

International Law Studies—Volume 60

Documents on Prisoners of War

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DOCUMENT NO. 36

1907 HAGUE CONVENTION XI RELATIVE TO CERTAIN RESTRICTIONS WITH REGARD TO THE EXERCISE OF THE RIGHT OF CAPTURE IN NAVAL WAR
(18 October 1907)

SOURCES

36 Stat. 2396
1 Bevans 711
100 BFSP 422
2 AJIL Supp. 167

NOTE

Even though it does not specifically so provide, and probably was not so intended, this convention actually had the effect of codifying a rule of customary international law under which members of the civilian crews of captured enemy merchant vessels, if enemy nationals, were detained by their captors but were denied prisoner-of-war status and protections. It was only as a result of the provisions of Article 4A(5) of the 1949 Geneva Prisoner-of-War Convention (DOCUMENT NO. 108) that the right of these individuals to prisoner-of-war status, as a minimum, was established.

EXTRACTS

ARTICLE 5.

When an enemy merchant-ship is captured by a belligerent, such of its crew as are nationals of a neutral State are not made prisoners of war.

The same rule in the case of the captain and officers likewise nationals of a neutral State, if they promise formally in writing not to serve on an enemy ship while the war lasts.

ARTICLE 6.

The captain, officers, and members of the crew, when nationals of the enemy State, are not made prisoners of war, on condition that they make a formal promise in writing, not to undertake, while hostilities last, any service connected with the operations of the war.

ARTICLE 7.

The names of the persons retaining their liberty under the conditions laid down in Article 5, paragraph 2, and in Article 6, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said person.

ARTICLE 8.

The provisions of the three preceding Articles do not apply to ships taking part in the hostilities.

DOCUMENT NO. 37

**AGREEMENT BETWEEN GREAT BRITAIN AND GERMANY
CONCERNING COMBATANT AND CIVILIAN PRISONERS OF WAR
(The Hague, 2 July 1917)**

SOURCES

111 BFSP 257

Parl. Papers, "Misc., No. 12 (1917)"

NOTE

During World War I (1914-1918) the provisions of the 1907 Hague IV Regulations (DOCUMENT NO. 33) with respect to prisoners of war repeatedly proved inadequate to answer the many problems which arose in that area. Accordingly, the various Parties to that conflict found it necessary and appropriate to enter into a great number of bilateral and multilateral agreements containing *ad hoc* solutions to those problems. (This was a phenomenon which was not repeated during World War II (1939-1945) despite the many obvious inadequacies of the 1929 Geneva Prisoner-of-War Convention (DOCUMENT NO. 49).) The present agreement is one of them. Two other representative agreements, containing typical solutions to the great majority of the prisoner-of-war problems which arose during World War I are included herein. One of them (DOCUMENT NO. 40) supplements the present agreement and the other is between Germany and the United States (DOCUMENT NO. 42). Other representative agreements, to be found in French only, were entered into by Germany, Austria-Hungary, Rumania, Russia, and Turkey at Copenhagen in November 1917 (Archives of the Ministry of Foreign Affairs, Copenhagen, Denmark) and by France and Germany in April 1918 (111 BFSP 713). The rather anomalous term "civilian prisoners of war" was used in a number of these agreements, including the present one, because of the necessity to provide a *modus operandi* for dealing with civilian internees who, at the time, were not the subjects of any humanitarian convention. This problem is now dealt with in the 1949 Civilians (Fourth) Convention (75 UNTS 287; 6 UST 3516; 157 BFSP 355; 50 AJIL Supp. 724).

EXTRACTS

The British and German Governments, with respect to combatant and civilian prisoners of war, have agreed as follows: —

I. — *Resumption of Repatriation under the existing Agreements.*

Paragraph 1. — Repatriation of combatant and civilian prisoners of war under the existing Agreements shall be resumed as soon as practicable, and to that end the Netherlands Government has been requested by both parties to arrange for and carry through such repatriation in a manner agreeable to the British and German Governments.

II. — *Repatriation or Internment in Neutral Countries of Sick and Wounded Combatant Prisoners of War.*

Paragraph 2. *Repatriation of Tuberculous Prisoners.* — All tuberculous prisoners interned in Switzerland who are practically cured shall be repatriated after examination, as prescribed by paragraph 8.

Paragraph 3. *New Schedules of Disabilities.* — New and more lenient schedules of disabilities shall be drawn up for guidance in choosing combatant prisoners of war —

(a.) For repatriation direct or from a neutral country.

(b.) For internment in a neutral country.

Pending the settlement of these new schedules, the schedules lately agreed upon between the French, German, and Swiss military authorities shall be operative for the purpose aforesaid.

Paragraph 4. *Barbed-wire Disease.* — Prisoners of war who have been at least eighteen months in captivity, and who are suffering from “barbed-wire disease,” shall for the future be recognised as suitable for internment in Switzerland or other neutral country. If after being interned there for three months a considerable improvement in health is not observable, the disease will be treated as serious and the prisoner entitled to be considered for repatriation, as provided in paragraph 8 hereof.

Paragraph 5. *“Complementary Internment” according to the New Schedules of Disabilities.* — (A.) With consent of the Swiss Government, there shall be effectuated, in August and September of this year, a complementary internment in Switzerland of prisoners who were in captivity prior to the 1st November, 1916.

The examination for this purpose shall be conducted by two Commissions, each composed of three Swiss doctors and three doctors of the captor State. In case the Commission is equally divided in opinion, the Senior Swiss medical officer shall have the casting vote. The Commissions shall meet on the 1st August of this year, and shall base their decisions in each case presented to them upon the new schedules of disabilities above referred to.

The classes of prisoners whose cases are to be decided upon by these Commissions are: —

(a.) Prisoners of war, who have already been selected as fit for internment in a neutral country by the travelling medical Commission, but whose cases have been adjourned for future considerations.

(b.) Prisoners of whom it has become known that they have been ill for some time, but have, for unknown reasons, not been recognised as being fit for internment.

(c.) Prisoners who, by mistake or inadvertence, have not had their cases brought before the travelling Commission, or who have been unable to appear before it.

(B.) None of these prisoners shall be finally rejected by the Commission above mentioned at the first examination. All those not selected for repatriation or internment shall be transferred to an observation camp, and

their cases shall be considered again by the Commission after an interval of four weeks. When the decision of the Commission is unfavourable to the prisoner, the reasons shall be explicitly given.

(C.) All prisoners who have been designated by the complementary examination as being fit for internment shall be transferred to Switzerland as soon as practicable.

Paragraph 6. *Repatriation of Interned Prisoners of War.* — In order to gain room for the complementary internment, the British prisoners interned by the German Government and the German prisoners interned by the British Government, who need a long time for their complete recovery, shall be repatriated from Switzerland in August and September next, according to the Agreement for the reciprocal exchange of the severely wounded and seriously ill. The decision is a matter for the Swiss doctors, and shall be binding on both sides, unless the nationals of one side designated for repatriation shall exceed by 20 per cent or more the nationals of the other. In that case, the method of examination shall be as at present (see paragraph 8).

Paragraph 7. *Further Examination according to the New Schedules.* —

(A.) As soon as possible after the examination mentioned in paragraph 5 has been concluded, Commissions, composed of two medical officers of a neutral State and three medical officers of the captor State, shall proceed to examine the prisoners who have been recommended for internment by the camp medical officers of the captor State after having made a thorough examination according to the new schedule of disabilities for internment.

(B.) The same procedure shall be adopted in subsequent examinations of invalid prisoners of war for internment in a neutral country. These examinations will take place at intervals of three or four months, as hitherto has been customary.

(C.) Prisoners of war passed for internment shall be interned as soon as practicable.

Paragraph 8. *Examination for Repatriation from a Neutral Country.* — The examination of invalids for repatriation from a neutral country shall be made in accordance with the new schedule of disabilities for repatriation, and shall in other respects continue to be conducted on the present system, namely, by a Commission composed of two medical officers of the captor State and a representative of the Legation of the same State in the country of internment.

Paragraph 9. *Direct Repatriation of Prisoners of War.* — The selection of prisoners of war for direct repatriation shall be made in accordance with the new schedule of disabilities for repatriation, but in other respects the procedure shall remain as heretofore.

Paragraph 10. *Non-employment of Repatriated Prisoners of War.* — Prisoners repatriated in pursuance of this chapter shall not be employed on any front of military operations or on lines of communication or within occupied territory.

III. — *Internment in a Neutral Country of Officers and Non-commissioned Officers who have been in Captivity for not less than 18 months.*

Paragraph 11. — All officers and non-commissioned officers, irrespective of rank or number, and whether under punishment or not, so soon as they have been in captivity at least eighteen months, shall, so far as they do not express the desire to remain, be interned in Switzerland or other neutral country, subject always to the possibility of accommodation being found for them, which both Governments will use their best efforts to secure. The order of transfer to the neutral country shall be that of priority of capture irrespective of nationality. As far as German officers and non-commissioned officers are concerned, the agreement contained in this paragraph applies to those only who are now or may hereafter be in Great Britain and France.

IV. — *Internment of Invalid Civilians in the Netherlands.*

Paragraph 12. — 1,600 of the German civilians now interned in Great Britain, and 400 of the British civilians now interned in Germany, shall be interned in the Netherlands. They shall be chosen by the medical authorities of the captor State in accordance with the new schedule of disabilities for the internment of sick and wounded combatants referred to in Chapter II of this Agreement. If on either side the civilians who are found to be qualified under that schedule do not reach the requisite number, the deficiency shall be made up by adding those who, in the opinion of the medical authorities of the captor State, are the next most in need of relief from captivity on medical grounds.

V. — *Allocation of Accommodation for Combatant and Civilian Prisoners of War to be Interned in the Netherlands.*

Paragraph 13. — Under the supposition that the Netherlands Government, as they have offered, will receive for internment in the Netherlands 16,000 German and British prisoners of war (combatant or interned civilians), this accommodation shall be allotted as follows: —

(a.) To sick and wounded combatants to be interned under Chapter II of this Agreement, 7,500 places.

(b.) To officers and non-commissioned officers to be interned under Chapter III of this Agreement, 6,500 places.

(c.) To invalid civilians to be interned under Chapter IV of this Agreement, 2,000 places.

Both Governments hereby undertake to return promptly to the Netherlands any of these persons who may escape therefrom and come within their power.

VI. — *Repatriation of Medical Personnel still retained.*

Paragraph 14. — All members of the German medical personnel who are still in British hands [in Great Britain or France], and all members of the British medical personnel who are still in German hands, shall be released and repatriated, as soon as may be, in the transport for exchanges of prisoners of war.

If further evidence that a prisoner belongs to the medical personnel is required by the captor State, this shall be given by his name being included in a list which will be compiled by the Home Government and sent to the captor State through the usual diplomatic channel. If the captor State has reasons for refusing to recognise the right to repatriation of any person mentioned in the lists the captor State shall explicitly set forth these reasons.

Paragraph 15. — The British Government will permit the German medical personnel originally belonging to the German garrison of Tsingtau, and now in the United States of America, to return to Germany by sea if they are permitted by the Government of the United States to leave that country for Germany.

VII. — *Punishments for Attempts to Escape by Combatant Prisoners of War.*

Paragraph 16. — (a.) The punishment for a simple attempt to escape on the part of a combatant prisoner of war, even if repeated, shall not exceed military confinement for a period of fourteen days.

The punishment for such an attempt to escape combined with other punishable actions consequent upon or incidental to such attempt in respect of property, whether in relation to the appropriation or possession thereof, or injury thereto, shall not exceed military confinement for a period of two months.

(b.) All combatant prisoners of war who have been in confinement in respect of attempts to escape, whether simple or combined with other offences as defined above for longer periods than above mentioned, shall at once be released.

(c.) All reprisals taken on British combatant prisoners of war in German hands for the offence of attempting to escape, whether simple or combined with other offences as defined in sub-paragraph (a), shall be at once cancelled.

Paragraph 17. — The Agreement contained in the preceding paragraph shall become operative at the latest on the 1st August, 1917.

VIII. — *Remission of Punishment Inflicted on Combatant and Civilian Prisoners of War.*

Paragraph 18. — The execution of all punishments inflicted on combatant and civilian prisoners of war on account of offences and crimes which have been committed between the date of capture and the 1st August next will be remitted until the conclusion of peace.

Paragraph 19. — Any prisoner who benefits under this Agreement will be exempt from any special restrictions other than those which are applicable to all prisoners of war and will be equally eligible with them for all benefits they may enjoy, including repatriation and internment in a neutral country.

IX. — *Reprisals against Combatant and Civilian Prisoners of War.*

Paragraph 20. — Reprisals against combatant and civilian prisoners of war may only be carried out after at least four week's notice of intention so to do has been given.

The time limit begins with the date on which the Swiss Legation in London has been notified of the intended reprisals against German prisoners in British hands or the Netherlands Legation in Berlin of those against British prisoners in German hands.

In cases which seem suitable an attempt will be made to eliminate the reasons for reprisals by arranging a personal discussion at The Hague before threatening the reprisals.

X. — *Speedy Delivery of Parcels.*

Paragraph 21. — Both military administrations will use every endeavour to secure the speedy delivery of all parcels addressed to prisoners of war, both combatant and civilian, and to avoid all unnecessary censorship.

XI. — *Notification of Capture.*

Paragraph 22. — Both military administrations will immediately repeat instructions to all concerned to the following effect: —

(a.) All captures are to be notified by the captor State to the other State with the least possible delay.

(b.) Every prisoner captured is to be allowed to communicate at once with his family and is to be provided with the means of doing so, and the dispatch of his communications is to be facilitated.

(c.) As soon as practicable after capture every prisoner is to be enabled to inform his family of an address at which his family can communicate with him.

Annex 3.

The Hague, July 2, 1917.

Youthful Prisoners. — General Friedrich declares that subject to reciprocity, those British subjects who are youthful and who are captives in German hands, shall be separated from the rest of the prisoners of war and put in a separate block in one camp by themselves. They shall be kept away from all unfavourable influences to which they might be subjected by being brought in contact with adult prisoners of war. Their further education and instruction shall also be provided for.

Annex 4.

The Hague, July 2, 1917.

More Speedy Trial of Combatant Prisoners of War. — The British delegates having intimated that information has reached His Majesty's Government from time to time that the trial of prisoners of war in German camps has frequently only taken place after long delay and that the prisoners in the meantime been kept in custody, General Freidrich informed the delegates that such occurrences were not in any way in order, and he stated that so soon as he returned to Berlin he would expressly instruct the different commands to take such steps as would prevent the occurrence of similar delays in the future.

Annex 5.

The Hague, June 28, 1917.

Punishments of Prisoners of War, Remission of Punishments. — (1.) The British delegates desire to represent to the German delegates the desirability of an Agreement being concluded between them on lines approximately as closely as possible to that arranged between the French and German Governments whereby all sentences inflicted for offences committed prior to the 1st September, 1916, were remitted until the conclusion of hostilities. An Agreement on precisely similar lines is, however, owing to the limitations of disciplinary powers allowable under the British military code, impracticable.

The British delegates therefore suggest that every combatant prisoner of war held by either State, of whatever rank, shall, on a date to be agreed upon between the British and German Governments, be released from any form of imprisonment, detention, punishment, or restrictions which may have been inflicted upon him for any crime or offence whatever committed during his internment and prior to the date agreed upon, and that the remainder of his punishment shall be remitted from that date. Any prisoner who benefits under this Agreement will be exempt from any special restrictions other than those which are applicable to all prisoners of war, and will be equally eligible with them for all benefits they may enjoy, including repatriation and internment in Switzerland.

It has been a satisfaction to the British delegates to observe the favourable reception accorded by the German delegates to this proposal at the meeting of the 26th June. The British delegates were moved to make their proposal largely by reason of the number of heavy sentences hitherto inflicted on many British prisoners in Germany far beyond any imposed for similar purposes in England, and the delegates express the hope that they are now things of the past.

(2.) The British delegates assume that all ideas which the German delegates may have had that prisoners of war, whether combatant or civilian, who attempt to escape, are subjected to additional penalties by reason of their falling into the hands of the civil power, has been removed by the explanation given on the subject at the meeting of the 26th June.

The Hague, June 30, 1917.

The German delegates have heard with interest the declaration of the British delegates of the 28th June, from which it appears desirable that an understanding should be arrived at on the subject of the remission of the punishments of British and German prisoners of war. They entirely agree with the view of the British delegates, and have willingly complied as far as possible in this direction with their proposals. By the understanding thus reached the point seems to be settled in a satisfactory manner.

A far as concerns the punishment of German prisoners of war who have endeavoured to escape, the German delegates have no hesitation, after the explanation given by the British delegates at the sitting of the 26th June, in confirming that the supposition expressed at the end of the declaration of the 28th June is correct.

Annex 6.

The Hague, July 2, 1917.

Parcels. — Various questions were raised relating to the delay which had taken place in the delivery of parcels, especially to prisoners in the labour camps throughout Germany and in the occupied districts. This delay appears to be largely attributable to excessive censorship, some parcels before reaching their destination having been censored as often as three times.

General Friedrich explained that the delays in the delivery of parcels at the camps in Germany and the strict censorship which is being exercised on parcels was due to the discovery in many cases of articles of sabotage, which had been enclosed in parcels addressed to prisoners of war in Germany.

General Friedrich further stated that the wishes of the British delegates had already been met to a certain extent, and the British delegates having stated that they saw great objection to such practices and strongly deprecated them, General Friedrich suggested that the British Government should publish in the British and especially in the neutral press a statement that the including of articles of sabotage in the parcels addressed to combatant and civilian prisoners of war is deprecated and disapproved by the Government as being contrary to the interests of the whole body of prisoners of war, General Friedrich stating that he would simultaneously publish a corresponding declaration on behalf of the German Government.

By these means it would be possible to give full satisfaction to the wishes of the British delegates.

In order to give a guarantee for a corresponding action, General Friedrich proposes that both Governments communicate to each other the text of their publications. As soon as General Friedrich approves the British text, he will communicate to the British Government the text he proposes to publish for their approval. As soon as the two Governments have arrived at an agreement on the text of both announcements, as far as possible by telegram, the declaration shall be published by both sides on the same date agreed upon by telegram.

General Friedrich then stated that he had given instructions before leaving Germany that parcels for prisoners in working camps were to be censored only at those camps, save in exceptional instances where no possibility of local censorship existed, in which cases the parcels would be censored at the parent camp before being sent on to their destination as far as possible undamaged. He added that as the result of his conversation with the British delegates this would be the practice in the future. General Friedrich also stated that these parcels were now delivered in the working camps in occupied districts as freely as in the camps in Germany, and that in these camps the same privileges of correspondence would be permitted to the prisoners as in other camps. Special cases of excessive censorship, which would lead to the deterioration of the goods, would be enquired into and avoided as much as possible in future.