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Documents on Prisoners of War

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**DOCUMENTS ON
PRISONERS OF WAR**

NAVAL WAR COLLEGE
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PRISONERS OF WAR

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PREFACE

While working on the manuscript of a volume dealing with the law relative to the treatment of prisoners of war (PRISONERS OF WAR IN INTERNATIONAL ARMED CONFLICT, Naval War College Press, 1979), I discovered that although the great majority of the treatises and articles on various aspects of the subject were readily available on the shelves of most university and law school libraries, the same could not be said with respect to many of the official documents (treaties, agreements, statutes, decrees, judicial decisions, military orders, regulations, etc.). In some instances I encountered great difficulty, or was even unsuccessful, in identifying an available published source for documents of which I had, over the years, accumulated copies of the originals in my own files. For others, I located a place of publication, but in some esoteric volume which would be found on only a very few library shelves.

This situation led me to consider the possibility of bringing the relevant documents together so as to make them readily available in today's libraries. The present collection is intended to accomplish that purpose. Documents which do not fall within the category of "hard to find" have been included so that this volume might be an entity complete in itself. The subject dealt with has, of course, evolved over the course of centuries and is still very much in a state of evolution. Accordingly, in order to understand the historical implications of a particular document it is often absolutely essential to read it in the context of the era in which it originally appeared. For this reason the methodology employed is one of strict chronology. (When a document included herein covers events occurring over a period of time, the beginning date has been used for the purposes of the chronology. For lengthy trials the date of the rendering of the judgment by the court is used.)

Each document included herein has a three-part introduction: (1) the TITLE; (2) the SOURCE or SOURCES; and (3) a NOTE. Not infrequently, there is really no "official" title for an official document. When this is so, I have attempted to select the title which appears to be the one most frequently used; or, if that was not possible, the most descriptive. The TITLE also includes other identifying matter, as appropriate, such as the place where signed, the date, the parties, the name of the court, the issuing authority, etc.

The documents contained herein are from the official records. Where the official document has not been found in another published form, the SOURCE given is the office or institution in which an original version is held in the archives; where the document has been found in only one or two published forms, they are given in the SOURCES, even though they may have been published in a language other than English; and, where the document has appeared in numerous published forms, I have selected a limited number of those most widely available in order to make recourse to an entire original as simple as possible. Thus, where a particular document has been widely published, such as, for example, the 1949 Geneva Prisoner-of-War Convention, I have limited the citations under SOURCES to a maximum of six works and I have selected those which I believe to be the most generally

available. These SOURCES are: (1) LNTS or UNTS, as appropriate; (2) Stat. or UST, as appropriate; (3) Bevans; (4) BFSP; (5) AJIL [Supp.]; and (6) Parry. Where one or more of the foregoing is unavailable (Parry's tremendous project has, for example, just entered the fourth quarter of the nineteenth century), some substitutions have been made, but only where deemed necessary.

Because some of the documents are so extremely difficult to find in their official form, and because only the portions of such documents relating to prisoners of war have been reproduced herein, unofficial, but reliable and more readily available, publications have sometimes been cited as secondary sources. However, it must be borne in mind that frequently these secondary sources are themselves only extracts of lengthy official documents and it may even be that they do not include all of the portions of the original document which are reproduced in this volume. Thus while these volumes are excellent, and often almost unique sources of material for the researcher, it was felt that the abstracts contained therein were often too abbreviated for the purposes of this collection of documents.

It has been assumed that the Resolutions of the Security Council and of the General Assembly need no official citation, that given the resolution number, the session and the date, anyone having access to any type of United Nations document collection will have no need of further information., However, because there are undoubtedly many to whom even a limited collection of United Nations documents may not be available, an unofficial source (Djonovich, UNITED NATIONS RESOLUTIONS) is given. Unfortunately, at this writing that set of volumes only covers the period 1945-1971. (A number of resolutions adopted by the quinquennial meetings of the International Conference of the Red Cross have been included herein, not because they have any official significance, but because so often the actions of this Conference are harbingers of provisions subsequently to be found embodied in international humanitarian conventions — or of the conventions themselves.)

Finally, all of the documents included herein are presented in English no matter what the original language used may have been; and, with rare exceptions, the versions cited in the SOURCES are also in English. When the only available version was in French, a situation which occurred in only a handful of instances, the editor has presumed to act as translator as well. It might be well to point out also that footnotes appearing in the originals have been omitted. There are no editorial footnotes.

The NOTE has sometimes been used to give not only the historical background of the document, but also to tie it to other related documents; and, occasionally, the prerogative of editorial comment has been exercised. Finally, when the original document is presented *in toto* in this collection, it is labeled TEXT; when less than the entire document is presented, it is labeled EXTRACT or EXTRACTS, as appropriate.

If the student of the subject of the law governing the treatment of prisoners of war follows these documents through the centuries of recorded history which they represent, there can be little doubt that he will observe that there has been, on the whole, a fairly steady improvement in the legal status of these unfortunates. By unilateral, bilateral, and multilateral acts, nations have accepted voluntarily-imposed self-restraints in this area and have made commitments for affirmative action which unquestionably exceed self-restraints accepted and affirmative commitments made in any other area of international law, including other areas of the law of war. This is not to say that all nations have at all times complied with the self-restraints so accepted and the voluntary commitments so made. A number of documents included herein demonstrate gross disregard of legal obligations voluntarily assumed. But, hopefully, these are only temporary aberrations and are not indicative of a trend. If anything, it will be contended by some that the trend of the ongoing lawmaking in this area is moving in the direction of "too far, too fast," a process which could, in the long run, result in converting what have been the aberrations of a few individual law-defying nations into the customs and usages of many nations. At this point in history the great need is not so much for the development of new and additional rules protecting prisoners of war as it is for the development of methods of ensuring and securing compliance with already existing rules. It is the sincere hope of the editor that this volume may, in some small part, contribute to that goal by its almost graphic display of the promises that nations have made and how, at times, these promises have been totally disregarded with little or no reaction on the part of the rest of the members of the world community of nations.

It will be noted that a number of the documents included herein are concerned with the subject of war crimes. It has been deemed appropriate to include those documents in this volume for two reasons: (1) because prisoners of war have been and, unfortunately, will probably continue to be the victims of so many conventional war crimes; and (2) because so often the individual charged with having committed a conventional war crime will claim to be entitled to the status of prisoner of war and to the judicial safeguards which accompany that status. (It is for this latter reason that a number of countries were, and continue to be, concerned lest reservations to Article 85 of the 1949 Geneva Prisoner-of-War Convention, such as those made by the members of the Communist bloc, were intended to permit a Detaining Power to deny an individual the protection of prisoner-of-war status by merely labeling him a "war criminal." While the Soviet Union has impliedly denied any such intention, this was clearly the policy followed by the Chinese Communists in Korea and by the North Vietnamese in Vietnam.)

Maltreatment of prisoners of war was among the charges preferred in more than fifty percent of the war crimes trials conducted after World War II. Unfortunately, there are available, in a true sense, only a very limited number of reports of those trials. The multi-volumed trial record, opinion, and judgment of the International Military Tribunal (the Nuremberg court) has been widely printed and is easily found. The comparable record of the

International Military Tribunal for the Far East (the Tokyo court) has never been printed but it can be found on microfilm and the majority opinion and the judgment have been distributed in mimeographed form. The trial records, opinions, and judgments of the "Subsequent Proceedings," the trials conducted before United States Military Tribunals in Nuremberg pursuant to Control Council Law No. 10, have been printed and copies are not difficult to locate. But at this point we have just about completed listing the trials as to which full coverage is available. There is, of course, the 15-volume set of LAW REPORTS OF TRIALS OF WAR CRIMINALS, the invaluable work published by the United Nations War Crimes Commission between 1947 and 1949. These volumes contain substantial reports of 89 war crimes trials conducted by a number of countries after World War II of which 49, or approximately 55%, include prisoners of war among the victims of the criminal actions charged against the accused. However, these are not really case "reports" as that word is normally understood, but are summarizations of the trial records by the staff of the Commission. As they are the sole available source of specific data with respect to many of the war crimes trials conducted after World War II, those involving important legal questions relating to prisoners of war have been included herein. Except in the very rare instance where it was absolutely essential to an understanding of the case, the so-called "Notes on the Case" have been omitted as being merely a personal legal analysis by a lawyer on the staff of the Commission and as having no binding legal significance. (In all of the war crimes trial reports reproduced herein, any discussion of the question of the jurisdiction of the particular tribunal to hear the case before it has been omitted where the jurisdictional problem involved an issue under domestic law only.)

One final comment: it is not anticipated that any individual making use of this collection of documents will agree entirely with the decisions made by the editor as to which documents should be included and which should be omitted. However, it is believed that every document in this area which we would all agree is of prime importance is included herein; and that we would all agree that a substantial number of other documents warranted inclusion. No editor can hope for more than that.

The selection of documents to be included herein and the contents of the Notes are, of course, the personal responsibility of the editor and should not be construed as representing decisions or opinions of the United States Government or of the Department of the Navy.

Howard S. Levie

Newport, September 1979

ABBREVIATIONS

A.C.	Law Reports (Appeal Cases) [United Kingdom]
AJIL [Supp.]	American Journal of International Law [Supplement]
All E.R.	All England Law Reports
Ann. Dig.	Annual Digest and Reports of Public International Law Cases (renamed International Law Reports since 1950: see ILR)
Bevans	Treaties and Other International Agreements of the United States of America, 1776-1949
BFSP	British and Foreign State Papers
Can. C.C.	Canadian Criminal Cases
CMR	Court-Martial Reports [United States]
DeClercq	Recueil des traités de la France
Djonovich	United Nations Resolutions
D.L.R.	Dominion Law Reports [Canada]
Fed. Reg.	Federal Register [United States]
F. 2d	Federal Reporter, Second Series [United States]
F. Supp.	Federal Supplement [United States]
Final Record	Final Record of the Diplomatic Conference of Geneva of 1949
For. Rel.	Foreign Relations of the United States
Friedman	The Law Of War: a Documentary History (1972)
German Regulations	Regulations Pertaining to Prisoners of War: Translation of a Collection of Orders Issued by the Supreme Command of the Wehrmacht from 16 June 1941 to 15 January 1945 (prepared in the Office of the Provost Marshal General of the United States Army) (mimeo., 1945)
ICRC	International Committee of the Red Cross
ILM	International Legal Materials
ILR	International Law Reports (formerly known as Annual Digest and Reports of Public International Law Cases)
IMT	Trial of the Major War Criminals before the International Military Tribunal (1947)
IMTFE	Judgment of the International Military Tribunal for the Far East (mimeo., 1948; microfilm)
IRRC	International Review of the Red Cross
Israel	Major Peace Treaties of Modern History, 1648-1967 (1967)
JAGW	Opinions of The Judge Advocate General of the United States Army (typed)
LNTS	League of Nations Treaty Series

LRTWC Malloy	Law Reports of Trials of War Criminals Treaties, conventions, international acts, protocols, and agreements between the United States of America and other Powers, 1776-1937
M. L. J. M. L. Rev. [1965] Measures to Repress	Malayan Law Journal Malayan Law Review Respect of the Geneva Conventions: Measures taken to Repress Violations. Report sub- mitted by the International Committee of the Red Cross to the XXth International Con- ference of the Red Cross, Vienna, 1965. Conf. D. 4 a/1
Miller	Treaties and Other International Acts of the United States of America
NWC	United States Naval War College, International Law Documents
Parry Pictet, Commentary	Consolidated Treaty Series Commentary on the Geneva Convention Rela- tive to the Treatment of Prisoners of War
RGDIP RICR S.A.L.R. Santa Clara Law. Schindler & Toman	Revue général de droit international public Revue internationale de la Croix-Rouge South African Law Reports Santa Clara Lawyer The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents (1973)
Stat. TIAS	United States Statutes at Large Treaties and Other International Act Series [United States]
TWC	Trials of War Criminals before the Nuernberg Military Tribunals
U.S.	Reports of the Supreme Court of the United States
U.S.C. USCMA	United States Code Reports of the United States Court of Military Appeals
UNTS UST	United Nations Treaty Series United States Treaties and other International Agreements (1950-)
WM. & Mary L. Rev. W. W. R.	William and Mary Law Review Western Weekly Reports [Canada]

