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Documents on Prisoners of War

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DOCUMENT NO. 7

**TREATY OF AMITY AND COMMERCE BETWEEN THE KING OF
PRUSSIA AND THE UNITED STATES OF AMERICA
(Berlin, 10 September 1785)**

SOURCES

8 Stat. 84

8 Bevans 78

49 Parry 331

2 Malloy 1477

NOTE

This treaty, one of the earliest to which the United States was a Party, was negotiated by Benjamin Franklin, Thomas Jefferson, and John Adams. (Its ratification by the United States was delayed “for want of a proper number of States in Congress.”) It was most unusual for the era in which it was negotiated in that, although a treaty of amity and commerce, entered into when the Parties were friends and at peace with each other, it contained a lengthy and completely novel article which, in effect, constituted an agreement for the protection of prisoners of war should the two countries, Prussia and the United States, find themselves at war with each other during the effective period of the treaty. (For a 20th-century German comment on the provision given below, see DOCUMENT NO. 31.) Identical provisions were contained in Article XXIV of the Treaty of Berlin of 11 July 1799 between the same Parties (8 Stat. 162; 8 Bevans 88; 15BFSP 894; 55 Parry 15). Although this latter treaty expired on 22 June 1810, the Treaty of Washington of 1 May 1828 (8 Stat. 378; 8 Bevans 98; 15 BFSP 874; 78 Parry 279) revived, among others, Article XXIV thereof, “with the same force and virtue, as if they made part of the context of the present treaty”; and the 1828 Treaty remained in force between the United States and Germany, the successor State of Prussia, until it lapsed pursuant to the provisions of Article 289 of the 1919 Treaty of Versailles (sources at DOCUMENT NO. 44) as carried into effect for the United States by Article 2 of the 1921 Treaty of Berlin (42 Stat. 1939; 8 Bevans 145; 114 BFSP 828; 16 AJIL Supp. 10). Accordingly, during World War I General Pershing properly considered that the provisions set forth below were applicable to German prisoners of war captured by the United States armed forces (see DOCUMENT NO. 39).

EXTRACTS

ARTICLE XXIV

And to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge themselves to each other, and to the world, that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East-Indies,

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or any other parts of Asia or Africa, but that they shall be placed in some part of their dominions in Europe or America, in wholesome situations; that they shall not be confined in dungeons, prison-ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomly and good as are provided by the party in whose power they are for their own troops; that the officers shall also be daily furnished by the party in whose power they are, with as many rations, and of the same articles and quality as they are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such ration as they allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustments of accounts for the subsistence of prisoners of at the close of the war; and the said accounts shall not be mingled with, of set off against any others, nor the balances due on them, be withheld as a satisfaction or reprisal for any other cause, real or pretended, whatever; that each party shall be allowed to keep a commissary of prisoners of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him; but if any officer shall break his parole, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual officer or other prisoner, shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceeding article; but, on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature or nations.

ARTICLE XXVII.

His Majesty the King of Prussia, and the United States of America, agree, that this treaty shall be in force during the term of ten years from the exchange of ratifications; and if the expiration of that term should happen during the course of a war between them, then the articles before provided for the regulation of their conduct during such a war, shall continue in force until the conclusion of the treaty which shall re-establish peace; and that this treaty shall be ratified on both sides, and the ratifications exchanged within one year from the day of its signature.