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THE GENESIS OF THE 1949 CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR

GENERAL J. V. DILLON*

DEVELOPMENT OF LAW RELATIVE TO TREATMENT OF PRISONERS OF WAR

In 1911 one of the prominent writers on the law of war wrote:

To-day the prisoner of war is a spoil'd darling; he is treated with a solicitude for his wants and feelings which borders on sentimentalism. He is better treated than the modern criminal, who is infinitely better off, under the modern prison system, than a soldier on a campaign. Under present-day conditions, captivity—such captivity as that of the Boers in Ceylon and Bermuda and of the Russians in Japan—is no sad sojourn by the waters of Babylon; it is usually a halcyon time, a pleasant experience to be nursed fondly in the memory, a kind of inexpensive rest-cure after the wearisome turmoil of fighting. The wonder is that any soldiers fight at all; that they do so, instead of giving themselves up as prisoners, is a high tribute to the spirit and the discipline of modern armies.

Many, and especially those who suffered the horrors of the death march of Bataan in 1942, would undoubtedly be inclined to disagree with the author of that statement.

It is, however, probably true that in nothing connected with war has a greater improvement been wrought than in the treatment of prisoners of war. This subject engaged the early writers and thinkers in the field of International Law. Francisco de Vitoria, regarded by James Brown Scott as the founder of International Law, wrote that under certain conditions it was permissible to take the lives of prisoners. The number to be killed was apparently determined by the degree of punishment which the enemy deserved. He found that although the Roman *jus gentium* authorized the enslavement of prisoners of war, by the dawn of the sixteenth century the law had so changed that Christian captives might not be enslaved. He thought the proper method of treatment was to hold those captured for ransom. Grotius, writing a century later, found a right of captors to enslave their captives, but he advocated exchange and/or ransom. Until the eighteenth century the principal question regarding prisoners of war was whether

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1. SPAIGHT, WAR RIGHTS ON LAND 265 (1911).
2. INSTITUTE OF WORLD POLITIC, PRISONERS OF WAR 33 (1948).
3. JAMES BROWN SCOTT, FRANCISCO DE VITORIA AND HIS LAW OF NATIONS (1934).
4. DE BELLO CXXIX (C.1550).
5. Id. at CXIV: DE JURE GENTIUM ET NATURALI CXIV (C. 1550).
6. DE JURE BELLI 453 (C. 1550).
7. DE JURE BELLII AC PACIS BOOK III, CH. 14 SEC. 9 (1625).
there was a right of survival as free men. Rousseau agreed with neither Vitoria nor Grotius. He argued that the law as he found it was derived from the nature of things and was founded on reason. He contended that war is no longer a conflict between armies but rather a conflict between nations. His conception was that war is in no way a relation of man to man but rather a relation of state to state. The aim of war being the destruction or subjugation of the enemy state, the right to kill its soldiers exists only so long as they are armed. As soon as they lay down their arms and become prisoners they lose their character as instruments of the enemy state and the captor has no right (as long as the prisoners conform to their status) to take their lives. War gives no rights which are not necessary to the accomplishment of its aims. Vattel was in accord with this view. The theories of the early writers are splendidly compounded by James Lorimer:

Life, being the source of all human right, and the only source for the loss of which no compensation is possible, must, as we have seen, be the first object of human economy, whether in peace or war. On this ground, the right to sacrifice or imperil life which belligerency confers on the State belongs to it only for belligerent purposes. Combatants who throw down their arms are entitled to claim from humanity, as a whole, that protection which their own State is unable to afford them. By abandoning their own State they become citizens of the world. As such they are non-combatants; and, apart from such precautions as may be necessary to prevent their resuming their combatant character in the existing war, they are entitled to be treated like other non-combatants. Their lives, ceasing to be jura publica under the dominion of belligerency, have become jura universalia, when seen from one point of view, and jura privata, when seen from another; thus, by a double portal they re-enter the sphere of normal relations. Though separated for the time being from any political community, they once more belong to humanity and to themselves. And as of their lives so of their liberties. It is of their combatant liberty alone that belligerency can dispose.

There is little doubt that the early writers influenced the customs developed in the treatment of prisoners of war and indeed, shaped conventional international law on the subject. Even a superficial study reveals a steady trend of bettering the humanitarian principles invoked in the treatment of prisoners of war. The United States has been a leader in the development of this trend. The treaty of 1785 between the United States and Prussia marked a considerable advance in the formal development of the law. Again, Webster as Secretary of State, wrote:

Prisoners of war are to be considered as unfortunate and not as criminal, and are to be treated accordingly, although the question of detention or liberation is one affecting the interest of the captor alone, and there-

8. Rousseau, De Control Social au Principles de Droit Politique 10 (1762).
9. Id. at 9-10.
10. 2 Vattel, Le Droit des Gens, Book III, Ch. VIII, Sec. 137 (1758).
11. 2 Institute of the Law of Nations, 72 (1884).
12. 8 Stat. 84 (1785).
13. 3 Wharton, Digest 332 (1886).
fore, one with which no other Government ought to interfere in any way; yet the right to detain by no means implies the right to dispose of the prisoners at the pleasure of the captor. That right involves certain duties, among them that of providing the prisoners with the necessities of life and abstaining from the infliction of any punishment upon them which they may not have merited by an offense against the laws of the country since there were taken.

United States War Department General Order No. 100 (1863), drafted by Francis Lieber for use of the Union Army, was perhaps the first formal codification of rules governing the treatment to be accorded prisoners of war. That code has been, since its publication, the basis of every convention and revision on the subject.

Russia proposed a conference of European nations at Brussels in 1874 with a view of drafting a convention on the treatment of prisoners of war. Although the draft convention was regarded as an improvement on the United States code of 1863, it was never ratified. Nevertheless, it had a significant influence on the attitude of nations and on the subsequent Hague Conventions of 1899 and 1907.

Because some of the belligerents of World War I had not ratified the Hague Convention of 1907, the participation of these states rendered the Convention legally ineffective among the belligerents which had ratified. But by that time it was pretty well established that the Hague rules were merely declaratory of customary international law on the subject and were binding on that basis. Most belligerent participants in World War I observed the Hague rules at least as far as they believed they were declaratory of existing customary international law. That was the position of the United States.

Many separate agreements relating to the treatment of prisoners of war were concluded during World War I. Interestingly, an agreement was concluded at Berne, Switzerland, between Germany and the United States on November 11, 1918. Although this agreement was signed by the United States.

14. It is difficult to say when or how a rule of International Law becomes binding by custom. Judge Neilsen in his dissent in the International Fisheries Company Case, United States-Mexican Claims Commission, Opinions of the Commissioners (1931) 207, at 233, gives some guidance and help: "International law is a law grounded on the general assent of the nations. Its sources are treaties and customs, and the important sources of evidence of the law are judicial decisions of domestic and international tribunals, certain other kinds of public governmental acts, treaties and the writings of authorities. The existence or non existence of a rule of international law is established by a process of inductive reasoning; by marshaling various forms of evidence of the law to determine whether or not such evidence reveals the general assent that is the foundation of the law. No rule can be abolished, or amplified, or restricted in its operation, by a single nation or by a few nations or by private individuals acting in conjunction with a Government. No action taken by a private individual can contravene a treaty or a rule of international law, although it is the duty of a Government to control the action of individuals, with a view to preventing contravention of rules of international law or treaties."


TREATMENT OF WAR PRISONERS

States and Germany, its ratification never received serious consideration. Nevertheless, the Geneva Convention of 1929 bears a striking resemblance to the United States-German agreement of 1918.

The effort of the nations represented at Geneva in 1929 was to make International Law regarding the treatment of prisoners of war and not to draft a set of rules declaratory of existing customary international law. The Convention signed by the delegates on July 27, 1929 was a signal advance in the codification of the law of war. Unlike the Hague Convention, the Convention of 1929 was effective between the states which ratified it in their relations with one another. It will be remembered that the Hague Rules, as such, were binding only if ratified by all of the belligerents.

DEVELOPMENT OF THE 1949 CONVENTION

On August 12, 1949, a revision of the Geneva Convention of 1929 relative to the Treatment of Prisoners of War was completed. This Convention was formally signed by the United States and sixty other nations on December 8, 1949. It now awaits ratification by the various signatory nations.

At Geneva in July of 1945, the United States Provost Marshal General of the European Theater of Operations suggested to the President of the International Committee of the Red Cross that a meeting of experts on prisoner of war affairs of the various belligerent nations be called with the view of recording for future reference, their experiences under the Convention of 1929. It was believed that these experiences would be most helpful in any future revision of that Convention. The President, Dr. Max Huber, submitted the suggestion to the full committee which approved and directed immediate implementation. Thereupon, invitations were sent to all of the belligerents of World War II.

About sixteen nations, in response to the invitation, sent their experts to a parley at Geneva during April, 1947. An extensive expression of desirable changes in the Convention of 1929 was recorded at that conference. Russia did not attend although many of her satellite nations took an active part.

The XVIIth International Conference of Red Cross invited delegations to Stockholm, Sweden in August of 1948, to attempt a draft revision of the
Convention of 1929.  

About sixty nations attended and two weeks of most fruitful labors utilizing the reports of the 1947 conference of experts brought forth a draft revision which became the working text of the Diplomatic Conference convened for revision (inter alia) of the Convention concluded at Geneva on July 27th, 1929, Relative to the Treatment of Prisoners of War. Russia did not attend the Stockholm conference but had a large and well-instructed delegation at the Diplomatic Conference which opened at Geneva in April of 1949.

THE 1949 CONVENTION

The 1929 Convention was an elaboration of the principles enunciated in the Hague Regulations of 1899 and 1907. It was a long stride taken in the effort to ameliorate the rigors and horrors of war. However, it was still a very imperfect instrument. Experience in World War II had indicated that a more detailed instrument was necessary. One of its fundamental faults was its adoption of national standards rather than absolutes. Illustrative of this fault is Article 11 of the 1929 Convention which provided:

The food ration of prisoners of war shall be equal in quantity and quality to that of troops at base camps.

Furthermore, prisoners shall receive facilities for preparing, themselves, additional food which they might have.

A sufficiency of potable water shall be furnished them. The use of tobacco shall be permitted. Prisoners may be employed in the kitchens.

All collective disciplinary measures affecting the food are prohibited.

Perhaps the ration of the United States troops may not be particularly palatable to the Oriental soldier but at least he could live on it. Whereas, the Occidental soldier could not exist healthily on dried fish and rice. Contrast the food provisions of the 1949 Convention with that quoted supra and the difference in the underlying bases of the two Conventions becomes clearer. Article 26 of the 1949 Convention provides:

The basic daily food ration 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.

21. In 1921 the Tenth International Conference of the Red Cross adopted a resolution urging the various governments to revise the Hague Convention IV of 1907 and requested the International Committee of the Red Cross to draw up a draft convention. This draft became the working text for the delegations which drafted the Geneva Convention of 1929. The contribution of the Red Cross to the establishment of better treatment for prisoners of war has been steady and consistent.

22. The author of this article was a representative of the United States at the Conference of Experts, 1947, at the Red Cross Conference, 1948, and at the Diplomatic Conference in 1949.
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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.

The national standard adopted as to alimentation in 1929 is an old one and not a very good one. As early as the American Revolution we find that at first American-held British prisoners were supplied the same ration as that supplied the American forces. But later that practice was modified so that America gave the same ration that the British gave Americans held by them. During this period there was much bickering as to who would pay for the food supplied prisoners and as a result, prisoners suffered many hardships.

In the War Between the States both the North and South provided for the ration of prisoners on the same basis as their own troops. There is evidence that there was much tinkering with the rule on both sides. Even though the Confederate States fulfilled their obligations under the rule, their rations, at times, may have been insufficient to sustain life. That, in short, is the danger in the rule. The drafters of the 1949 Convention agreed that the world has had over a century of unsatisfactory performance under the rule for alimentation re-enacted in 1929, and accordingly, determined to adopt an absolute standard evidenced by Article 26 supra. Where there is a shortage of food this will be a difficult article to observe. This fact was recognized and discussed at length at the conference. Nevertheless, there was a fixed determination to discard the 1929 standard which caused so much suffering and death.

The query was posed: What shall a nation do where there is a general food shortage? Of course, impossibility of performance is always an excuse for non-compliance. But this is not the complete answer. A Detaining Power might transfer the prisoners to a Power which is a party to the Convention in accord with Article 12 infra or even repatriate the prisoners in accord with Article 109. Certainly a nation intending to comply with the

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25. U. S. War Department, Revised Regulations for the Army of the United States, 1861, p. 107, Art. 764; the prisoners "receive for subsistence one ration each, without regard to rank." The Statutes at Large of the Provisional Government of the Confederate States of America (1864), Ch. LIX, p. 154, (May 21, 1861): "The rations furnished prisoners of war shall be the same in quantity and quality as those furnished to enlisted men in the army of the Confederacy." The Confederate provisions is almost identical with that found in the Geneva Convention of 1929.
27. Ibid.
spirit of the convention is not without alternatives to the violation of Article 26.

All agree that absolute standards are not as practical as national standards. But national standards tend to retrograde. And if the treatment of prisoners of war was to achieve a level of understandable certainty then that standard had to be prescribed. This appeared preferable to a provision which relied upon the ability of the Detaining Power during a period of economic and emotional stress.

The virtues of the 1949 Convention generally may be summed up briefly as follows:

a. A better arrangement of the articles (related provisions are logically arranged together in chapters).
b. Elimination of known ambiguities in the 1929 Convention.
c. More fully spelling out matters which were left to the humane discretion of the signatories in 1929.
d. Establishing absolute standards, where possible, as substitutes for national standards.

**Obligation to Publicize**

Article 127 of the 1949 text prescribes wide dissemination of the provisions of the Convention and “in particular to include the study thereof in their (signatories) programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.” Much abuse under the 1929 Convention grew out of ignorance on the part of prisoners of war as well as those persons of the Detaining Power who were concerned with the administration of their affairs. The implementation of Article 127 will serve to overcome many abuses and will apprise the populations of the signatory nations of the high humanitarian purpose of the present Convention.

It is not the purpose here to present the 1949 Convention in detail, but rather to present what are perhaps the important changes in concept and philosophy regarding treatment to be accorded prisoners of war.

**Prisoners of War Defined**

Article 4 defines prisoners of war in detail. The article abandons the 1929 text system of reference to the Hague Regulations of 1907. It includes all those included in the 1929 text and introduces several other categories of persons who, when they fall into the power of the enemy, are entitled to be treated as prisoners of war. Among the new categories are those “who accompany the armed forces without actually being members thereof, such as civilian military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card...” And also members of crews of the merchant marine and of civil aircraft.
During the Middle Ages the effort of the humanitarians was to exclude non-combatants from the perils of prisonership. The nineteenth century marks the dawn of the rule that only members of the armed forces and those closely connected with those forces should be taken. This rule was adopted in the Hague Regulations and elaborated on in the Geneva Convention of 1929. Because the treatment prescribed for prisoners is of such high standard in the 1949 revision it was felt necessary to enumerate in detail those entitled to the benefits of its protection.

Article 5 of the Convention prescribes the duration of the obligation of the Detaining Power:

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

The 1929 Convention had no specific article comparable to that just quoted. Its absence, it is reported, permitted commanders to speciously reason as to when a person taken became a prisoner of war.

Flory, as late as 1942, wrote:

It is difficult to determine the point at which an enemy individual may no longer be lawfully attacked. Prisonership probably begins when he is no longer capable of resistance, because he either has been overpowered or is weaponless, when he has voluntarily and individually ceased to fight, or when his chief has surrendered his command.

World War II proved that Flory had summed up the situation fairly accurately. In the early part of World War II a prominent American commander believed that he could condition the commencement of captivity. He announced to a group of enemy troops who had fallen into his power that he would not treat them as prisoners of war until they had removed the land mines which had been planted by their forces. He was soon persuaded that he had no authority to so condition the commencement of prisonership. It became the established position of the United States that prisonership commenced without condition when the United States forces had gained custody of the individual and his resistance had ceased. Article 5 of the 1949 Convention so far as commencement of prisonership is concerned, is merely declaratory of the United States practice in World War II.

NATIONAL CHARACTER OF OBLIGATIONS

Article 7 is an important introduction of the principle of non-waiver of rights. It provides:

Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.
This provision gives strength to the proposition that the obligations of the Convention are national in character and may not be altered by the action of individual prisoners of war.

Responsibility for the Treatment of Prisoners Inter-Nation Transfers

Article 12 reiterates the doctrine of national responsibility and at the same time recognizes individual responsibility for treatment accorded prisoners of war. A more important provision of Article 12, however, is the establishment of a right in the Detaining Power to transfer prisoners of war to another Power under certain prescribed safeguards:

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

This article gave rise to long debate at the conference. A number of nations were unwilling to free a Detaining Power, which has transferred prisoners of war to another Power, from responsibility for the application of the Convention to such prisoners of war while the latter are in the custody of the Power accepting them. Others desired to place full and sole responsibility on the transferee Power. The present article represents a practical compromise with full responsibility on the transferee Power and contingent responsibility on the transferor. At the time of signing, Russia and the satellites deposited a reservation on this article, to the following effect:

The Union of Soviet Socialist Republics does not consider as valid the freeing of a Detaining Power, which has transferred prisoners of war to another Power, from responsibility for the application of the Convention to such prisoners of war while the latter are in the custody of the Power accepting them.

The 1929 Convention was silent on the subject of transfers. Nevertheless, it was the practice of belligerents to transfer prisoners from one ally to another. And it was generally accepted as an allowable practice under customary international law. There was considerable difference of opinion however, as to whether the captor or detaining state had the Conventional responsibilities. This was an involved question because of the national standards contained in the 1929 Convention. A prisoner taken by the United

32. Id. at p. 45.
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States is entitled to the ration of the base troops of the United States. That ration was substantially different than the ration given the base troops of France. The question arose as to whether a prisoner transferred by the United States to France was entitled to the ration of the United States base troops or that of France. Many similar questions arose. The particular question posed, was not answered. Nevertheless, the United States maintained the position that a prisoner's status ought not be worsened by a transfer and it was the captor's responsibility to insure that it was not.

In one instance where the United States in World War II had made a transfer of prisoners to an ally, the ally became unable, because of a change in its economy, to uphold the obligations of the Convention. The transferred prisoners became undernourished and when the United States was apprised of the situation it provided medical supplies and food and took back many of the transferred prisoners. Article 12 is pretty much declaratory of the practice of the United States in World War II.

HUMANE TREATMENT OF PRISONERS

The principle was enunciated in Article 3 of the 1929 text:

Prisoners of war have the right to have their person and their honor respected. Women shall be treated with all the regard due to their sex.

Prisoners retain their full civil status.

This has been substantially broadened by Article 13 of the present text, which provides:

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.

IDENTIFICATION OF PRISONERS

In World War II, prisoners of war were many times evacuated from beachheads before they had been administratively processed and indeed, before nominal rolls were completed. Had any of the vessels upon which these prisoners were evacuated, been sunk or lost, with incidental loss of personnel, no record would be available to identify those so lost.

Article 17 provides:

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental,
personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

This provision offers an easy solution to the problem of hasty evacuation. The duplicates of each identity card may be collected prior to evacuation and they constitute a basis for a nominal roll. The provision that the identity card “may in no case be taken away from him” does not preclude the taking of the duplicate. The intent of the provision is that the prisoner of war shall at no time be without means of identification.

SHelters Against Bombardment

Article 23 is one of the few instances where national or local standards of protection were used as a basis of protection for prisoners:

... prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply in them.

For reasons which are obvious, no absolute standard was sought.

FOOD, MEDICAL CARE AND RELIGIOUS RIGHTS

Article 26 concerning food rations (previously quoted and discussed) contains another important stipulation to the effect that “adequate premises shall be provided for messing.” This same principle was carried through in other articles dealing with religious worship and medical attention.

The provisions concerning hygiene and medical attention, Articles 29-32, represent an amplification of the 1929 text. It is provided now that at least monthly medical inspections of prisoners of war shall be held and these must include the checking and recording of the weight of each prisoner of war as well as “periodic mass miniature radiography for the early detection of tuberculosis.”

Articles 34-37 stress the right of prisoners of war to “enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, ...” and the right of “Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting Prisoners of War, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience.”

RESPONSIBILITY FOR CAMP STAFF INDOCTRINATION

Emphasizing the principle of Article 127 (previously discussed), Article
39 requires that each prisoner of war camp commander shall ensure that the provisions of the Convention are known to the camp staff and the guard and the camp commander under the direction of his government, is held responsible for their application.

**Transfers and Evacuation of Prisoners**

Inter-camp transfers of prisoners of war have been more expansively treated. The memory of the horrors of the Death March of Bataan and other fearful transfers were still green in the minds of the representatives at the Conference, and there was a solemn determination to outlaw any such catastrophes in the future. Articles 46-48 are designed for that purpose. Exemplifying that intention it is prescribed in Article 46:

The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

**Labor of Prisoners of War**

Perhaps no section of the Convention gave rise to more debate and expressions of differences of view than that dealing with "Labour of Prisoners of War." At the outset, it appeared that all that could be agreed upon was the fact that the 1929 Treatment of the subject was inadequate and ambiguous. Article 31 of the 1929 text was the basis of most of the confusion. It was there provided:

Labor furnished by prisoners of war shall have no direct relation with war operations. It is especially prohibited to use prisoners for manufacturing and transporting arms or munitions of any kind, or for transporting material intended for combatant units.

In case of violation of the provisions of the preceding paragraph, prisoners, after executing or beginning to execute the order, shall be free to have their protests presented through the mediation of the agents whose functions are set forth in Articles 43 and 44, or, in the absence of an agent, through the mediation of representatives of the Protecting Power.

In 1941, The Provost Marshal General, U. S. Army, submitted several

33. *Id.* at pp. 33-35.
queries to The Judge Advocate General as to how the labor of prisoners of war might be utilized under the proscriptions of that article. Among the questions presented was whether prisoners of war might be employed on the building of the Alaskan Highway. The Judge Advocate General held that inasmuch as the road, when completed, could and probably would be used as a military highway, the labor furnished would have a direct relation with war operations and was accordingly prohibited. In 1943, The Judge Advocate General of the North African Theater of Operations held that the employment of prisoners of war on the manufacture of camouflage nets used to camouflage targets from the prisoners' own army was not prohibited. Neither opinion was approved and accordingly had no governing effect. What constituted a direct relation with war operation was a matter of personal opinion or indeed, guess. No article gave rise to a greater variety of opinions and no article needed revision more than Article 31. Its related article, which prohibited use of prisoners of war at unhealthful or dangerous work proved almost as troublesome. Many nations felt that work which might otherwise be dangerous (such as mine removal) was not prohibited under the article if the prisoner of war was thoroughly trained and properly equipped for the work.

The Conference, after long and arduous debate, decided to enumerate the classes of work on which prisoners of war might be compelled to work.44 To that end, Article 50 was adopted and provides:

Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

(a) agriculture;
(b) industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose;
(c) transport and handling of stores which are not military in character or purpose;
(d) commercial business, and arts and crafts;
(e) domestic service;
(f) public utility services having no military character or purpose.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

Many of the delegations present at the conference believed that the qualifying phrases in (b), (c) and (f), "... which are not military in

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44. Id. at pp. 47-51; at p. 47 it is stated: "There is the real danger that forced labor for prisoners of war is a part of a general trend towards the revival of slavery." However true this statement may be, there was no tendency in evidence at the Diplomatic Conference (Geneva 1949) toward putting labor of prisoners of war, except that of officers, on a voluntary basis.
character or purpose . . .”, will create some difficulty in future interpretations.\(^{35}\)

In Article 52, the removal of mines or similar devices has been defined as dangerous labor and it was therein provided also that “unless he be a volunteer, no prisoner of war may be employed on labor which is of an unhealthy or dangerous nature.” The conditions of labor for prisoners of war have been elaborately improved (Articles 51-57) and of special interest is the provision contained in Article 55:

The fitness of prisoners of war for work shall be periodically verified by medical examinations at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion unfit for work, be exempted therefrom.

**FINANCIAL RESOURCES OF PRISONERS**

Perhaps no section of the new Convention gives greater evidence of disturbing experiences under the 1929 text than that dealing with financial resources of prisoners of war. There were but two articles dealing with the subject in the 1929 Convention. The brevity of treatment left too much to the discretion of the Detaining Power. The new Convention devotes eleven articles (58-68) to a rather comprehensive treatment of the subject. Article 23 of the 1929 Convention provided:

Subject to private arrangements between belligerent Powers, and particularly those provided in Article 24, officers and persons of equivalent status who are prisoners of war, shall receive from the Detaining Power the same pay as officers of corresponding rank in the armies of that Power, on the condition, however, that this pay does not exceed that to which they are entitled in the armies of the country which they have served. This pay shall be granted them in full, once a month if possible, and without being liable to any deduction for expenses incumbent on the detaining Power, even when they are in favor of the prisoners.

An agreement between the belligerents shall fix the rate of exchange applicable to this payment; in the absence of such an agreement, the rate adopted shall be that in force at the opening of hostilities.

All payments made to prisoners of war must be reimbursed, at the end of hostilities, by the Power which they have served.

With the changing value of currencies together with the difficulty of negotiating an agreement with the enemy the Article proved to be utterly impractical. After failing to come to any agreement on the subject with any of our enemies during World War II, the United States fixed a gratuity of three dollars a month for each prisoner of war. This was paid in com-

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35. Id. at p. 47 where it is stated. “There was general agreement that today all work is connected in one way or another with the war effort.”
modities at post exchange prices in the theaters of operations and in post
exchange script in the zone of interior. The United States fixed a rate of
eighty cents a day for labor which was credited to the accounts of the pris-
oners. These rates were communicated to the enemy governments through
the Protecting Powers. Upon repatriation of the prisoners they were given
certificates of credit which were cashable in designated banks in their home
countries. Neither France nor Great Britain followed our system but used
discretion (not quite as generously as did the United States) in the
matter. Our defeated enemies had no means of doing for our soldiers held
by them as prisoners what we had done for theirs at repatriation, for the
simple reason that their monetary systems collapsed with their govern-
ments.8

Illustration of the minute detail resorted to in the 1949 Convention
is gleaned from Article 60 which fixes a monthly advance of pay as follows:

The Detaining Power shall grant all prisoners of war a monthly ad-
vance of pay, the amount of which shall be fixed by conversion, into the
currency of the said Power, of the following amounts:

Category I: Prisoners ranking below sergeant, eight Swiss francs.
Category II: Sergeants and other non-commissioned officers, or pris-
oners of equivalent rank, twelve Swiss francs.
Category III: Warrant Officers and commissioned officers below the
rank of major or prisoners of equivalent rank, fifty Swiss
francs.
Category IV: Major, lieutenant-colonels, colonels or prisoners of equi-
valent rank, sixty Swiss francs.
Category V: General officers or prisoners of war of equivalent rank,
seventy-five Swiss francs.

However, the Parties to the conflict concerned may by special agree-
ment modify the amount of advances of pay due to prisoners of the pre-
ceding categories.

Furthermore, if the amounts indicated in the first paragraph above
would be unduly high compared with the pay of the Detaining Power's
armed forces or would, for any reason, seriously embarrass the Detaining
Power, then, pending the conclusion of a special agreement with the
Power on which the prisoners depend to vary the amounts indicated above,
the Detaining Power:

(a) shall continue to credit the accounts of the prisoners with the
amounts indicated in the first paragraph above;

(b) may temporarily limit the amount made available from these
advances of pay to prisoners of war for their own use, to sums
which are reasonable, but which, for Category I, shall never be
inferior to the amount that the Detaining Power gives to the
members of its own armed forces.

The reasons for any limitations will be given without delay to the
Protecting Power.

And Article 66 dealing with termination of captivity:

On the termination of captivity, through the release of a prisoner of
war or his repatriation, the Detaining Power shall give him a statement,

36. Id. at pp. 42-43 for practices of other nations in World War II.
signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

Article 68 sets up a right of claim for injury or losses, an important matter not treated in the old Convention. It is therein provided:

Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim by a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123.

MAIL OF PRISONERS OF WAR

One of the most bitter features of captivity is the ignorance of the prisoners of conditions and news in general of home. Even under the very best circumstances long delays in the passage of mail from and to prisoners of war are unavoidable.\textsuperscript{37} One need only consider the requirements of censorship and the routes that prisoner of war mail must normally take to realize the truth of that statement. Expeditious handling of mail of prisoners of war proved to be a problem without a solution in World War II. In 1943, thousands of Italian prisoners held by the United States in North Africa since April of that year were not in communication with their families.

\textsuperscript{37} Id. at p. 31.
across the Mediterranean by Christmas of that year. The situation was so sorrowful that The Pope, through his representative in North Africa, offered to operate for Italian prisoners an EFM (Emergency Family Message) similar to that in use for our own forces. The offer was accepted and the system operated between The White Fathers Seminary in Algeria and the Vatican. This was in operation by Christmas and brought a great deal of relief to thousands of prisoners and their families.

The subject of relation of prisoners of war with the exterior was a matter of considerable concern to the delegates at the 1949 Conference. Many had themselves been prisoners of war. Others had the task of administering the affairs of prisoners of war. All were aware of the terrible anguish that grew out of situations that little could be done to correct. Nevertheless, Article 71 which is fairly typical of the detail attempted in this section provides:

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoner of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner of war mail must be securely sealed and labeled so clearly to indicate their contents, and must be addressed to offices of destination.

All parties to the Convention (belligerent or neutral) through whose country prisoner of war mail or relief shipments pass must provide free transport and should "military operations prevent the Powers concerned
from fulfilling their obligations to assure the transport of shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway, wagons, motor vehicles, vessels, or aircraft, etc.). For this purpose the High Contracting Parties shall endeavor to supply them with such transport and to allow its circulation, especially by granting the necessary safe conducts."

Prisoners' Representative

It was found during World War II that German prisoners of war were generally well briefed in their rights as prisoners of war. Accordingly, the relations between them and the authorities administering their affairs were on a high level. They were insistent upon being accorded every important right granted by the Convention. And advantage was always taken of the right of complaint established by Article 42 of the 1929 text for any real or supposed wrong. The section of the old Convention dealing with the subject proved to be quite adequate. The rights and duties of the "prisoners' representatives" were outlined in more detail in the revised text and the title which varied in the various camps as camp leader, camp spokesman, etc., was finally fixed in the new text as "Prisoners' Representative." An important innovation is the stipulation that "Prisoners' Representatives" shall not be held responsible, simply by reason of their duties, for any offenses committed by prisoners of war."

Penal and Disciplinary Sanctions

The entire chapter on penal and disciplinary sanctions is logically divided into three parts: (1) General provisions covering matters of general application to both the other parts, i.e., (2) Disciplinary Sanctions and (3) Judicial Proceedings. Surprisingly, unanimity on the revision of the Penal and Disciplinary Sanctions (with the exception of one important article) was achieved without wrangle or delay. Although the fundamental principles laid down in the Hague Regulations of 1907 and reasserted in the 1929 text were again adopted whereby a "prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offense committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed." Some new and important principles have been introduced and old ones have been broadened and clarified. Article 83 provides that "the Detaining Power shall ensure that the competent authorities exercise the greatest

40. Art. 75.
41. Art. 80.
42. Art. 82.
leniency and adopt, wherever possible, disciplinary rather than judicial measures." The former has a limit of punishment about equal to our Summary Court while the latter’s limit is that of our General Court. And Article 87 provides that:

When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

**Treatment of War Criminals**

Article 85 provides: “Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.” This caused an irreparable cleavage between Russia and her satellites on the one hand and the remainder of the nations represented at the conference. The United States sponsored the article containing a principle which most of those administering the affairs of prisoners of war during World War II believed was contained in the 1929 text. But the Supreme Court of the United States held in the Yamashita Case that the provisions of the Convention are not applicable to trials for offenses committed prior to capture. Since war crimes would almost always be committed prior to the acquisition of status as prisoner of war, the decision of the Supreme Court had the effect of saying that war criminal suspects would have their rights as prisoners of war suspended until they were cleared of such suspicion. The United States position at the conference was that the essential guarantees of a fair trial should be provided all prisoners of war and conventionally prescribed treatment should even be applicable after conviction. The United States delegation made it perfectly clear that it intended to punish all war criminals but that it favored one judicial system for all prisoners of war whether their alleged offense was committed before or after capture. And also, that the conditions of executions of sentences as a minimum should conform to Article 108 regardless of the nature of the crime or when it was committed. Article 108 provides:

Sentences pronounced on prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

43. 327 U.S. 1 (1946).
In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and dispatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph.

While this article adopts the standard accorded troops of the Detaining Power, the standard must meet the requirements of health and humanity. Without Article 85, nations would be left to their own discretion as to the treatment of a war crimes suspect, and this at a time when feeling runs high against such suspects. The United States refused to permit even inhuman conduct to be met with inhuman treatment. It averred that Article 85 substituted certainty for uncertainty and a humane standard in lieu of barbarism. The entire conference, with the exception of Russia and her satellites, agreed with the United States and adopted Article 85. The reservation taken by Russia and her satellites appears on superficial examination to be quite innocuous but on studied analysis reveals a high degree of casuistry; it leaves the power of sentencing without limitation and the treatment after conviction in the realm of uncertainty. It provides:

The Union of Soviet Socialist Republics does not consider itself bound by the obligation, which follows from Article 85, to extend the application of the Convention to prisoners of war who have been convicted under the law of the Detaining Power, in accordance with the principles of the Nuremberg trial, for war crimes and crimes against humanity, it being understood that persons convicted of such crimes must be subject to the conditions obtaining in the country in question for those who undergo their punishment.

**Escape**

While it was provided in the 1929 text that prisoners of war who escape and who are recaptured, shall not be liable to any punishment in respect of their escape, it was difficult to determine what constituted a completed or successful escape. The new text resolves the difficulty in Article 91:

The escape of a prisoner of war shall be deemed to have succeeded when:

1. he has joined the armed forces of the Power on which he depends, or those of an allied Power;
2. he has left the territory under the control of the Detaining Power, or of an ally of the said Power;
3. he has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.
Full realization is accorded the fact that it is a prisoner's duty to his own country to effect an escape if possible.\footnote{Armou\-nd du Payrat, \textit{Le Prisonnier de Guerre Continentale} 419 (1910). Also U.S. War Department General Order No. 207 (3 July 1863), Art. 3 stated: "... it is the duty of the prisoner of war to escape if able to do so." See also H. C. Fooks, \textit{Prisoners of War}, pp. 292-3 (1924).} Acts committed solely in furtherance of escape are to be dealt with lightly. For instance, the maximum punishment for the theft of an automobile, taken only to further the escape, would be confinement for thirty days, for that is the maximum disciplinary punishment. And Article 93 provides:

Escape or attempt to escape, even if it is a repeated offense, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offense committed during his escape or attempt to escape.

In conformity with the principle stated in Article 83, offenses 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 offenses against public property, theft without intention of self-enrichment, the drawing up or use of false papers, or 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.

\textbf{DISCIPLINARY PUNISHMENT}

Slightly infractious conduct is handled in practically the same manner as conduct punishable under the 104th Article of War in the Manual for Courts-Martial, U.S. Air Force-1949. A limited enumeration of disciplinary punishments is found in Article 89 and the procedure for handling such cases is defined in detail in Article 96 as follows:

Acts which constitute offenses against discipline shall be investigated immediately.

Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offenses of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.
TREATMENT OF WAR PRISONERS

JUDICIAL PROCEEDINGS

The first article under judicial proceedings gives to prisoners of war three of the most important of our Constitutional guarantees, namely, no ex post facto trial or sentencing; no involuntary confessions; the right of defense and the assistance of qualified counsel.45

When 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 the Protecting Power is notified.46 Pre-trial confinement may in no case exceed three months and the period spent in pre-trial confinement must be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any other penalty.47

The provision limiting pre-trial confinement surprisingly gained unanimity with comparatively little debate at the Conference. Yet the provision is far-reaching. The United States sponsored the provision because it believed an unscrupulous nation might avoid Article 85 by incarcerating a war criminal suspect and then let him languish in confinement awaiting trial indefinitely. Under the precept of Article 103 the Detaining Power must, within three months of the date of confinement, try the suspect in accord with the provisions of the Convention or release him from confinement. The right to a speedy trial or release is in conformity with modern democratic principles.

Before judicial proceedings can take place against a prisoner of war evidence must be submitted to the court that at least three weeks prior thereto the Protecting Power had received notice of trial.48 This requirement is jurisdictional.

Article 105 details the time allowed to secure counsel for defense and the minimum time of two weeks allowed counsel to prepare the defense.

TERMINATION OF CAPTIVITY

1. During Hostilities

Article 110 prescribes the conditions under which sick and wounded prisoners of war may be repatriated direct, accommodated in a neutral country and the conditions which prisoners of war accommodated in a neutral country must fulfill in order to permit their repatriation:

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention. (Art. 110).

45. Art. 99.
46. Art. 102.
47. Art. 103.
48. Art. 104.
Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war and to make all appropriate decisions regarding them. The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

The wounds or sickness need not be the result of combat to make one eligible for repatriation. Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country.

It is also prescribed that “no repatriated person may be employed on active military service.”

2. At the Close of Hostilities.

The principle of release and repatriation without delay after the cessation of active hostilities is again asserted in Article 118. At the time of signing of the present Convention, some signatories still held German and Japanese prisoners. It was fairly well agreed that under the terms of the new article, retention of prisoners for so long a period would be clearly violative of the Convention.

**Execution of the Convention**

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular, the prisoners’ representatives, without witnesses, either personally or through an interpreter.

The real teeth of enforcement of the Convention, supplementing the usual sanctions of International Law, i.e., condemnation of world public opinion and fear of reprisal, is found in Articles 129 and 130 wherein it is prescribed that the signatory nations shall undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any grave breaches involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

Normally, International Law has only sought to regulate the conduct
of nations in their relations with one another. In the recent past, and particularly since the cessation of hostilities in World War II, there has been a growing tendency, in international relationships, to insure the extension of penal sanctions to individual conduct. This tendency was in evidence at the Geneva Convention of 1949.

One of the great Lord Chief Justices of England in the eighteenth century is reputed to have said with respect to Common Law Pleading that it is better to err on the side of pleonasm than on that of exiguity. It may be said that this doctrine, if such it be, imbued the drafters of the present Convention, for they certainly sought to expressly cover as much as possible and leave as little as possible to imagination or discretion.