

THE GENEVA CONVENTIONS OF 12 AUGUST 1949

COMMENTARY

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III

GENEVA CONVENTION

RELATIVE TO THE TREATMENT
OF PRISONERS OF WAR

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

It should be noted that after 1949, the term "Geneva Convention" was extended to cover all four Conventions instead of merely the First Convention. The Conference considered that this would constitute an appropriate tribute to the city of Geneva, the headquarters of the International Committee of the Red Cross, and also to Switzerland as a whole².

PREAMBLE

The undersigned, Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War³ have agreed as follows :

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

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

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

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

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

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

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

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

ARTICLE 3. — CONFLICTS NOT OF AN INTERNATIONAL CHARACTER ²

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

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

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

- (a) *violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture ;*
(b) *taking of hostages ;*
(c) *outrages upon personal dignity, in particular, humiliating and degrading treatment ;*
(d) *the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*
- (2) *The wounded and sick shall be collected and cared for.*

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

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

² Article common to all four Conventions.

laid upon the transferring Power, the receiving Power is obliged to accept this offer of assistance. If these measures nevertheless prove inadequate, if the poor treatment given to prisoners is not caused merely by temporary difficulties but by ill-will on the part of the receiving Power, or if for any other reason the situation cannot be remedied, the Power which originally transferred the prisoners must request that they be returned to it. In no case may the receiving Power refuse to comply with this request, to which it must respond as rapidly as possible.

The Power which originally transferred the prisoners of war may moreover arrange for them to be transferred to a third Power which is better qualified to receive them, provided the latter is also a party to the Convention ¹.

ARTICLE 13. — HUMANE TREATMENT OF PRISONERS

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

¹ Although the 1929 Convention contained no express provision to this effect, the International Committee of the Red Cross has always held the view that in case of transfer the Power which captured the prisoners retains a certain responsibility. Thus, in August 1945 it drew the attention of the United States Government to the difficult situation of German prisoners of war who had been handed over by the United States military authorities to the French authorities, because of the general shortage of foodstuffs in France. Following this intervention, the United States placed very large quantities of foodstuffs and clothing at the disposal of the International Committee of the Red Cross, and these supplies were forthwith distributed to prisoner-of-war camps in France. The text of this Article is largely based on this experience. (See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. III, pp. 110-111.)

that prisoners of war suffer any loss or damage to their personal property, however slight, they must be able to claim any rights due to them, through the offices of the military authority in whose hands they are, unless this authority expressly authorizes them to defend their own interests themselves.

Responsibility for injuries or offences may also be involved in the case of occupational accidents. Article 27, paragraph 4, of the 1929 Convention required belligerents "to admit prisoners of war who are victims of accidents at work to the benefit of provisions applicable to workmen of the same category under the legislation of the Detaining Power". The International Committee of the Red Cross pointed out that the effectiveness of this provision was restricted if the consequences of the accident continued after the repatriation of the prisoner of war; it was therefore deleted and was replaced by Article 54, paragraph 2, and Article 68 of the 1949 Convention, which provide for compensation by the Power of Origin and require the Detaining Power to provide the prisoner of war concerned with a medical certificate enabling him, if need be, to submit a claim.

ARTICLE 15. — MAINTENANCE OF PRISONERS

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.

The requirement of principle contained in this Article already existed in the 1929 Convention (Article 4)¹. The phrase "free of charge", which strengthens the present text, was implicit in the 1929 text.

Maintenance must be understood to mean the supply of what is necessary for the life and continuing physical health of prisoners of war. These various requirements are confirmed by special articles regarding quarters (Article 25), food (Article 26), clothing (Article 28), medical attention (Article 30), and possibly, although the link is less direct, working pay (Articles 54 and 62) and advances of pay (Articles 60 and 61). The funds made available to prisoners of war in the form of working pay or advances of pay enable them to purchase certain items which also contribute to their maintenance. We have in mind

¹ Also in other legal texts of Conventions or of doctrine; *Lieber Laws*, Art. 76; *Brussels Declaration*, Art. 27; *Oxford Manual*, Art. 69; *The Hague Regulations*, Art. 7.

ARTICLE 26. — FOOD

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking-water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals ; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

To provide prisoners with food is one of the principal duties of the Detaining Power under Article 15, which concerns the maintenance of prisoners in general. It is also one of the most difficult obligations to define, since one must reconcile the varying requirements of armed forces, on the one hand, and, on the other hand, the difficulties which the Detaining Power may have in regard to its own food supplies.

PARAGRAPH 1. — DETERMINATION OF THE BASIC DAILY RATION

Article 7, paragraph 2, of the Hague Regulations stated the principle that prisoners should be treated "on the same footing as the troops of the Government who captured them"; and this had been made more explicit by Article 11 of the 1929 Convention, which read: "The food ration of prisoners of war shall be equivalent in quantity and quality to that of the depôt troops."

This text was not entirely satisfactory. In some armies depôt troops did not exist and the comparison could therefore not be made; moreover, it seemed rather strange to give the same food to troops who might be accustomed to a very different diet. This difficulty arose in particular in the Far East, where European troops found it very difficult to accustom themselves to the diet of the local forces.

members of the camp community. Once they enter the camp, they must nevertheless comply with the regulations, in accordance with this clause. As a reciprocal measure, such persons should be afforded the various facilities referred to in Articles 33 and 34 to 36 by virtue of the duties which they perform.

ARTICLE 38. — RECREATION, STUDY, SPORTS AND GAMES

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise including sports and games and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

GENERAL

Captivity makes great demands not only on the bodily health of prisoners of war but also on their morale and it may even have the gravest psychological effects. It is therefore essential to ensure that prisoners of war have time for mental and physical relaxation. During the First World War, there was considerable development of "intellectual relief", as a result of joint action by the Governments of neutral States, Red Cross Societies and other philanthropic or cultural associations. In the Second World War, when large numbers of prisoners were held captive for years, special efforts were made throughout the world to combat the detrimental effects of captivity¹.

PARAGRAPH 1. — GENERAL OBLIGATIONS OF THE DETAINING POWER

Intellectual, educational and recreational pursuits, sports and games must, in the first place, afford prisoners of war with a means of relaxation; every prisoner must be able to follow his individual preferences. This is clearly stipulated in the opening phrase of the

¹ See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 276-281.