitation, sera passible d'emprisonnement jusqu'à un mois, ou d'une amende n'excédant pas 300 Gulden".

Art. 2

L'article 473 a) du Code pénal est abrogé.

Art. 3

Cette Loi entrera en vigueur à une date que nous spécifierons ultérieurement.

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Philippines

LETTER OF THE PHILIPPINE NATIONAL RED CROSS SOCIETY

December 24th, 1964

with annex

THE PHILIPPINE NATIONAL RED CROSS
Manila, Philippines

24 December, 1964

We are pleased to report to you on the action of the Philippine National Red Cross on the subject of "Repressions of Violations of the Geneva Conventions."

The PNRC Board of Governors created again a special committee to make a study of the subject. Enclosed is a report on extracts of legislative texts of the Republic of the Philippines pertinent to sanctions on violations of the Geneva Conventions.

We trust that this study will contribute to your overall research on this matter.

EXTRACTS OF LEGISLATIVE TEXTS OF THE REPUBLIC
OF THE PHILIPPINES PERTINENT TO SANCTIONS ON
VIOLATIONS OF THE GENEVA CONVENTIONS

1. Constitutional Provision

a) Art. II, sec. 3

The Philippines "adopts the generally accepted principles of international law as part of the law of the nation."

Philippines

- (1) The provisions of a treaty or convention which have been generally observed by international custom or usage form part of the Philippine law even if the Republic of the Philippines is not a party to the treaty or convention.
- (2) The Supreme Court of the Philippines, in several decided cases arising from World War II, has applied certain provisions of the Hague Conventions of October 18, 1907 as generally accepted principles of international law.

2. Republic Act 95, as amended by Republic Act 855
(Charter of the Philippine National Red Cross)

Sec. 3. That the purposes of this Corporation shall be as follows:

- a. To furnish volunteer aid to the sick and wounded of armed forces in time of war, in accordance with the spirit of and under the conditions prescribed by the Geneva Red Cross Convention to which the Republic of the Philippines proclaimed its adherence on February fourteen, nineteen hundred and forty-seven;
 - b. For the purposes mentioned in the preceding subsection, to perform all the duties devolving upon the Corporation as a result of the adherence of the Republic of the Philippines to the said Convention;
 - c. To act in matters of voluntary relief and in accord with the authorities of the Armed Forces as a medium of communication between the people of the Republic of the Philippines and their Armed Forces, in time of peace and in time of war, and to act in such matters between similar national societies of other governments and the Government and people and the Armed Forces of the Republic of the Philippines;
 - d. To establish and maintain a system of national and international relief in time of peace and in time of war and apply the same in meeting the emergency needs caused by typhoons, floods, fires, earthquakes, and other natural disasters and to devise and carry on measures for minimizing the suffering caused by such disasters;
- and

Philippines

- e. To devise and promote such other services in time of peace and in time of war as may be found desirable in improving the health, safety and welfare of the Filipino people and as do not infringe upon the functions of the government.

Sec. 10. It shall be unlawful for any person to solicit, collect, or receive money, material, or property of any kind, falsely representing or pretending himself to be a member, agent or representative of the Philippine National Red Cross; or for any person to wear or display the sign of the Red Cross or any insignia made or colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member or representative of or agent for the Philippine National Red Cross.

The use of the name Red Cross is reserved exclusively to the Philippine National Red Cross and the use of the emblem of the red Greek cross on a white ground is reserved exclusively to the Philippine National Red Cross and the medical services of the Armed Forces of the Philippines as provided in Article 28 of the Geneva Red Cross Convention. It shall be unlawful for any other person or entity to use the words Red Cross or Geneva Cross or to use the emblem of the red Greek cross on a white ground or any designation, sign or insignia constituting an imitation thereof for any purpose whatsoever.

As used in this article, the term person shall include any legal person, group, or legal entity of whatsoever nature, and any person violating any section of this article shall upon conviction therefor be liable to a fine of not more than one thousand pesos or imprisonment for a term not exceeding one year, or both, at the discretion of the court, for each and every offence. In case the violation is committed by a corporation or association, the penalty shall devolve upon the president, director or any other officer responsible for such violation.

3. Proposed Legislation

- a) Code of Crimes (Prepared by the Code Commission)
 - Title V (Crimes Against Humanity)
 - Art. 334. Atrocities in time of War

Philippines

Any citizen or subject or any foreign State who in time of war, shall directly or indirectly commit atrocities upon any citizen or citizens of the Philippines, contrary to the laws of war shall be sentenced to heavy imprisonment, life imprisonment or death.

The commander of any unit of the armed forces of the enemy shall likewise be responsible under this article for atrocities committed by persons under his command.

Art. 335. Genocide

Any person who commits any of the following acts with intent to destroy, in whole or in part, any national, ethnical, racial or religious group as such shall be guilty of genocide, and sentenced to life imprisonment or death:

- (1) Killing members of the group;
- (2) Causing serious bodily or mental harm to members of the group;
- (3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (4) Imposing measures intended to prevent births within the group; or
- (5) Forcibly transferring children of the group to another group.

Persons who are guilty of conspiracy, direct and public incitement, and attempt to commit genocide, shall be sentenced to heavy imprisonment, or death, in the discretion of the court.

4. Military Law (The Articles of War)

a) Executive Order 68, s-47

Prescribing rules and regulations governing the trial of persons accused of war crimes before military tribunals.

In the promulgation and enforcement of Executive Order 68, the President of the Philippines acted in conformity with the generally accepted principles and policies of international law which are part of the Constitution of the Philippines (GR No. L-129 /Supt Ct. Phil/, Yamashita v. Gen Styer /1945/.)

Philippines

- b) Under the Articles of War, our military tribunals are governed by the terms of any treaty between the Philippines and the territory in which the military tribunal has jurisdiction, and by the terms of any armistice, conditional surrender, capitulation or pact entered into by the Philippines. Manual for Courts-Martial, PA, pp 1 & 10.

Among these treaties are:

- (1) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. (12 August 1949)
- (2) Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. (12 August 1949)
- (3) Geneva Convention Relative to the Treatment of Prisoners of War (12 August 1949)
- (4) Geneva Convention Relative to the Protection of Civilian Persons in Time of War (12 August 1949)

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GENEVA CONVENTIONS ACT, 1957

Royaume Uni

Punishment of offenders against conventions

Grave
breaches of
scheduled
conventions.

1.- (1) Any person, whatever his nationality, who, whether in or outside the United Kingdom, commits, or aids, abets or procures the commission by any other person of, any such grave breach of any of the scheduled conventions as is referred to in the following articles respectively of those conventions, that is to say-

(a) article 50 of the convention set out in the First Schedule to this Act;

(b) article 51 of the convention set out in the Second Schedule to this Act;

(c) article 130 of the convention set out in the Third Schedule to this Act; or

(d) article 147 of the convention set out in the Fourth Schedule to this Act,

shall be guilty of felony and on conviction thereof-

(i) in the case of such a grave breach as aforesaid involving the wilful killing of a person protected by the convention in question, shall be sentenced to imprisonment for life;

(ii) in the case of any other such grave breach as aforesaid, shall be liable to imprisonment for a term not exceeding fourteen years.

(2) In the case of an offence under this section committed outside the United Kingdom, a person may be proceeded against, indicted, tried and punished therefor in any place in the United Kingdom as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.

(3) Neither a court of quarter sessions nor, in Scotland the sheriff shall have jurisdiction to try an offence under this section, and proceedings for such an offence shall not be instituted in England except by or on behalf of the Director of Public Prosecutions or in Northern Ireland without the consent of the Attorney General for Northern Ireland.

(4) If in proceedings under this section in respect of a grave breach of any of the scheduled conventions any question arises under article 2 of that convention (which relates to the circumstances in which the convention applies)

that question shall be determined by the Secretary of state and a certificate purporting to set out any such determination and to be signed by or on behalf of the Secretary of State shall be received in evidence and be deemed to be so signed without further proof, unless the contrary is shown.

(5) The enactments relating to the trial by court-martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of court-martial convened in the United Kingdom as if this section had not been passed.

Provisions as to certain legal proceedings

Notice of trial of protected persons to be served on protecting power, etc.

2.- (1) The court before which-

(a) a protected prisoner of war is brought up for trial for any offence; or

(b) a protected internee is brought up for trial for an offence for which that court has power to sentence him to death or to imprisonment for a term of two years or more, shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in the next following subsection, so far as they are known to the prosecutor, has been served not less than three weeks previously on the protecting power and, if the accused is a protected prisoner of war, on the accused and the prisoners' representative.

(2) The particulars referred to in the foregoing subsection are-

(a) the full name and description of the accused, including the date of his birth and his profession or trade, if any, and, if the accused is a protected prisoner of war, his rank and army, regimental, personal or serial number;

(b) his place of detention, internment or residence;

(c) the offence with which he is charged; and

(d) the court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section a document purporting-

(a) to be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and

(b) to be an acknowledgment of the receipt by that power representative or person on a specified day of a notice described therein as a notice under this section,

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shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection (1) of this section was served on that power, representative or person on that day.

(4) In this section the expression "prisoners' representative" in relation to a particular protected prisoner of war at a particular time means the person by whom the function of prisoners' representative within the meaning of article 79 of the convention set out in the Third Schedule to this Act were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.

(5) Any court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other enactment, remand the accused for the period of the adjournment.

Legal
representation
of certain
persons.

3.- (1) The court before which-

(a) any person is brought up for trial for an offence under section one of this Act; or

(b) a protected prisoner of war is brought up for trial for any offence,

shall not proceed with the trial unless-

(i) the accused is represented by counsel; and

(ii) it is proved to the satisfaction of the court that a period of not less than fourteen days has elapsed since instructions for the representation of the accused at the trial were first given to the solicitor by whom that counsel was instructed , ,

and if the court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding anything in any other enactment, the court may remand the accused for the period of the adjournment.

(2) Where the accused is a protected prisoner of war, in the absence of counsel accepted by the accused as representing him, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (ii) of the foregoing subsection, be regarded for the purposes of that subsection as representing the accused.

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(3) If the court adjourns the trial in pursuance of subsection (1) of this section by reason that the accused is not represented by counsel, the court shall direct that a solicitor and counsel be assigned to watch over the interests of the accused at any further proceedings in connection with the offence, and at any such further proceedings, in the absence of counsel either accepted by the accuser as representing him or instructed as mentioned in the last foregoing subsection, counsel assigned in pursuance of this subsection shall, without prejudice to the requirements of paragraph (ii) of the said subsection (1), be regarded for the purposes of that subsection as representing the accused.

(4) In relation to any proceedings before a court before which the accused may be heard by a solicitor, the foregoing provisions of this section shall be construed, with any necessary modifications, as if references therein to counsel were references to counsel or a solicitor; and for the purposes of any such proceedings the court in giving a direction under the last foregoing subsection may, if the court is satisfied that the nature of the charge and the interests of justice do not require that the interests of the accused should be watched over by counsel, direct that a solicitor only shall be assigned as mentioned in that subsection.

(5) A solicitor or counsel shall be assigned in pursuance of subsection (3) of this section in such manner as Her Majesty may by Order in Council prescribe, and any solicitor or counsel so assigned shall be entitled to be paid by the Secretary of State out of moneys provided by Parliament such sums in respect of fees and disbursements as the Secretary of State may by regulations made by statutory instrument prescribe.

Appeals by
protected
persons.

4.- (1) Where a protected prisoner of war or a protected internee has been sentenced to death or to imprisonment for a term of two years or more, the time within which he must give notice of appeal or notice of his application for leave to appeal to the Court of Criminal Appeal, the High Court of

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Justiciary, or the Court of Criminal Appeal in Northern Ireland, as the case may be, shall, notwithstanding anything in the enactments relating to such appeals, be the period from the date of his conviction or, in the case of an appeal against sentence, of his sentence to the expiration of ten days after the date on which he receives a notice given-

(a) in the case of a protected prisoner of war, by an officer of Her Majesty's forces;

(b) in the case of a protected internee, by or on behalf of the governor of the prison in which he is confined,

that the protecting power has been notified of his conviction and sentence; and in a case to which the foregoing provisions of this subsection apply, a reference to the period aforesaid shall be substituted for any reference to the period of ten days after the date of conviction in subsection (1) of section six of the Criminal Appeal Act, 1907, or subsection (1) of section five of the Criminal Appeal (Northern Ireland) Act, 1930 (which relate to the revesting and restitution of property on conviction).

7.Edw.7.c.23
20 & 21-Geo.5.
c.45

(2) Where after an appeal to the Court of Criminal Appeal or to the Court of Criminal Appeal in Northern Ireland the sentence on a protected prisoner of war or a protected internee remains a sentence of death, or remains or has become a sentence of imprisonment for a term of two years or more, the time within which he must apply to the Attorney General or, as the case may be, to the Attorney General for Northern Ireland for a certificate authorising an appeal to the House of Lords from the decision of the Court of Criminal Appeal in question shall, instead of being a period of seven days from the date when the decision of the court was given, be a period from that date to seven days after the date when the convicted person receives a notice given as mentioned in paragraph (a) or, as the case may be, paragraph (b) of the foregoing subsection that the protecting power has been notified of the decision of the court.

14 & 15-Geo.6.
c.46.

(3) In relation to a protected prisoner of war, the Courts Martial (Appeals) Act, 1951, shall have effect as if-

(a) the expression "army court-martial" therein included a prisoner of war court-martial constituted under a Royal Warrant governing the maintenance of discipline among prisoners of war;

(b) a reference to such a Royal Warrant as aforesaid were substituted-

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(i) for any reference in section six of the said Act of 1951 to the relevant Act;

(ii) for the reference in subsection (4) of the said section six to section one hundred and sixteen of the Army Act, 1955;

(iii) for the reference in subsection (5) of the said section six to the Army Act, 1955; and

(iv) for the reference in section eighteen of the said Act of 1951 to the enactment relating to the revision of the finding or sentence of an army court-martial; and

(c) the proviso to subsection (1) of section fourteen of the said Act of 1951 were omitted;

and the last foregoing subsection shall apply in relation to the Courts-Martial Appeals Court as it applies in relation to the Court of Criminal Appeal but with the substitution for the words "seven days" in both places where they occur in that subsection of the words "fourteen days".

Reduction
of sentence
and custody
of protected
persons.

5.- (1) It shall be lawful for the Secretary of State or, in Northern Ireland, the Minister of Home Affairs for Northern Ireland, in any case in which a protected prisoner of war or a protected internee is convicted of an offence and sentenced to a term of imprisonment, to direct that there shall be deducted from that term a period not exceeding the period, if any, during which that person was in custody in connection with that offence, either on remand or after committal for trial (including the period of the trial), before the sentence began, or is deemed to have begun, to run.

(2) It shall be lawful for the Secretary of State or, in Northern Ireland, the Minister aforesaid, in a case where he is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, either on remand or after committal for trial (including the period of the trial), for an aggregate period of not less than three months, to direct that the prisoner shall be transferred from that custody to the custody of an officer of Her Majesty's forces and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the court at the time appointed by the remand or committal order.

Prevention of abuse of Red Cross and other emblems

Use of Red Cross and other emblems.

6.- (1) Subject to the provisions of this section it shall not be lawful for any person, without the authority of the Army Council, to use for any purpose whatsoever any of the following emblems or designations, that is to say-

(a) the emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation "Red Cross" or "Geneva Cross";

(b) the emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent";

(c) the following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun".

(2) Subject to the provisions of this section, it shall not be lawful for any person, without the authority of the Board of Trade, to use for any purpose whatsoever-

(a) any design consisting of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation, or any other design so nearly resembling that design as to be capable of being mistaken for that heraldic emblem;

(b) any design or wording so nearly resembling any of the emblems or designations specified in the foregoing subsection as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems.

(3) If any person contravenes the foregoing provisions of this section he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding fifty pounds and to forfeit any goods upon or in connection with which the emblem, designation, design or wording was used.

(4) In the case of a trade mark registered before the passing of this Act, the foregoing provisions of this section shall not apply by reason only of its consisting of or containing a design or wording which reproduces or resembles

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an emblem or designation specified in paragraph (b) or (c) of subsection (1) of this section; and where a person is charged with using such a design or wording for any purpose and it is proved that he used it otherwise than as, or as part of, a trade mark registered as aforesaid, it shall be a defence for him to prove-

(a) that he lawfully used that design or wording for that purpose before the passing of this Act; or

(b) in a case where he is charged with using the design or wording upon goods, that the design or wording had been applied to the goods before he acquired them by some other person who had manufactured or dealt with the goods in the course of trade and who lawfully used the design or wording upon similar goods before the passing of this Act.

(5) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, and in the subsection the expression "director", in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that body.

(6) It is hereby declared that this section extends to the use in or outside the United Kingdom of any such emblem, designation, design or wording as is referred to in subsection (1) or (2) thereof on any British ship or aircraft, not being a ship or aircraft registered in any country mentioned in subsection (3) of section one of the British Nationality Act, 1948.

(7) Proceedings under this section shall not be instituted in England except by or on behalf of the Director of Public Prosecutions or in Northern Ireland without the consent of the Attorney General for Northern Ireland.

(8) The authority of the Board of Trade under this section may be given by the President of the Board, any Minister of State with duties concerning the affairs of the Board, any secretary, under-secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board.

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(9) The Geneva Convention Act, 1911, and the Geneva Convention Act, 1937, shall cease to have effect except in so far as they form part of the law of any territory outside the United Kingdom.

General

Interpretation. 7.- (1) In this Act the following expressions have the following meanings respectively, that is to say-

"court" does not include a court-martial;

"enactment" includes an enactment of the Parliament of Northern Ireland;

"protected internee" means a person protected by the convention set out in the Fourth Schedule to this Act and interned in the United Kingdom;

"protected prisoner of war" means a person protected by the convention set out in the Third Schedule to this Act;

"the protecting power", in relation to a protected prisoner of war or a protected internee, means the power or organisation which is carrying out, in the interests of the power of which he is a national, or of whose forces he is, or was at any material time, a member, the duties assigned to protecting powers under the convention set out in the Third or, as the case may be, Fourth Schedule to this Act;

"the scheduled conventions" means the conventions set out in the Schedules to this Act.

(2) Save where the context otherwise requires, references in this Act to any enactment shall be construed as references to that enactment as amended by or under any other enactment.

Short title and extent. 8.- (1) This Act may be cited as the Geneva Conventions Act, 1957.

(2) Her Majesty may by Order in Council direct that any of the provisions of this Act specified in the Order shall extend, subject to such exceptions and modifications, if any, as may be specified in the Order to-

- (a) any of the Channel Islands;
- (b) the Isle of Man;
- (c) any colony;
- (d) any country outside Her Majesty's dominions in which for the time being Her Majesty has jurisdiction;
- (e) any country consisting partly of one or more colonies and partly of one or more such countries as are mentioned in the last foregoing paragraph.

STATUTORY INSTRUMENTS

1959 No. 1301

The Geneva Conventions Act (Colonial Territories)

Order in Council, 1959

Made - - - - - 28th July, 1959

Coming into Operation - - - 1st September, 1959

At the Court of Saint James, the 28th day of July, 1959

Citation
and
commen-
cement.

1.- (1) This Order may be cited as the Geneva Conventions Act (Colonial Territories) Order in Council, 1959.

(2) This Order shall come into operation on the first day of September, 1959.

Extension of Geneva Conventions Act, 1957 to Colonial territories. 2.- Subject to the exceptions and modifications specified in the Second Schedule to this Order, the provisions of the Geneva Conventions Act, 1957 (other than section 4 and subsection (2) of section 8) shall extend to the territories specified in the First Schedule to this Order.

inter-pretation. 3.- The Interpretation Act, 1889 (a), shall apply for the purpose of interpreting this Order as it applies for the purpose of interpreting an Act of Parliament.

THE FIRST SCHEDULE

Territories to which the Act extends

Aden Colony.
Bahamas.
Basutoland.
Bechuanaland Protectorate.
Bermuda.
British Guiana.
British Honduras.
British Virgin Islands.
British Solomon Islands Protectorate.
Central and Southern Line Islands.
Cyprus.
Falkland Islands and Dependencies.
Fiji.
Gambia (Colony and Protectorate).
Gibraltar.
Gilbert and Ellice Islands Colony.
Hong Kong.
Kamaran.
Kenya (Colony and Protectorate).
Malta.
Mauritius.
The Federation of Nigeria.
North Borneo.
Pitcairn.
St. Helena.
Sarawak.
Seychelles.
Sierra Leone (Colony and Protectorate).
Somaliland Protectorate.
Swaziland.
Tanganyika.
Uganda Protectorate.
The West Indies.

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THE SECOND SCHEDULE

Exceptions and modifications to be made in the extension of the Act to the Territories specified in the First Schedule

1.- (1) For the words "United Kingdom" wherever they occur there shall be substituted the word "Territory".

(2) For the words "the Secretary of State", "the Army Council" or "the Board of Trade" wherever they occur there shall be substituted the words "the Governor".

2.- (1) In subsection (1) of section 1 for the word "felony" there shall be substituted the words "an offence".

(2) In subsection (2) of section 1 the word "indicted" shall be omitted.

(3) For subsection (3) of section 1 the following subsection shall be substituted:-

"(3) Proceedings for an offence under this section shall not be instituted in the Territory without the consent of the appropriate legal officer of the Territory."

(4) Subsection (5) of section 1 shall be omitted.

3.- (1) In section 3 for the word "counsel" wherever it occurs there shall be substituted the words "an advocate" except where the following provisions of this paragraph otherwise require.

(2) In paragraph (ii) of subsection (1) of section 3 for the words "the solicitor by whom that counsel was instructed" there shall be substituted the words "that advocate or, where that advocate is instructed by a solicitor, to the solicitor by whom he is instructed".

(3) In subsection (3) of section 3 for the words "a solicitor and counsel" there shall be substituted the words "an advocate and, where the law or practice of the Territory requires that in proceedings before the court an advocate shall be instructed by a solicitor, a solicitor".

(4) Subsection (4) of section 3 shall be omitted.

(5) In subsection (5) of section 3-

(a) for the words "A solicitor or counsel shall be assigned in pursuance of subsection (3) of this section in such manner as Her Majesty may by Order in Council prescribe, and any solicitor or counsel" there shall be substituted the words "An advocate or solicitor shall be assigned in pursuance of subsection (3) of this section in such manner as the

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Governor may by regulations prescribe, and any advocate or solicitor";

(b) for the word "Parliament" there shall be substituted the words "the legislature of the Territory";

(c) the words "made by statutory instrument" shall be omitted.

(6) After subsection (5) of section 3 there shall be inserted the following subsection :-

"(6) In this section-

"advocate" means, in relation to proceedings before any court, a legal practitioner who has a right of audience in that court; and

"solicitor" means, in relation to proceedings before any court, a legal practitioner who has a right to instruct an advocate in such proceedings."

4.- (1) In subsection (1) of section 5 the words "or, in Northern Ireland, the Minister of Home Affairs for Northern Ireland," shall be omitted.

(2) In subsection (2) of section 5 the words "or, in Northern Ireland, the Minister aforesaid," shall be omitted.

5.- (1) In subsection (4) of section 6 for the words "passing of this Act" wherever they occur there shall be substituted the words "coming into operation of this Act in the Territory",

(2) In subsection (5) of section 6 for the word "national" there shall be substituted the word "public".

(3) In subsection (6) of section 6 for all the words following the word "thereof" there shall be substituted the words "on any ship or aircraft registered in the Territory".

(4) For subsection (7), (8) and (9) of section 6 there shall be substituted the following subsections:-

"(7) Proceedings under this section shall not be instituted in the Territory without the consent of the appropriate legal officer of the Territory.

(8) The authority of the Governor under this section may be given by the Governor or any person or authority authorised in that behalf by the Governor.

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(9) (a) The Geneva Convention Act, 1911 (a), and the Geneva Convention Act, 1937 (b), shall cease to have effect in so far as they form part of the law of the colonies to which this section extends, and the Geneva Convention Act, 1911 (Colonies) Order in Council, 1917 (c) and the Geneva Convention Act, 1937 (Colonies) Order in Council, 1937 (d) (as amended by the Geneva Convention Act, 1937 (Colonies) (Amendment) Order in Council, 1953 (e)) are hereby revoked in relation to those colonies.

(b) The British Protectorates (Geneva Convention) Order in Council, 1917 (f), and the British Protectorates (Geneva Convention) Order in Council, 1937 (g), are hereby revoked in relation to the Protectorates to which this section extends.

(c) The Geneva Conventions, 1906 and 1929 (Mandated Territories) Order in Council, 1937 (h), is hereby revoked in relation to Tanganyika and the Cameroons under United Kingdom administration."

6.- (1) In subsection (1) of section 7-

(a) the definition of "enactment" shall be omitted;

(b) immediately before the definition of a "protected internee" there shall be inserted the following definition :-

"Governor", in relation to any Territory, means the Governor of the Territory and includes any person administering the government of the Territory :

Provided that-

(a) in relation to the British Solomon Islands Protectorate, the Central and Southern Line Island and the Gilbert and Ellice Islands Colony "Governor" means the High Commissioner for the Western Pacific and includes any person for the time being discharging the functions of the office of High Commissioner;

(b) in relation to the Federation of Nigeria or The West Indies "Governor" means the Governor-General of the Federation of Nigeria or of The West Indies, as the case may be, and includes any person for the time being discharging the functions of the office of Governor-General;

(c) in relation to Basutoland, the Bechuanaland Protectorate and Swaziland "Governor" means Her Majesty's High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland and includes any person for the time being discharging the functions of the office of High Commissioner;"

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(c) there shall be inserted at the end of the subsection the following definition :-

"Territory" means any of the territories to which the foregoing provisions of this Act extend and includes the dependencies thereof."

(2) At the end of section 7 there shall be inserted the following subsection:-

"(3) The references in this Act to the consent of the appropriate legal officer of a Territory in connection with the institution of proceedings for an offence shall be construed as references to the consent of the Attorney-General or other principal Law Officer of the Territory (including any person for the time being discharging the functions of that office) or to such other officer as the Governor may, either generally or in relation to specified classes of proceedings, prescribe by order."

Explanatory Note

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order extends to the territories specified in the First Schedule the provisions (other than sections 4 and 8 (2)) of the Geneva Conventions Act, 1957, subject to the exceptions and modifications specified in the Second Schedule.

Sierra Leone

Voir ROYAUME UNI, Geneva Conventions Act,
Order in Council, 1959.

Suède

LETTRE DE LA CROIX-ROUGE SUEDOISE

du 18 novembre 1964

COMITE CENTRAL
DE LA CROIX-ROUGE SUEDOISE

Stockholm, le 18 novembre 1964

Me référant à votre lettre circulaire Fr 866 b j'ai l'honneur de vous donner les informations suivantes :

Les dispositions en vigueur relatives aux peines pour les crimes contre le droit international, et par là également contre les Conventions de Genève en question, figurent à l'art. 11, chap. 27 de la loi pénale, dont la teneur est la suivante :

" Celui qui, en temps de guerre, par l'emploi de moyens de combat pouvant causer des souffrances inutiles, par l'abus de l'emblème de la croix rouge, ou de quelque autre manière, contrevient à une convention existant avec une puissance étrangère ou aux principes du droit des gens universellement reconnus, sera puni, pour crime de droit international, des travaux forcés pour 4 ans au plus. La même peine sera appliquée à celui qui, en d'autres circonstances qu'en temps de guerre, contrevient aux conventions et principes indiqués ci-dessus concernant la protection des blessés, des malades et des naufragés des forces armées de terre ou de mer, des prisonniers de guerre ou des personnes civiles en temps de guerre ou d'occupation, et qui, par ces actes, a causé des souffrances physiques ou morales ou tout autre dommage ou atteinte non négligeable.

Dans les cas graves, la peine sera les travaux forcés de 2 à 10 ans ou à vie. Pour apprécier la gravité de l'infraction, il y a lieu de tenir compte spécialement du fait qu'elle a été commise un grand nombre de fois, ou qu'elle a causé la mort d'un grand nombre de personnes ou leur a causé des lésions graves, ou encore qu'elle a causé des pertes matérielles considérables".

Suède

En outre, il y a lieu de remarquer que d'après la "Loi du 30 juin 1948 sur la peine capitale dans certains cas lorsque la Suède se trouve en état de guerre", toute personne qui, la Suède se trouvant en état de guerre, commet un crime pouvant être passible de travaux forcés à perpétuité, c'est-à-dire entre autres, un crime grave de droit international, peut être condamnée à la peine de mort.

CODE PENAL MILITAIRE

Extension en temps de guerre

Art. 4

En temps de guerre, sont soumis au droit pénal militaire, outre les personnes mentionnées aux articles 2 et 3 :

- 1) Les personnes qui suivent l'armée;
- 2) Les civils qui se rendent coupables d'une des infractions suivantes :

Trahison dans les cas prévus aux articles 88, 90 et 91,
Espionnage militaire au préjudice d'un Etat étranger (art.93),
Infractions commises en guerre contre le droit des gens (art. 109 à 114),
Pillage ou brigandage de guerre (art. 139 et 140),
Incendie, explosion, emploi d'explosifs, inondation ou écroulement, en tant que l'infraction porte atteinte à des choses servant à l'armée (art. 160, 2e al. et art. 160 bis; art. 161, ch. 1, 3e al., et ch. 2; art. 162, 3e al.; art. 165, ch. 1, 3e al., et ch. 2);
- 3) Les prisonniers de guerre, pour les infractions prévues par le présent code, y compris celles qu'ils auraient commises en Suisse ou à l'étranger, pendant la guerre et avant le début de leur captivité, contre l'Etat ou l'armée suisses, ou contre des personnes appartenant à l'armée suisse;
- 4) Les parlementaires ennemis et les personnes qui les accompagnent, s'ils abusent de leur situation pour commettre une infraction.
- 5¹) Les civils internés dans des régions en guerre ou occupées.

(1) LF du 21 décembre 1950.

Chapitre sixième

INFRACTIONS COMMISES EN GUERRE CONTRE LE DROIT DES GENS

Emploi de moyens de combat illicites

Art. 108

Celui qui aura employé ou fait employer contre l'ennemi des moyens ou des procédés de combat expressément défendus dans l'armée suisse, sera puni de l'emprisonnement. Dans les cas graves, la peine sera la réclusion.

Violation d'accords internationaux

Art. 109

Celui qui aura contrevenu aux prescriptions de conventions internationales sur la conduite de la guerre et pour la protection des victimes de la guerre, sera puni pour violation des devoirs du service selon l'art. 72, sauf si des dispositions plus sévères du présent code sont applicables.

Abus d'un emblème international

Art. 110

Celui qui aura abusé de l'emblème ou de la protection de la Croix-Rouge, du Croissant-Rouge ou du Lion et du Soleil Rouges, pour préparer ou commettre des actes d'hostilités, sera puni de l'emprisonnement. Dans les cas graves, la peine sera la réclusion.

Actes d'hostilité contre des personnes
et des choses protégées par une organisation internationale

Art. 111

Celui qui se sera livré à des actes d'hostilité contre des personnes placées sous la protection de la Croix-Rouge, du Croissant-Rouge ou du Lion et du Soleil Rouges,

celui qui, à l'occasion d'hostilités, aura détruit ou endommagé du matériel placé sous la protection de la Croix-Rouge, du Croissant-Rouge ou du Lion et du Soleil Rouges,

sera puni de l'emprisonnement.

L'infraction sera punie disciplinairement si elle est de peu de gravité.

Violation des devoirs envers des ennemis

Art. 112

Celui qui aura tué ou blessé un ennemi qui se rendait ou qui, d'une autre manière, avait cessé de se défendre,

celui qui aura mutilé un ennemi mort,

sera puni de l'emprisonnement. Dans les cas graves, la peine sera la réclusion.

Rupture d'un armistice ou de la paix

Art. 113

Celui qui aura continué les hostilités, après avoir eu officiellement connaissance de la conclusion d'un armistice ou de la paix,

celui qui aura, de n'importe quelle autre manière, violé les conditions d'un armistice qui avaient été officiellement portées à sa connaissance,

sera puni de l'emprisonnement. Dans les cas graves, la peine sera la réclusion.

Suisse

Infractions contre un parlementaire

Art. 114

Celui qui aura maltraité, injurié ou retenu indûment un parlementaire ennemi ou une personne qui l'accompagne, sera puni de l'emprisonnement.

Cinquième section

DE LA PROCEDURE PENALE ENVERS DES ETRANGERS, CONFORMEMENT AUX

CONVENTIONS INTERNATIONALES POUR LA PROTECTION DES VICTIMES

DE LA GUERRE

Art. 214

Pour les procédures pénales exécutées en temps de guerre envers des étrangers, les dispositions des conventions de Genève pour la protection des victimes de la guerre qui dérogent à la présente loi sont réservées.

Art. 215

En matière de crimes et de délits commis par des étrangers et qui ne violent aucun devoir de fidélité envers la Suisse, le juge n'est pas lié par les peines minimums prévues par la loi.

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Syrie

LETTRE DU CROISSANT-ROUGE SYRIEN

20 décembre 1964

CROISSANT ROUGE SYRIEN

Damas le 20 décembre 1964

Je me permets de me référer à votre lettre du 20 avril concernant les textes législatifs consacrés à la répression des infractions aux Conventions de Genève. En effet, le gouvernement de la République Arabe Syrienne n'a pas pris des mesures législatives particulières aux personnes ayant commis une infraction à ces conventions, les lois pénales en vigueur étant suffisantes à son avis pour assurer la répression prévue par les conventions. Nous joignons à cette lettre la traduction française du code pénal et du code pénal militaire où vous trouvez tous les renseignements relatifs à ce sujet.

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Tanganyika

Voir ROYAUME UNI, Geneva Conventions Act,
Order in Council, 1959.

LETTRE DE LA CROIX-ROUGE TCHECOSLOVAQUE

1 mars 1965

avec annexe

CROIX-ROUGE TCHECOSLOVAQUE

Prague, le 1 mars 1965.

Nous nous permettons de vous envoyer les extraits du Code pénal et de la loi de procédure pénale en vertu desquels peut être assurée en Tchécoslovaquie la répression des infractions graves aux Conventions de Genève.

Annexe

Loi pénale du 29 novembre 1961 No 140/1961 du Recueil.

§ 196

- 1) Celui qui menace un groupe d'habitants de mise à mort, de préjudice à la santé ou de dommages d'une grande importance, sera puni d'une peine privative de liberté pour un an ou par des mesures de correction.

- 2) Qui fera usage de contrainte à un groupe d'habitants ou à un individu, ou les menacera de mise à mort, de préjudice à la santé ou d'un dommage de grande importance pour la raison qu'ils sont partisans du régime socialiste de la société ou de l'Etat, pour la raison de nationalité, race, confession ou pour la raison qu'ils sont sans

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confession, sera puni d'une peine privative de liberté jusqu'à 2 ans ou d'une mesure de correction.

§ 198

Qui insulte publiquement et d'une manière révoltante une nation, une langue ou une race sera puni d'une peine privative de liberté jusqu'à un an ou par des mesures de correction.

§ 259

- 1) Qui, dans l'intention de liquider complètement ou partiellement un groupe national, ethnique, de race ou religieux
 - a) amène les membres d'un tel groupe dans des conditions de vie qui doivent avoir pour conséquence leur liquidation physique partielle ou totale
 - b) prend des mesures visant à empêcher la naissance des enfants dans un tel groupe
 - c) transfère les enfants par force d'un tel groupe à autre ou
 - d) cause à un membre d'un tel groupe de graves préjudices à la santé ou même la mort sera puni d'une peine privative de liberté de 12 à 15 ans ou de la peine de mort.
- 2) Sera puni de même manière celui qui prendrait part à l'acte mentionné dans l'alinéa 1).

§ 260

- 1) Qui soutient ou propage ----- ou un mouvement -----, visant à réprimer les droits et les libertés des travailleurs, ou celui qui propage la haine nationale, de race ou religieuse, sera puni d'une peine privative de liberté de 1 à 5 ans.
- 2) Par une peine privative de liberté de 3 à 8 ans sera puni celui qui

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- a) commettrait le crime mentionné dans l'alinéa 1) par presse, radiodiffusion, film, télévision ou par autre moyen à une pareille efficacité ou
- b) s'il commet tel crime quand l'Etat est à pied de guerre.

§ 261

Qui manifeste publiquement les sympathies envers ----- ou un mouvement ----- cité dans le 260, sera puni d'une peine privative de liberté de 6 mois à 3 ans.

§ 263

- 1) Qui, pendant la guerre, viole les prescriptions du droit international en maltraitant inhumainement les habitants civils non armés, les réfugiés, les blessés, les membres des forces armées qui ont déjà mis à bas les armes ou les prisonniers de guerre, sera puni d'une peine privative de liberté de 3 à 10 ans.

§ 264

Qui, dans l'espace des opérations de guerre, sur les champs de bataille ou dans les endroits éprouvés par des opérations de guerre

- a) s'emparera, profitant de l'état de contrainte d'une personne, d'un objet d'autrui
- b) endommage malicieusement les biens d'autrui ou s'en empare sous prétexte de nécessité de guerre ou
- c) dépouille les cadavres

sera puni d'une peine privative de liberté de 3 à 15 ans ou de la peine de mort.

§ 265

Qui utilise, à titre non autorisé, et au moment où l'Etat est à pied de guerre, le signe de la croix rouge ou un autre emblème ou couleur par laquelle sont désignées les institutions sanitaires ou les moyens de transport, d'évacuation sanitaire sera puni d'une peine privative de liberté de 6 mois à 3 ans.

La loi du 29 novembre 1961, No 141/1961 du Recueil,

sur la procédure pénale judiciaire.

§ 2

Les principes fondamentaux de la procédure pénale

- 1) Personne ne peut être poursuivi comme accusé sinon pour des raisons légales et en appliquant la procédure stipulée par la présente loi. Ne peut être poursuivi, à base de cette loi, que celui qui a commis un acte pénal.
- 2) Autant que la culpabilité n'a été constatée par un jugement passé en force de chose jugée du tribunal, on ne peut considérer celui contre qui on mène la procédure pénale, comme coupable.
- 3) Le procureur est obligé à poursuivre tous les actes pénaux dont il a pris connaissance; les exceptions ne sont admises que conformément aux termes de la loi.
- 4) Si cette loi ne stipule pas autrement, les organes agissent dans la procédure pénale d'office; ils sont tenus à traiter les affaires pénales le plus vite possible et en tenant compte des droits civils, garantis par la Constitution.
- 5) Les organes chargés de la procédure pénale agissent de telle sorte que l'état réel des choses soit vérifié et, dans leur jugement, ils doivent partir de ce fait. Ils éclairent avec les mêmes soins les circonstances qui témoignent contre l'accusé comme celles qui témoignent en sa faveur et administrent des preuves dans les deux sens, sans attendre la proposition respective des parties. L'aveu de l'accusé ne dispense pas les organes chargés de la procédure pénale du devoir de vérifier par tous les moyens disponibles toutes les circonstances du cas.

- 6) Les organes chargés de la procédure pénale apprécient les preuves d'après leur conviction interne, basée sur une estimation soigneuse de chacune des circonstances du cas en particulier et de toutes les circonstances dans leur ensemble.
- 7) Tous les organes chargés d'une procédure pénale collaborent dans la plus large mesure avec les organisations sociales et ont recours à leur influence éducative.
- 8) Intenter une poursuite devant un tribunal n'est possible qu'à base d'une accusation présentée par le procureur.
- 9) Dans les poursuites pénales judiciaires, les tribunaux décident en sénat; le président du sénat décide à lui seul uniquement dans des cas expressément prévus par la présente loi.
- 10) Les affaires pénales sont plaidées devant le tribunal en public, de telle sorte que les travailleurs puissent prendre pleinement part au procès et suivre la procédure. Lors des audiences du fond et les sessions publiques on peut exclure le public uniquement dans les cas prévus par cette loi.
- 11) La poursuite devant le tribunal est orale; les preuves par les dépositions des témoins, des experts et de l'accusé se font d'habitude de telle sorte que le tribunal procède lui-même à l'interrogation desdites personnes.
- 12) En prenant des décisions au cours des audiences du fond ou au cours des audiences publiques ou à huis-clos, le tribunal ne peut tenir compte que des preuves administrées au cours de cette procédure.
- 13) Celui, contre qui on mène le procès, doit être, à chaque phase de la procédure, bien informé des droits qui lui permettent de faire pleinement valoir sa défense et du droit de choisir lui-même son avocat; tous les organes qui prennent part à la procédure pénale sont obligés de lui rendre possible de faire valoir ses droits.

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- 14) Chacun a le droit d'employer devant les organes chargés de la procédure pénale sa langue maternelle.

§ 14

- 1) Sont soumis à la compétence des tribunaux militaires
 - a) les soldats en service actif
 - b) les membres des corps para-militaires ou autres, stipulés par une loi spéciale, tant que ces personnes sont en service actif
 - c) les personnes qui ont été appelées à des services particuliers et sont devenues ainsi les membres des forces armées
 - d) les personnes appelées à des fonctions personnelles pour les besoins des forces armées
 - e) les prisonniers de guerre
- 2) Les soldats et les membres des corps mentionnés dans l'alinéa 1) lettre b) sont soumis à la compétence des tribunaux militaires même en dehors du service actif pour les actes criminels militaires qu'ils ont commis revêtus de l'uniforme de service.
- 3) Sont soumises à la compétence des tribunaux militaires également les personnes civiles ayant commis des actes de trahison de guerre (& 114 de la loi pénale), ayant prêté service dans l'armée étrangère (& 115 de la loi pénale) ou ne s'étant pas présentées au service dans les forces armées (& 269-271 de la loi pénale).

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ROUGH TRANSLATION

Act

for the Application of the Geneva Convention relative to the Treatment of Prisoners of War of August 12 th. B.E. 2492, B.E. 2498.

IN THE NAME OF HIS MAJESTY KING BHUMIBOL ADULYADEJ

Given on the 6 th of October B.E. 2498 (1955)

Being the 10 th Year of the Present Reign

By Royal Command of His Majesty King Bhumibol

Adulyadej, it is hereby proclaimed that :

Whereas it is deemed expedient to have a law for the application of the Geneva Convention relative to the Treatment of Prisoners of War of August 12th. B.E. 2492, to which Thailand is a party.

His Majesty the King, by and with the advice and consent of the Assembly of the People's Representatives is graciously pleased to enact the following Act :

Section 1. This Act shall be called the "Act for the Application of the Geneva Convention relative to the Treatment of Prisoners of War of August 12th. B.E. 2492, B.E. 2498".

Section 2. This Act shall come into force as and from the day following the date of its publication in the Government Gazette.

Section 3. All other provisions of laws, regulations and rules in so far as they deal with matters governed by this Act or the Convention or are contrary or inconsistent with the provisions of this Act or the Convention shall not be applied to the Prisoners of War.

Section 4. In this Act :

"Convention" means the Geneva Convention relative to the Treatment of Prisoners of War of August 12th. B.E. 2492;

"Prisoners of War" means the persons specified in article 4 of the Convention.

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Section 5. The President of the Council of Ministers shall have charge and control of the execution of this Act.

PART I
OFFENCES COMMITTED
BY THE PRISONERS OF WAR

Section 6. The laws, regulations and orders in force in the Thai armed forces shall apply to the Prisoners of War and when they commit any offence contrary to such laws, regulations and orders, the judicial as well as disciplinary measures in respect of such an offence shall apply in so far as they are not contrary to the Convention.

Prisoners of war shall not be sentenced by the Thai military authorities and Courts to any penalties except those provided for in respect of members of the Thai armed forces who have committed the same offence.

Section 7. The Military Courts are competent to try and adjudicate the criminal cases concerning offences committed by the Prisoners of War, subject to the conditions permitting civil Courts to try a member of the Thai armed forces in some cases.

Section 8. No prisoners of war may be convicted without having had an opportunity for defence or without being assisted in the conditions provided by article 105 of the Convention.

Section 9. The disciplinary punishment applicable to the 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 Prisoners of War would otherwise receive under the provisions of Articles 60 and 62 of the Convention during a period of not more than thirty days;
- (2) discontinuance of privileges granted over and above the treatment provided for by the Convention;
- (3) fatigue duties not exceeding two hours daily;
- (4) confinement.

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The punishment referred to under (3) shall not be applied to officers.

The duration of any single punishment shall not 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 in this section may not be exceeded, even if the Prisoners 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.

Section 10. 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 if any receives, at an indicated address, the detailed communication provided for in Article 107 of the Convention.

Section 11. Prisoners of War who have made good their escape in the sense of Article 91 of the Convention and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

A prisoner of war who escapes and is recaptured before having made good his escape within the meaning of Article 91 of the Convention shall be liable only to a disciplinary punishment.

When the Prisoner of War is accused before the court for an offence committed during the escape or attempt to escape, such escape or attempt to escape shall not be deemed an aggravating circumstance notwithstanding such escape or attempt to escape have been previously committed.

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.

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PART II
OFFENCES COMMITTED
AGAINST PRISONERS OF WAR

Section 12. Whoever shall subject a prisoner of war to medical, biological or scientific experiments of any kind which are not justified by his medical treatment, shall be punished with fine not exceeding three thousand five hundred baht or imprisonment not exceeding one year, or both.

Section 14. Whoever shall inflict on a prisoner of war physical or mental torture or any other form of coercion in order to obtain from him information of any kind whatever, or shall threaten, insult or submit the Prisoners of War who refuse to answer to any unpleasant or disadvantageous treatment of any kind, shall be punished with fine not exceeding one thousand five hundred baht or imprisonment not exceeding three years or both.

Section 15. Whoever shall compel a prisoner of war to serve in the forces of the hostile Power shall be punished with fine not exceeding two thousand five hundred baht or imprisonment not exceeding five years, or both.

Section 16. Whoever wilfully deprive a prisoner of war of the rights of fair and regular trial prescribed in the Convention, shall be punished with fine not exceeding one thousand five hundred baht or imprisonment not exceeding three years, or both.

Section 17. Whoever acts contrary to the provisions of Section 10 of this Act shall be punished with fine not exceeding three thousand five hundred baht or imprisonment not exceeding seven years, or both.

PART III
OFFENCES COMMITTED IN CASE
OF ARMED CONFLICTS NOT OF INTERNATIONAL CHARACTER

Section 18. Whoever shall, in case of armed conflict not of international character, commit upon persons specified in

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article 3 of the Convention, any act mentioned in Section 12 Section 13 Section 14 of this Act, shall be liable to the punishments specified in the said Sections.

Section 19. In case of armed conflict not of international character whoever takes hostages shall be punished with fine not exceeding one thousand five hundred baht, or imprisonment not exceeding three years, or both.

Countersigned by :

Field Marshal P. Pibulsonggram

President of the Council of Ministers

Trinité et Tobago

Voir ROYAUME UNI, Geneva Conventions Act,
Order in Council, 1959.

2/27/51

CODE PENAL

Traduction publiée par l'Institut de droit Comparé de
Belgrade (1964)

Chapitre onzième

INFRACTIONS CONTRE L'HUMANITE ET CONTRE LE DROIT
DES GENS

Génocide

Article 124

Celui qui, dans le dessein d'anéantir totalement ou partiellement un groupe national, ethnique, confessionnel, ou un groupe appartenant à une certaine race, aura pratiqué des homicides ou lésions corporelles graves, ou aura porté des atteintes graves à la santé physique ou mentale des membres du groupe ou qui aura pratiqué le dispersement forcé de la population, ou aura mis un tel groupe dans les conditions de vie telles qu'elles conduisent à l'extermination totale ou partielle du groupe, ou bien qui aura appliqué des mesures en vue d'empêcher la progéniture parmi les membres du groupe, ou aura opéré le déplacement forcé des enfants dans un autre groupe,

sera puni de l'emprisonnement sévère pour cinq ans au moins ou de la peine de mort.

Crime de guerre contre la population civile

Article 125

Celui qui, en violant les règles du droit des gens, en temps de guerre, de conflit armé ou d'occupation, aura ordonné ou exécuté à l'égard de la population civile des homicides, actes de torture ou de traitement inhumain, les expériences biologiques y comprises, des actes entraînant de grandes souffrances ou des atteintes à l'intégrité corporelle ou à la santé, le dispersement ou le déplacement de la population, contraires au droit, ou la dénationalisation forcée ou la conversion dans une autre confession; la contrainte à la prostitution ou les viols; l'application des mesures d'intimidation ou de terreur, la prise des otages, l'application des peines collectives, la déportation dans les camps de concentration contraire au droit, et d'autres détentions contraires au droit; la privation du droit d'être jugé selon une procédure régulière et impartiale; la contrainte de faire du service dans les forces armées de la puissance ennemie ou dans son service de renseignement ou son administration; l'astreinte au travail la réduction à la famine de la population, la confiscation des biens, le pillage, la destruction ou l'appropriation des biens contraires au droit et arbitraires, dans des proportions démesurées et non justifiées par les

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nécessités militaires, la contribution et la réquisition contraires au droit et démesurées, la dépréciation de la monnaie du pays occupé ou l'émission de monnaie du pays occupé contraire au droit,

sera puni de l'emprisonnement sévère pour cinq ans au moins ou de la peine de mort.

Crime de guerre envers les blessés et malades

Article 126

Celui qui, en violant les règles du droit des gens, en temps de guerre ou de conflit armé, aura ordonné ou exécuté envers les blessés, malades, naufragés, ou envers le personnel du service sanitaire des homicides, des actes de torture ou de traitement inhumain, y compris les expériences biologiques, des actes entraînant de grandes souffrances ou des atteintes à l'intégrité corporelle ou à la santé, ou bien qui aura ordonné ou exécuté la destruction ou l'appropriation, contraires au droit et arbitraires, des matériaux et des réserves des institutions ou unités sanitaires, dans des proportions importantes, non justifiées par des nécessités militaires,

sera puni de l'emprisonnement sévère pour cinq ans au moins ou de la peine de mort.

Crime de guerre contre les prisonniers de guerre

Article 127

Celui qui en violant les règles du droit des gens, aura ordonné ou exécuté envers les prisonniers de guerre des homicides, des actes de torture ou de traitement inhumain, y compris les expériences biologiques, les actes entraînant de grandes souffrances ou des atteintes à l'intégrité corporelle ou à la santé, la contrainte à prendre du service dans les forces armées de la puissance ennemie, ou bien qui aura privé les prisonniers de guerre du droit d'être jugés selon une procédure régulière et impartiale,

sera puni de l'emprisonnement sévère pour cinq ans au moins ou de la peine de mort.

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Organisations d'un groupement en vue de pratiquer du
génocide et des crimes de guerre

Article 128

Celui qui aura organisé un groupement tendant à commettre des infractions prévues aux articles 124 à 127 du présent Code, ou qui aura incité à la formation de tels groupements, ou bien qui aura préparé l'organisation de ceux-ci,

sera puni de l'emprisonnement sévère pour cinq ans au moins ou de la peine de mort.

Tuer ou blesser l'ennemi contrairement au droit

Article 129

(1) Celui qui, en violant les règles du droit des gens, en temps de guerre ou de conflit armé, aura tué ou blessé l'ennemi qui a mis bas les armes, ou s'est rendu sans conditions, ou ne dispose pas de moyens de défense,

sera puni de l'emprisonnement sévère.

(2) Si le meurtre visé à l'alinéa premier du présent article a été exécuté d'une manière cruelle ou sournoise, par cupidité ou bien inspiré d'autres mobiles bas, ou bien s'il a été tué **plusieurs personnes**,

le délinquant sera puni de l'emprisonnement sévère pour dix ans au moins ou de la peine de mort.

Dépouille illégale des effets des tués et blessés sur
le champ de bataille

Article 129-a

(1) Celui qui aura ordonné ou exécuté la dépouille illégale des effets des tués et blessés sur le champ de bataille,

sera puni de l'emprisonnement sévère pour cinq ans au plus.

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(2) Si l'infraction prévue à l'alinéa premier du présent article a été commise d'une manière cruelle,

le délinquant sera puni de l'emprisonnement sévère pour dix ans au plus.

L'emploi des moyens de combat illicites

Article 129-b

(1) Celui qui, en temps de guerre ou de conflit armé, aura ordonné l'emploi des moyens de combat ou d'un mode de combat qui sont prohibés par les règles du droit des gens, ou bien celui qui aura fait emploi des moyens ou d'un mode de combat pareils,

sera puni de l'emprisonnement sévère.

(2) Si à la suite de l'infraction visée à l'alinéa premier du présent article plusieurs personnes ont perdu la vie,

le délinquant sera puni de l'emprisonnement sévère pour cinq ans au moins ou de la peine de mort.

Atteinte à l'inviolabilité du parlementaire

Article 130

Celui qui, en violant les règles du droit des gens, en temps de guerre ou de conflit armé, aura commis des insultes ou se sera livré aux voies de fait à l'égard d'un parlementaire ou de son escorte, ou les aura retenus ou aura empêché leur retour, ou de toute autre manière aura porté atteinte à leur inviolabilité,

sera puni de l'emprisonnement pour six mois au moins ou de l'emprisonnement sévère pour cinq ans au plus,

Cruauté envers les blessés, les malades et les prisonniers
de guerre

Article 131

Celui qui, en violant les règles du droit des gens, aura traité avec cruauté les blessés, les malades ou les prisonniers de guerre, ou bien qui leur aura rendu impossible ou les aura empêché d'user des droits leur appartenant en vertu de ces règles,
sera puni de l'emprisonnement pour six mois au moins ou de l'emprisonnement sévère pour cinq ans au plus.

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Destruction de monuments culturels et historiques

Article 132

Celui qui, en violant les règles du droit des gens, en temps de guerre ou de conflit armé, aura ordonné ou exécuté la destruction des monuments et édifices culturels et historiques ou des établissements affectés à la science, aux arts, à l'éducation ou aux fins humanitaires,

sera puni de l'emprisonnement sévère.

Usage abusif des insignes internationaux

Article 133

(1) Celui qui aura fait usage abusif du drapeau ou des insignes de l'Organisation des Nations Unies, ou des insignes ou du drapeau de la Croix-Rouge ou des insignes leur correspondant, ou des autres insignes jouissant d'une reconnaissance internationale, par lesquels sont marqués les objets déterminés pour être protégés contre les opérations militaires, ou bien celui qui aura porté des insignes ou des drapeaux mentionnés sans y être autorisé,

sera puni de l'emprisonnement.

(2) Celui qui aura commis l'infraction visée à l'alinéa premier du présent article dans la zone des opérations de guerre,

sera puni de l'emprisonnement pour six mois au moins ou de l'emprisonnement sévère pour cinq ans au plus.

Prononcé de la peine de confiscation des biens

Article 134

Lors de la condamnation en raison des infractions prévues aux articles 124 à 128 et à l'article 129b du présent Code à une peine d'emprisonnement sévère, le tribunal pourra infliger au délinquant la peine de confiscation des biens.
