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for the study of Conventions for the Protection of war victims

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Geneva Convention of July 27, 1929
relative to the Treatment of Prisoners of War.
CONVENTION CONCLUDED IN GENEVA
on July 27, 1929, relative to the Treatment
of Prisoners of War

INTRODUCTION

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From its inception the International Committee of the Red Cross has taken particular interest in the situation of Prisoners of War. In 1863, Governments could not see their way to adopting treaty stipulations on this matter. It was in 1907 only that the case of Prisoners of War was dealt with in the Fourth Hague Convention. These few and very general rules rapidly proved inadequate during the War of 1914 - 1918.

For this reason, the International Committee devoted particular care, since 1920, to the establishment of a Draft International Convention. This draft, after undergoing a few amendments, was approved by the Diplomatic Conference which took place in Geneva in 1929.

During the recent War, this Convention, to which 47 States were signatory, regulated the situation of a very large number of Prisoners of War, and it may safely be said that, in a general manner, it has proved extremely valuable. This fact becomes at once clear when we compare the treatment allotted to Prisoners of War belonging to States signatory to the Convention, and that of Prisoners of War whose Governments had not found possible to adhere to the said agreement. This in no way signifies that the absence of a Convention justifies ill-treatment of Prisoners of War, as is stated in the preamble to the Fourth Hague Convention on cases not regulated by treaty, the inhabitants and the belligerents remain under the protection and authority of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of public conscience.

However, the Convention, put to its first real test during the recent War, is incomplete in some respects and lacks precision in some important matters, more particularly as regards its application in special circumstances. Nevertheless, it may be said in a general manner that the ill-treatment of very many Prisoners of War was due, not to the Convention itself, but to its non-application.
On February 15, 1915, when the War was not yet over in Europe, the International Committee advised all Governments and all National Red Cross Societies that they were undertaking to assemble and centralise preliminary data, in view of the revision of the Conventions relative to war victims. The replies received proved the keen interest raised by this scheme, and urged the Committee to pursue its studies in this field. A special department was established by the Committee and entrusted with this task.

Apart from many contacts with representatives of Governments, National Red Cross Societies and other bodies, the Committee convened meetings of Medical Experts who had been members of Mixed Medical Commissions.

Furthermore, the Preliminary Conference of National Red Cross Societies, convened in Geneva in July 1916 by the Committee, discussed among other matters the revision of the Convention relative to Prisoners of War. The Conference was unanimous in recognizing the necessity of revising this Convention, and came to certain practical conclusions which will be considered below.

At the same time, the International Committee invited a certain number of States to send to Geneva experts having occupied posts in connection with PoW and Enemy Aliens, and who could thus give the meeting the benefit of their experience, and make suggestions for the drafting of a revised text. The States invited were those which had either detained large numbers of PoW and Civilian Internees, or had many of their nationals held in captivity as PoW or Civil Internees.

Their proposal having met with a favourable reception, the International Committee wish to facilitate the Commission's task by submitting herewith, Article by Article, a commentary on the present stipulations of the Convention, with proposed amendments. Following each Article or Section will be found, first, the text of the stipulation under consideration, then a brief summary of the experience gathered during the War, and finally, if necessary, one or several suggested amendments. New problems, which are not the object of a special stipulation, are examined in the chapter or section most suitable for their insertion in the Convention.
The main sources of these data are the following:

(a) The archives of the International Committee of the Red Cross, in particular all the steps taken by the Committee regarding the application of the Conventions.

(b) Reports of the International Committee's delegates on their demarches and camp visits.

(c) Reports furnished by Governments, National Red Cross Societies and other institutions, former PoW, etc.

(d) The Proceedings of the 1929 Conference and the various legal commentaries published in connexion therewith.

(e) The reports of the Preliminary Conference of National Red Cross Societies of July 1946, with the various suggestions advanced by National Societies.

(f) The reports of the Commissions of Medical Experts, former members of the Mixed Medical Commissions.

(g) Documents furnished by Protecting Powers.

Several of these documents will be placed at the disposal of the meeting and a bibliography is being prepared.

* * *

Certain questions of general interest cannot be treated in relation to any given chapter of the Convention. The chief of these is the amalgamation of the provisions relative to PoW with those that will eventually ensure the protection of Civilians. In the opinion of the International Committee, it is impossible to deal with this question before making careful study of the stipulations relative to PoW. This question will therefore be taken up at the end of this Report.

The same remarks apply to another problem raised by the Committee during the Preliminary Conference of National Societies: how can the stipulations of the Convention relative to PoW best be arranged? This question should, in the Committee's opinion, be also treated at the close,
Among particularly urgent subjects dealt with alongside the relevant Articles are the following: measures to reinforce the control of the application of the Convention; penalties in case of violation; situation of PoW who for some reason, have no Protecting Power; application of the Convention in special situations; intangibility of the rights of PoW; fuller advertising of the Convention; application of the Convention in case of capture of very large members of PoW, etc.

With regard to all these points (and to many others) the International Committee will be extremely gratified to learn the views of qualified experts who, during the recent war, were called upon to deal with these matters on behalf of their Governments. Moreover, as the revised Convention of 1929 must be adapted as far as possible to the probable conditions of a future war - if such a catastrophe should unfortunately occur - the meeting will be better able than the International Committee to make useful suggestions.

In view of this revision, the International Committee is guided by the two principles which have always inspired its endeavours: the humanitarian ideal, and the desire to do work of practical value. It is essential that the new Convention shall be adopted by the greatest possible number of States. The text should, therefore, take into account both military necessities and the interests of the States. The International Committee hope that the meeting will indicate the limits of what it may consider feasible.

* * *

On the basis of the results of the debates scheduled for April, 1947, and of the experience already gathered, chiefly from National Red Cross Societies, the International Committee plan to draft a revised Convention - possibly after consulting the opinion of experts of other States - to be laid before the Seventeenth International Red Cross Conference, which will take place in Stockholm, in 1948. The States, assembled in Diplomatic Conference, will then be called upon to adopt the new Convention and give it force of law.
CONVENTION CONCLUDED IN GENEVA
on July 27, 1929, relative to the Treatment
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PART I

GENERAL PROVISIONS

ARTICLE 1.

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

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

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

The following is the text of Articles 1 to 3 of the Regulations annexed to the Hague Convention concerning the Laws and Customs of War on Land.

Chapter I.— The qualifications of belligerents

Article 1.— "The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:
(1) To be commanded by a person responsible for his subordinates;
(2) To have a fixed distinctive emblem recognizable at a distance;
(3) To carry arms openly; and
(4) To conduct their operations in accordance with the laws and customs of war.

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

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

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

This Article is the basis of the entire Convention. Most of the cases in which captured combatants were, either partially or wholly, denied the benefit of prisoner of war treatment, are to be attributed to the vagueness in the wording of this Article. It seems indispensable to revise these provisions. Without venturing to draw up formal proposals, the International Committee indicate below the main items in regard to which in their opinion, revision would be required.

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**I. DEFINITION OF THE TERM "PRISONER OF WAR"**

The Convention contains no definition, either in this Article or in any other, of the persons to whom it is applicable; it confines itself to making reference to the Hague Regulations.
which in Articles 1, 2 and 3 define the status of belligerents, the latter, when captured by the enemy, being entitled, according to Art. 1 of the Convention of 1929, to prisoner of war treatment.

The records of the Diplomatic Conference of 1929 show that it was considered preferable to refer back to the Hague Regulations which, at the time, gave a generally accepted definition of the term Belligerent, rather than to establish a definition of the term "Prisoner of War" which might, in certain respects, have contradicted that of the Belligerent.

These considerations still retain some value; but, independently of the fact that in a legislative text it is preferable to avoid references to another document, the provisions of the Regulations annexed to the Hague Convention defining the term belligerent are now obsolete, and have proved inadequate in certain fields of modern warfare.

Two courses are open with a view to giving a new definition of a Prisoner of War:

(a) Maintaining the reference to the Hague Regulations, and adding to Art. 1 of the Prisoner of War Convention the exact definitions which are necessary.

(b) Establishing under Art. 1 a full definition of the term "Prisoner of War", embodying all the useful details contained in the Hague Regulations.

The second course appears preferable, for it would avoid reference to another document, thus complicating the wording of the new Article.

It should be recalled, moreover, that the Hague Regulations were adopted in 1907, and are in many ways out of date, through the development of warfare. They will probably call for revision in the near future, but it is likely that such revision will be carried out independently of that of the Convention on Prisoners of War. If, therefore, reference to the Hague Regulations were kept, there might be a risk of the latter undergoing amendment, and of the reference becoming, in a sense, inoperative.

The new definition should enumerate the categories of persons to whom the Convention applies in case of capture by the enemy. Seven classes of persons may be envisaged; their status is examined below.
(1) Members of Armed Forces

In the opinion of the International Committee the expression "Members of Armed Forces" includes all combatants, irrespective of the unit to which they belong. It seems unnecessary to maintain the present distinction between prisoners taken in the course of land and maritime operations.

The special exceptions (derogations) provided for under Sec. 2 of Art. 1, as at present, in regard to captures made in the course of operations of maritime or aerial war, will be dealt with further on.

Membership in the armed forces of a State raised no particular difficulties in the recent War, except in some particular instances, (e.g. customs-officers, members of the police forces); this is however primarily a domestic matter for each State to decide, as a matter of sovereignty, which persons belong to its armed forces.

Certain States however denied the status of belligerent to combatant units subject to a Government or authority which the said States did not recognize. As instances we quote the French forces constituted under General de Gaulle, and the Italian units constituted in Southern Italy after September 1943. Yet these were regular troops wearing uniform. The International Committee on several occasions demanded and succeeded in obtaining that captured members of these forces should be treated as prisoners of war, irrespective of the authority under whose orders they claimed to be. It appears necessary to provide for this situation, and the definition of "armed forces" might run as follows:

"Members of armed forces, irrespective of the Government or authority under whose orders they claim to be".

It seems unnecessary to maintain the mention of militia or volunteer corps; these, wherever they exist, form part of the armed forces. It seems likewise unnecessary to preserve the distinction made in the Hague Regulations between combatants and non-combatants, since this is generally accepted.
(2) Mass Levies

This category is dealt with under Art. 2 of the Hague Regulations. The definition is clear and might be embodied with a few alterations in the new Art. 1.

"The inhabitants of a territory not under occupation, who on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organise themselves as regular armed forces, shall be regarded as belligerents if they bear arms openly and respect the laws and customs of war".

(3) "Partisans"

This class comprises persons in occupied territory who take up arms against the occupying Power and its allies. Their status is at present not expressly regulated by any treaty stipulation. Art. 2 of the Hague Regulations applies only to the inhabitants of a non-occupied territory. However, the Preamble of the Hague Convention states that "until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience. They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood."

This bare reference to the principles of international law is insufficient to regulate the status of persons who are fighting in occupied territory. It offered a very fragile basis to the International Committee, who on many occasions intervened on behalf of persons belonging to this category, captured by the enemy. The Committee has always claimed that "partisans" held by the enemy should benefit by prisoner of war treatment, in so far as they had respected the laws and customs of war. The efforts made by the Committee are summarized in a special report which is available to the meeting.

It seems that in some fashion, treatment under the Convention should certainly be guaranteed to partisans who fulfil given
conditions. But it is difficult to determine clearly what these conditions should be, and the Committee would particularly welcome the opinion of the meeting in this matter. Adaptation of the stipulations laid down in Art. 1 of the Regulations annexed to the Hague Convention might be contemplated, subject to adjusting them to the peculiar circumstances in the situation of the partisans. These stipulations are as follows:

(a) To be organised as military units, and to have a responsible leader.

According to the interpretation given by the commentators of this stipulation, it seems that the word "responsible" means not only responsible for subordinates, but also towards superiors. The authors probably intended to avoid conferring the status of combatants on small, independent groups, or even individuals who commit acts of war.

(b) To wear a fixed distinctive sign, recognisable at a distance.

This condition is extremely important. Combatants must be easily recognisable and clearly distinguishable from the civilian population who do not take part in the fighting. Thus, normally, combatants ought to wear uniform; but one can hardly suppose that partisans would have uniforms available. The adoption of a brassard as a distinctive sign has therefore been contemplated, but this must be securely fixed and worn continually. Treaty provisions might conceivably stipulate the nature and size of this sign, and the way in which it should be worn (for instance, a green armlet 10 centimetres wide, bearing the national emblem and worn on the left arm).

During the recent War, several partisan units requested the International Committee to forward to the adverse party a specimen of the sign worn by the members of these units. Notification to the adverse party of the sign employed might thus be envisaged; but account should be taken of the fact that as a rule it would be difficult to send such notification before acts of hostility had actually begun.

(c) Bear arms openly.

This condition no longer seems properly adapted to warfare as practised today. Combatants often have no rifles or other easily visible weapons, but merely small arms, such as revolvers, hand-
grenades, etc., which are regularly carried under the uniform and are thus invisible. It no longer appears possible to assert that the fact of bearing arms openly constitutes the status of regular combatants.

(d) Respect the laws and customs of war.

This is obviously a fundamental condition which, in effect, includes those quoted above. It must, however, be confessed that the idea of the laws and customs of war is somewhat vague, and subject to variations according to the development of the forms of warfare.

Further, the very position of partisans leads them to resort to special methods of warfare. Here it might be necessary to insert provisions regulating the special position of partisans.

By giving the above conditions, which are those of the Hague Regulations, the Committee do not pretend to furnish a general survey of the matter. The meeting will doubtless be in a much better position than the Committee to make a pronouncement on the matter, since they may have frequent opportunity of gaining first-hand knowledge in this field.

(4) Crews of the Mercantile Marine.

During the recent War, the question frequently arose as to what treatment should be applied to members of the Mercantile Marine captured by the enemy. Enemy merchant seamen were always held and interned by the enemy, in derogation of Art. 6 of the Eleventh Hague Convention relative to certain restrictions with regard to the exercise of the right of capture in naval war. Should, therefore, merchant seamen be considered prisoners of war? The ruling in this respect is not unanimous. The 1929 Conference rejected the Rumanian proposal to give crews of the mercantile marine the benefit of prisoner of war treatment. The records of the Conference state, in this connection, that "the Convention is applicable to all persons belonging to the armed forces of the belligerent parties, an expression which does not include the crews of merchant vessels". Some commentators, however, uphold a contrary view.

In the absence of any definite regulations, the belligerent States considered they were free to deal as they chose with members of the enemy mercantile marine who fell into their hands. These men were
sometimes treated as prisoners of war (by Great Britain and the Dominions), and sometimes as civilian internees (U.S.A. and Germany). No matter what status was applied to them, their financial position was always precarious, as they received no pay, and were not obliged to do any work, and therefore had no wages. Although the treatment of enemy merchant seamen varied according to the belligerents, in actual fact it became closely akin to that of civilian internees, who had no means either of working or of earning wages.

Any future Convention must clearly establish the status of the mercantile marine. In the present state of affairs, it would be more better for merchant seamen to be put on the same footing with prisoners of war, since the status of civilian internees is still undefined. When the status of civilian internees is established in a Convention, it will have to be settled whether merchant seamen come under the heading of civilians or of prisoners of war. What is of primary importance, however, is to give them a definite status, which will be a permanent guarantee of humane and equitable treatment. The International Committee are of opinion that it would be preferable to assimilate members of the mercantile marine with prisoners of war.

(5) Members of Forces arrested in occupied territories.

On various occasions during the recent War, the occupying Power in occupied countries proceeded, as a security measure, to arrest Members of Forces, generally officers, belonging to the army of the occupied country. This happened particularly in the Netherlands, where all the reserve officers were arrested and placed under detention in camps. Thanks to intervention by the International Committee they were treated as prisoners of war.

It might be useful to provide that persons arrested in occupied territory solely on account of their being members of the armed forces of the occupied State should benefit by the treatment stipulated under the Convention,
(6) Persons who follow the Armed Forces without belonging thereto.

These are mentioned under Art. 81 (See commentary on this Art.). It would be more logical to include them in the general definition.

(7) Military Internees in neutral countries and escaped Prisoners of War who are refugees in neutral countries.

This subject will be dealt with under Art. 81, for it could only be here a matter of application by analogy.

II. - TIME OF APPLICATION OF THE CONVENTION

Some definition is needed of the time when application of the Convention begins, and of its duration.

(1) Time when application begins.

The Convention provides no definite ruling. We may therefore justifiably suppose that the Convention becomes operative from the moment of capture, the more so as it contains provisions governing the evacuation of prisoners of war.

The Convention provides for exceptions (derogations) in the case of prisoners taken in the course of maritime or air operations, but such exceptions appear equally applicable to captures made in the course of land operations. It can hardly be presumed that at the front the Convention is always fully applied.

During the recent War, this question was the subject of much controversy, and no satisfactory solution was reached. The point was raised, in particular, whether prisoners taken in the course of military operations could be handcuffed, pending their evacuation from the fighting zone.

It must therefore be asked whether exceptions should be expressly foreseen during the period when prisoners are in the
fighting zone. In any case, if derogations are admitted, they should apply to all war operations. We should then foresee that such derogations do not infringe upon the fundamental rights of prisoners of war.

(2) Duration of Application.

As regards the second question raised by the time of application of the Convention, the persons concerned are certain classes who were indisputably entitled to be treated as PoW, but who were deprived of that right at some time or other by the Detaining Power. This instance arose in Germany, when PoW were converted into civilian workers. As a result of this change, these men lost de facto the benefit of a status founded on the provisions of international law. To be accurate, their legal situation was not clear, but they appear to have been considered by the Detaining Power as having given up their prisoner of war status. In consequence, they were more or less on the same footing with the civilian workers recruited by Germany in the occupied countries, and whose welfare, in the absence of any legal protection, was entirely subordinate to the detaining authorities. Furthermore, it seems that German and Japanese forces who had been taken when Germany and Japan capitulated, were not considered as PoW. The Allied Authorities created at the time a new category of prisoners, called "Surrendered Enemy Personnel" (SEP), to whom the Prisoner of War Convention was not, and is not, fully applied.

Although the present Convention contains no express stipulation on the point, its spirit clearly implies that all PoW should benefit by the rights conferred on them as long as their captivity lasts, even if they belong to a State which has been totally eliminated from the war. On this point, the Preliminary Conference of National Red Cross Societies (1946) made a recommendation that the future Prisoner of War Convention should proclaim, as a matter of principle, that the rights recognized to PoW are intangible, and that the Convention should indicate more clearly that there must be no change in its application, until complete and final liberation of all prisoners. For this reason, the International Committee propose that Art. 1 recognize to PoW individually the right to the application of the Convention, the latter to be not only a treaty binding on States, but also a declaration of the rights of PoW.
The International Committee are of opinion that States should not have the faculty of agreeing mutually on derogations to the Convention, which would render the position of PoW more precarious. The question is of particular importance when one of the States is occupied by the other and is submitted to pressure which it cannot resist. This point will be defined when Art. 83 is discussed. If the latter is interpreted according to the spirit in which it was conceived, it already excludes the conclusion of any such agreements. Consequently, Art. 1 might be supplemented as follows:

The application of the present Convention shall remain unchanged until the complete and final liberation of all Prisoners of War. The rights conferred upon Prisoners of War by the present Convention are intangible.

III.- APPLICATION IN THE CASE OF CIVIL WAR

This important question is dealt with in fine.

ARTICLE 2

New Section (preceding Sec. 1)

The present Convention contains no stipulations defining the purpose of captivity, nor does it specify that PoW are put wholly outside the conflict. A proposal on this subject was submitted to the Diplomatic Conference of 1929, but not entertained. It seems advisable, nevertheless, to reconsider these suggestions. During the recent War coercive measures were often taken, for, despite lack of means, PoW thought it their duty to try and harm the Detaining State. Such measures often led to the situation of PoW being worsened.

These principles could be embodied in a new introductory Section to Art. 2 and could be worded as follows:
"The sole purpose of captivity is to prevent any further participation of Prisoners of War in hostilities. Throughout their captivity Prisoners of War cease to be combatants. (This sentence could be replaced by the following proposed in 1929: "As from the time of capture, Prisoners of War shall neither execute nor suffer any acts of hostility").

Section 1:

"Prisoners of War are in the power of the enemy Government, but not of the individuals or military units which captured them".

This fundamental principle tends to prevent any arbitrary treatment of PoW by their captors. No difficulties seem to have arisen during the recent War in the application of this provision.

Although not expressly referred to in the above Section, the particular conditions arising from the transfer of PoW from one allied Power to another one should be examined here. The revised Convention will have to allow for this practice, followed by belligerents during the second World War. In this respect, two courses may be considered:

(1) Unconditional prohibition;

(2) Safeguards to PoW, if such transfers are admitted; absolute prohibition of transfer to a Power not signatory to the Convention; in case of transfer to another Power which is party to the Convention, the captor State should remain responsible for the full application of the Convention to transferred PoW.

Section 2:

"They shall at all times be humanely treated and protected, particularly against acts of violence, from insults and from public curiosity".

Although not always strictly applied, this provision should be kept in its present form in any revised Convention. The International Committee consider this Section as comprising also the protection of
PoW against acts of violence to which they might be subjected by other
PoW. Most of the States have construed this stipulation in this sense
and have taken the necessary steps, which in many cases however have
proved to be inadequate.

The question may therefore arise whether an explicit stipula-
tion should be introduced, compelling the Detaining Power to protect
PoW against acts of violence on the part of fellow-prisoners.

Section 3:

"Measures of reprisal against them are forbidden".

The introduction of this principle in the Convention gave
rise to an interesting debate in 1929. Finally the principle was agreed
to, the Conference supporting the idea that it was impossible to admit
that innocent and defenceless men should be held responsible for acts
committed by their Governments.

Certain delegations, however, stressed the fact that in the
case of illegal acts committed by the enemy State in connection with
the treatment of PoW, reprisals, or the threat of reprisals, were one
of the only means of restoring a normal state of affairs. The British
Delegation even suggested a kind of formal summons to the adverse party,
accompanied by an intervention by the Protecting Power.

These suggestions were not entertained and we must therefore
admit that this Section covers all measures of reprisal, whatever the
motive given for their application. The position should however be
clearly stated and Sec. 3 should read as follows:

"Measures of reprisal against them are forbidden, whatever
motives may be put forward by the Detaining Power for their application."

During the recent War, this rule was infringed by certain
belligerents on several occasions. The measures of reprisal brought to
the notice of the International Committee may be ranged in two classes:
(a) Those based on facts which had no relation whatever to the treatment
of PoW;
(b) Those taken by a Detaining Power on account of similar treatment inflicted on their PoW by the enemy State, with a view to putting an end to such unfavourable treatment.

These two classes of reprisals are forbidden by the Convention, and the International Committee have always made every effort to induce States to return to the treatment prescribed by the Convention. The experience of the last War has once more shown that reprisals, instead of attaining the required result, had most unfortunate consequences for the PoW whose position they were intended to improve.

While recommending that the Section should be maintained, the International Committee ask if, in certain circumstances provided under (b), it would not be preferable to adopt a special procedure rather than to allow further disregard of the Convention, especially when a State systematically and permanently infringes a particular provision of the Convention. For instance, if a State absolutely forbids the PoW it holds to write to their next-of-kin, it would be very difficult for the home country of these men not to act similarly, after a proper interval, as regards enemy PoW in their hands.

The special procedure which could be adopted once the facts have been ascertained by the Protecting Power, would be to issue a formal summons for the maintenance of the treatment provided by the Convention. Obviously, this procedure would only apply in cases of lesser importance, not affecting the men's lives, physical capacity or honour.

Another means of solving this problem, and which the International Committee would much prefer, would be to intensify the control of the application of the Convention, and to provide adequate sanctions to this effect. This point will be raised in connection with Art. 86 and following.

Art. 2, Sec. 3 of the Convention does not aim at the suppression by reciprocity of the advantages granted to PoW by the Detaining Power, either by applying optional clauses of the Convention, or entirely outside the latter. The International Committee, who have always supported the humanitarian view that the most favourable treatment possible should be granted to PoW, independent of any question of reciprocity, are desirous that such suppression should also be prohibited.
ARTICLE 3

Section 1, first sentence:

"Prisoners of war are entitled to respect for their persons and honour".

There is apparently no reason for changing this stipulation, which is of a very general character.

Propaganda among PoW played a fairly important part during the recent War. As there is no stipulation in the Convention on this matter, it should be mentioned here. The problem is threefold:

(1) Propaganda by the Detaining Power;
(2) Propaganda by the Home Country;
(3) Propaganda by the PoW themselves.

As regards (1), it must be decided whether propaganda undertaken by the Detaining Power and which may affect the morale of PoW should be expressly forbidden, or not. The prohibition of propaganda should however not prevent PoW reading the newspapers of the Detaining Power, which are often their only source of information.

During the second World War, the Detaining Powers sometimes prevented PoW from giving vent to their patriotic feelings. On such occasions incidents accompanied by bloodshed could not always be avoided. Should this matter be expressly regulated by the Convention, or should it be entirely left to the judgment of the Detaining Power? Should the Detaining Power be allowed to prevent all expressions of patriotism, or should a certain latitude in this matter be left to the PoW themselves?

As for the propaganda undertaken by the Home Country, it seems obvious that the Detaining Power has the right to prevent it. There is no need to regulate the matter expressly in the Convention.

As regards propaganda undertaken by PoW themselves, experiences in the recent War show that political passion, far from abating,

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1) This word appears to be a mistranslation of the French "personnalité" which has an essentially moral sense. - Translator.
increases rather in PoW camps. Differences of opinion arose for example among German PoW and led to acts of violence. (See also remarks on Art. 2, Sec. 2).

Section 1, second sentence:

"Women shall be treated with all consideration due to their sex".

This provision is based on the general principle embodied in Art. 4, Sec. 2: differences of treatment between prisoners are permissible only if they are based on military rank, physical or mental health, professional capacity, or the sex of those who benefit by them. It seems therefore that the recommendation contained in Art. 4 refers to the categorical stipulation of Art. 3, Sec. 1 above. A difference of treatment for women PoW is not only desirable, but made obligatory by the Convention. During the recent War, the number of women enrolled in the army increased considerably, and many women have been held as PoW. The stipulations referred to proved insufficient, and it would be useful to complete them in any revised text. It should be provided especially that women PoW must be separated from men, and that hygienic conditions for them should be satisfactory. Maternity cases should be repatriated with their babies. Expectant mothers should have special treatment; should their condition allow, they should be repatriated.

Section 2:

"Prisoners retain their civil capacity".

The present wording of this stipulation is misleading. What is meant, is the civil capacity of PoW in their home country; in the Detaining State, their position as enemy aliens and PoW makes it impossible for them to exercise most of their civil rights. Thus, PoW have not, as a rule, been authorised to marry inhabitants of the detaining States.

The exercise of civil rights of PoW in their home countries is facilitated by Art. 41, which provides for the transmission of
official documents or papers intended for PoW or established by them, PoW should be allowed, as far as is possible in a state of captivity, to continue to settle their official business.

The value of legal documents signed by a PoW and which must be operative in his home country, depends solely on the legislation of that country. This is particularly the case as regards marriages by proxy, which allow PoW in captivity to marry women residing in their own country.

As regards wills and death certificates, however, the Convention expressly stipulates in Art. 76 that they "shall be received and drawn up under the same conditions as for soldiers (members) of the national armed forces". In the absence of special legislation, the general rules of private international law of the home country are applicable.

There seems therefore no necessity to have a ruling on this matter in the Convention, since it devolves on each State to take the proper steps to enable PoW to exercise their civil rights in their home country.

In view of these remarks, it appears advisable to redraft the stipulation guaranteeing the civil capacity of PoW. The following wording might be considered:

"Prisoners of War retain their civil capacity. The Detaining Power shall grant all facilities to enable them to exercise their civil rights in their home countries."

ARTICLE 4

Section 1:

"The Detaining Power is required to provide for the maintenance of Prisoners of War in its charge."

The obligation to provide for the maintenance of PoW is embodied in Art. 10, 11 and 12 (Installation of camps; food and clothing of PoW); Art. 23 (Pecuniary resources of PoW; Army pay), Art. 34 (Pay or wages). All these articles will be examined in due course. It does not
It is quite certain that this provision obliges the Detaining Power to maintain PoW free of charge, but it might be as well to say so expressis verbis, and to insert the words "free of charge" after the word "maintain".

Section 2:

"Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them."

The main idea of this stipulation is equality of all PoW before the law of captivity, subject to the exceptions made for military, medical or professional reasons which are expressly mentioned in this Sec. 2.

The Section refers to the case of specially favoured PoW, i.e., who enjoy better treatment than that stipulated in the Convention. This is clearly indicated by the expression "who benefit from them". This ruling is further clarified in other Articles of the Convention, of which some are imperative and others mere recommendations. The first comprise the rules on treatment of women (Art. 3, Sec. 1, second sentence), on treatment of officers and persons of equivalent status (Art. 22, 23, 27, Sec. 1 and Art. 49), as also the stipulation that no prisoner of war may be employed on work for which he is physically unfit (Art. 29). As regards more favourable treatment based on the mental state or the professional abilities of PoW, Art. 4 of the Convention merely constitutes a recommendation.

This stipulation was not very often applied, chiefly because it is embodied in subsequent Articles of a more practical scope. Moreover, the principle laid down in Art. 4, Sec. 2 is not clearly expressed.

It is obvious that exceptions to the Convention which are favourable to PoW cannot, in principle, constitute violations.
benefits are of course always permissible. Furthermore, certain differences in treatment, due to circumstances, cannot be avoided (they may, for instance, arise from the geographical situation of PoW camps). Differential treatment is usually imputable to the Detaining Power, but it may also happen that relief supplies sent to individual PoW or to certain categories of PoW lead to inequality of treatment. The International Committee has always endeavoured to ensure the equitable distribution of relief consignments to all PoW.

However, there are two cases of differential treatment which should on no account be deleted: the first, when two enemy States agree, in virtue of Art. 83, to grant treatment more favourable than that stipulated by the Convention to PoW of their respective countries. Secondly, it appears impossible to prevent the Detaining Power from applying special measures of security to PoW who have attempted to escape. These measures usually lead to stricter discipline, and thus to less favourable treatment than that of the other PoW. What the Convention tried to prevent was that specially favourable treatment should be granted without sufficient grounds to certain groups of PoW, e.g. because of their nationality, race, etc. However, in laying down this principle, the authors of the Convention contradicted the general rule, that additional benefits by one of the Contracting Parties are always permissible. Consequently, it must be decided whether this contradictory stipulation should be dropped in the future. This could apparently be done without harm to the PoW, since the Convention guarantees to all PoW a minimum treatment which must be maintained in all circumstances. If, however, it is desired to retain this clause, we may ask whether differential treatment based on the age of PoW should not be likewise permitted.
PART II - CAPTURE

ARTICLE 5

Section 1:

"Every prisoner is required to declare, if he is interrogated on the subject, his true names and rank, or his regimental number."

According to this stipulation, a PoW is not required to state his age, which would enable the adversary to estimate how far the enemy has exhausted his reserves. Nor is a PoW required to say to what unit or regiment he belongs. Art. 77, Sec. 5 of the Convention takes this into account in stipulating that such information shall be noted on the prisoner's record, as far as possible, and subject to the provisions of Art. 5.

The International Committee, who have extensive experience of the difficulties encountered in identifying PoW, are doubtful whether it is advisable to retain a stipulation which permits PoW to refuse to declare even their names. If the lists of PoW forwarded to the Central PoW Agency contained merely the name and rank, or the regimental number of prisoners, it would be practically impossible to supply any reliable information. In practice however, PoW did not, in their own interest, profit by the above stipulation.

It appears, therefore, that the exact date of birth might be added to the data which PoW must furnish, and a clause might be included saying that the name and the regimental number must be given.

Section 2:

"If he infringes this rule, he exposes himself to a restriction of the privileges accorded to prisoners of his category."

This means that PoW disregarding this rule would lose the privileges accorded by the Convention to officers and NCOs, but this fact is not clearly expressed. The word "category" should, therefore, be replaced by "rank".
Section 5:

"No pressure shall be exerted on prisoners to obtain information regarding the situation in their armed forces or their country. Prisoners who refuse to reply may not be threatened, insulted, or exposed to unpleasantness or disadvantages of any kind whatsoever."

This provision, though clearly and explicitly worded, was not always observed by certain belligerents. Before being transferred to ordinary PoW camps, certain classes of men were placed in separate camps, called screening camps. Here PoW were subjected to extremely arduous conditions, in order to extort information from them. The International Committee's delegates were entirely unable to supervise these camps, and were often unaware of their existence. It also happened that a belligerent State tried to obtain information by deceptive practices, such as laying before PoW forms with the heading "International Committee of the Red Cross". It is obvious that these manoeuvres constitute an open violation of the Convention. In spite of the clear wording of the present Article, it may be asked whether these screening camps should not be explicitly forbidden in a revised Convention. At the same time, the obligation of the Detaining Power should be embodied, to notify the Protecting Power and the International Committee of all places where PoW are detained, thus allowing the representatives of these agencies to verify everywhere how PoW are treated, according to Art. 86 of the Convention.

Section 4:

"If by reason of his physical or mental condition, a prisoner is incapable of stating his identity he shall be handed over to the Medical Service."

This stipulation does not appear to have given rise to difficulties.
ARTICLE 6

Section 1:

"All personal effects and articles in personal use - except arms, horses, military equipment and military papers - shall remain in the possession of prisoners of war, as well as their metal helmets and gas-masks".

Art. 6 confirms a principle of international law, generally recognized in former times, which lays down that a belligerent's right of booty applies only to the property of the enemy State, and that the private property of a person of enemy nationality must be respected. Art. 6 also specifies in Sec. 1 that effects and articles of personal use shall remain in the possession of PoW, whereas arms, horses, military equipment and military papers, which are usually State property, may be confiscated.

This provision was frequently violated by certain belligerents during the recent war. The instant of capture is a critical moment during which it is generally impossible for a neutral organization or senior officers to exercise supervision, on certain occasions.

Art. 6, Sec. 1 gave rise to no difficulties of interpretation, except as regards the expression "military equipment". It was sometimes difficult to determine whether an article was, or was not part of the military equipment of a combatant. Disputes arose concerning watches issued by the Wehrmacht to members of the German army. However, it would doubtless be difficult to replace this expression, which is sufficiently explicit in most cases.

The International Committee are of opinion that the Detaining Powers were wrong in frequently impounding PoW's pay-books. The latter are identity papers in the sense mentioned in Sec. 3. This measure placed PoW in an awkward situation, more particularly when their pay-book was their sole identity paper. Deprived of this, they were no longer in a position to furnish evidence of their rank. It thus happened that NCOs in this situation were treated as privates and compelled to work. It would be certainly preferable to replace the term "military papers" by "military documents".
A matter which has not been clarified by the Convention is that of personal property left behind by escaped PoW. It would perhaps be useful to elucidate this in a future agreement.

The Detaining Power should be authorised to impound articles and money acquired by pillage. It does not, however, appear useful to insert such a stipulation in the PoW Convention, as it concerns an indisputable right of the Detaining Power; moreover, the Convention is primarily concerned with the protection of PoW.

Section 2:

"Sums of money carried by prisoners may only be taken from them on the order of an officer and after the amount has been recorded. A receipt shall be given for them. Sums thus impounded shall be placed to the account of each prisoner".

This stipulation has not always been respected by certain belligerents, though the sense is perfectly clear. It frequently happened that sums of money were impounded without a receipt being given. It appears advisable, however, to leave this Section as it stands. It might be completed by the adjunction "according to the procedure indicated in Art. 21".

Section 3:

"Their identity tokens, badges of rank, decorations and articles of value may not be taken from prisoners".

This provision was also frequently disregarded during the recent War. Impounding of identity documents is a particularly serious matter for PoW. This step was taken to prevent their escape, as if they escaped without any such documents, they ran the risk of being considered and treated as spies. The impounding of military identity documents should also be forbidden, according to Section 1.

Furthermore, after experiences gained during the War, military nationality badges should be added to badges of rank. The revised Section might therefore be worded as follows:
Art. 6

"Identity documents, whether military or not, badges of rank and of nationality, decorations and articles of value may not be taken from prisoners".

Lastly, as this Section constitutes a complement to Sec. 1, it should be placed immediately after, as Section No. 2.