CHAPTER II

THE REGIME OF THE PRISONER OF WAR

A. INTRODUCTORY

In general, each of the successive conventions containing provisions for the protection of prisoners of war, beginning with the unratified 1874 Declaration of Brussels and concluding, at the moment, with the Third 1949 Geneva Convention, has been somewhat more sophisticated in its coverage of the day-to-day life of prisoners of war, the protections afforded to them, and the obligations imposed upon them. The purpose of this chapter will be to analyze generally those protections and obligations that now devolve upon prisoners of war “from the time they fall into the power of the enemy and until their final release and repatriation.”

To the maximum extent possible, this analysis will be presented on a completely functional basis, avoiding for the most part the usual article-by-article discussion, thus bringing together and correlating all of the numerous provisions throughout the Convention which deal with any particular facet of the regime of the prisoner of war. We shall join the enemy soldiers at the moment of their capture, accompany them on their evacuation to the rear, view their life in the prisoner-of-war camp, and witness their ultimate release and repatriation. We should then have a fairly good understanding of the treatment of these unfortunate individuals which was probably contemplated by the great majority of the draftsmen of the 1949 Convention as well as, in some areas, the very different kind of treatment which they probably will actually receive, at least from some Detaining Powers. We will thus be alerted to the strengths and the weaknesses of this great humanitarian international agreement to which most of the members of the world community of nations have subscribed.

It is important to bear in mind that there are certain fundamental protections which are accorded to prisoners of war by the 1949 Convention during the entire period of captivity. Therefore, these protections are applicable whether the individual is still in the hands of

1 Article 5.
2 See Preface, p. v.
3 As a few of the subjects will require extremely extensive discussions, they will merely be mentioned here and a whole chapter will thereafter be devoted to each of them.
4 See Appendix B.
the capturing unit, is in the process of evacuation to the rear, is in an interrogation center, is in a rear-area permanent prisoner-of-war camp, is being transferred from one such camp to another, is in a labor detachment, or is in process of repatriation. These protections have, for the most part, been grouped together in the early part of the 1949 Convention. They include what are now such basic propositions as that prisoners of war are in the hands of the Detaining (enemy) Power, and not of the individuals who captured them, and that the Detaining Power is responsible for the treatment which they receive [first paragraph of Article 12]; that they must at all times be humanely treated and must be protected, particularly against acts of violence, intimidation, insults, and public curiosity [Article 13]; that they are entitled to respect for their persons and their honor [first paragraph of Article 14];5 and that, subject to specific provisions relating to rank, sex, health, age, and professional qualifications, they must all be treated alike, and without adverse distinctions based on race, nationality, religious belief, or political opinions [Article 16]. The cited Articles also contain provisions which are specific, rather than general, in their application. Many of the provisions of these Articles, both general and specific, will be discussed at length at the point where such a discussion is deemed to be most appropriate.

B. FROM BATTLEFIELD TO PRISONER-OF-WAR CAMP

1. Evacuation from the Battlefield

A surprise attack overruns an enemy position. An enemy unit is surrounded and forced to surrender. An enemy patrol is ambushed and its members are captured. A patrol succeeds in its mission and returns to its own lines with captured enemy personnel. These and many other incidents of war will result in the abrupt transformation from armed combatants to disarmed captives of officers, noncommissioned officers, and enlisted men, some of whom may be severely wounded, some of whom are less severely wounded, and some of whom are unhurt except for the mental shock which inevitably accompanies capture. The first paragraph of Article 5 specifies that the Convention

5 The advent in World War II of large numbers of women as combatant (or non-combatant) members of the armed forces, and the reasonable likelihood that this situation will also exist in future major international armed conflicts, necessitated the inclusion in the 1949 Convention of a number of provisions specifically dealing with this problem. Provisions of this nature are to be found in the second paragraph of Article 14, the last paragraph of Article 25, the second paragraph of Article 29, etc. A discussion of the overall problem and of the relevant provisions of the Convention will be found at pp. 178-180 infra. It will not be mentioned in the discussion of the various substantive problems which are applicable to all prisoners of war, regardless of sex. Because of the nominal and pronominal inadequacies of the English language, the words "men," "he," "his," and "him" should, where appropriate, be construed as including "women," "she," "her," etc.
applies to them "from the time they fall into the power of the enemy." This means that simultaneously with the transition from armed combatants to disarmed captives, there is a transition from armed combatants to prisoners of war and that, without any formal action or decision, the individuals whose status has thus abruptly changed are immediately entitled to the full protection and safeguards of the Convention. Thus, the 1949 Convention, like its predecessors, provides [in the first paragraph of Article 19] that these individuals must be removed from the dangers of the combat zone as soon as possible. There is, in addition, a prohibition against the holding of captured personnel in combat areas as a shield against enemy action.\(^6\)

Certainly, no front-line combat unit would willingly permit itself to remain encumbered with prisoners of war, so that there is every incentive on the part of the capturing troops to secure their evacuation with the greatest possible dispatch, at least to the next higher command which has responsibilities for prisoners of war. But the evacuation of prisoners of war requires manpower for guards, and perhaps for transportation—manpower which the combat unit most probably will not be able to spare, at least until the battlefield area has settled down to a comparatively quiet state. It can scarcely be said that such a necessary delay in evacuating the newly captured prisoners of war would be violative of the 1949 Convention. As a matter of fact, the third paragraph of Article 19 apparently contemplates such a possibility, for it provides that "[p]risoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone." In other words, during the period which elapses before it is physically possible for the capturing unit to effectuate the evacuation of the prisoners of war, every effort must be made to place them at a location where they will be protected from the fighting so far as such protection is possible.Evacuation to the rear must take place as soon as it is within the capabilities of the capturing unit. The requirement regarding prompt evacuation of new prisoners of war is that they be evacuated "far enough from the combat zone for them to be out of danger."\(^7\)

But even then not all of the new prisoners of war will necessarily be among those to be evacuated. The second paragraph of Article 19 authorizes the capturing unit to keep prisoners of war in the combat zone where, due to wounds or sickness, prompt evacuation would be

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\(^6\) The first paragraph of Article 23 prohibits the capturing unit from detaining prisoners of war where they may be exposed to the fire of the combat zone, or in the combat zone or elsewhere in order "to render certain points or areas immune from military operations."

\(^7\) Article 19, first paragraph. As a practical matter, in modern armed conflict there will be very few places where prisoners of war are completely out of danger. The Convention provision refers to the dangers of the battlefield itself.
more dangerous for their survival than retention in the combat zone.\(^8\) Many modern armies have medical units which function very close to the front lines, performing emergency operations on badly wounded personnel where delay in rendering such assistance would probably be fatal.\(^9\) In many armies wounded enemy personnel will receive the same type of emergency treatment as that side's own personnel and will only be evacuated thereafter.\(^10\) Unfortunately, this humanitarian procedure is far from being universally followed.

Selected prisoners of war will undoubtedly be sent to higher echelon interrogation centers. Normally, such centers will be sufficiently far removed from the combat zone to constitute compliance with the provisions of the Convention with which we are here concerned. Prisoners of war may not be held in the combat zone by front-line units solely for purposes of interrogation. This is a prohibition which, however, is not always obeyed. We shall shortly see that this is not the only problem arising out of the tactical need for the prompt interrogation of newly captured prisoners of war.\(^11\)

Assuming that the front-line unit is now in a position to evacuate to the rear the prisoners of war whom it has captured, the Convention contains provisions with regard to the manner in which such evacuation is to be performed, provisions with which, unfortunately, the front-line unit is not always in a position to comply, and through no fault of its own.

\(^8\) Article 14 of the First Convention (and Article 16 of the Second Convention) provides that enemy personnel captured while wounded or sick are prisoners of war and are entitled to the protections and safeguards of the Third Convention. See pp. 70–71 supra.

\(^9\) In Korea, and even more so in Vietnam as more refined techniques evolved, the helicopter was used as a quick method of evacuating the seriously wounded directly from the battlefield to medical installations. U.S. Army Regs. 633–50, para. 38, provides that the evacuation of wounded prisoners of war from the combat zone is to be through the same medical channels as those provided for wounded members of the United States armed forces. (Agreement was reached comparatively early at the Diplomatic Conference on the provisions of what is now the 1977 Protocol I with respect to medical air evacuation, a subject covered by Articles 24–31 thereof, and Articles 5-13 of Annex I thereof.)

\(^10\) Early in 1942 it was already apparent that the then Japanese Government did not intend to comply with the humanitarian provisions of the law of war, including the 1929 Prisoner-of-War Convention, despite its specific promise so to do. However, on at least one occasion, when units of the Japanese Army overran an American field hospital on Bataan and found wounded Japanese soldiers receiving the same treatment as wounded Filipinos and Americans, they posted guards to protect the hospital, its personnel, and its patients. Falk, Bataan 92–94. Such action is, of course, required by the provisions of the first paragraph of Article 19 of the First Convention. For a quite different attitude toward an American field hospital on Bataan, see ibid., 94–101.

\(^11\) For a specific instance of violations of the Convention in connection with interrogations before and during evacuation, see Levie, Maltreatment in Vietnam 340–41.
It will be recalled that Article 13 of the Convention requires that prisoners of war must "at all times be humanely treated." This provision, of course, applies to the period of evacuation as well as generally. However, lest there by any doubt about this, the provision is specifically repeated with regard to evacuation in the first paragraph of Article 20 which states, in part, that "[t]he evacuation of prisoners of war shall always be effected humanely. . . ." But this latter Article goes even further because, due to the unique problems frequently encountered during the course of the original evacuation of prisoners of war from the front lines to the rear, it was felt necessary, and properly so, to establish certain specific minimum standards for general guidance.

In the first place, Article 20 requires that the evacuation be effected under conditions similar to those employed in changes of station for forces of the Detaining Power. This provision is obviously unrealistic. Front-line troops do not have available to them the physical facilities which are available for the movement of troops on change of station. The most that can be expected is that logistical vehicles which bring supplies forward may be available to move prisoners of war to the rear. If, as may frequently occur, the battlefield conditions are such that motor vehicle turnabout areas are located at a considerable distance to the rear, then prisoners of war are necessarily going to be required to march on foot at least to those areas; and upon their arrival there, they are going to be required to continue their march to the rear on foot if no vehicles are available at that point. Moreover, many armies are not adequately mechanized for the movement of supplies to forward areas.\(^\text{12}\) Certainly, in line with what has already been discussed, it is to the advantage of the new prisoner of war to get away from the combat zone, and as far to the rear as possible, and as soon as possible, even if he must travel on foot—except, perhaps, insofar as the possibility of escape diminishes as he moves to the rear.

In the second place, the middle paragraph of Article 20 requires the Detaining Power to furnish an adequate amount of food, potable water, clothing, and medical attention during the course of the evacuation. There is no question but that humanitarian considerations of the highest order dictate that the prisoner of war should be adequately cared for in these material respects during the process of evacua-

\(^{12}\) Only a comparatively few of the armies of today are what might be considered to be "adequately" mechanized. In Korea a million "volunteers" of the so-called Chinese People's Volunteers were supported logistically by a number of vehicles which the commander of a Western European army would probably consider insufficient for a single infantry division.
This can be a crucial period insofar as the ultimate survival of a prisoner of war is concerned. While most prisoners of war will survive an evacuation which is accomplished in a few hours or, perhaps, a day, evacuations which are performed completely by marches and which last a number of days or weeks take a disproportionately high toll—and usually unnecessarily so.\textsuperscript{14}

In the third place, like its predecessors, the second paragraph of Article 20 requires the captors to “establish as soon as possible a list of the prisoners of war who are evacuated.” The dual purpose of this provision—like a number of other provisions relating to identifications, notifications, and communications with the exterior (the homeland of the prisoner of war)—is (1) to establish the accountability of the Detaining Power for the prisoners of war whom it has taken; and (2) to permit families to receive definite information concerning the fate of their loved ones. Perhaps in order to avoid accountability, perhaps in the expectation that uncertainty with regard to the fate of husbands, sons, and fathers will adversely affect the morale and the will to continue the war of the enemy civilian population, some countries have either intentionally disregarded this provision or, having perhaps complied with it for their own use, have refused or neglected to comply with the later provisions of the Convention\textsuperscript{15} which make the present provision meaningful by providing

\textsuperscript{13} In the preliminary discussions of this Article by Committee II (Prisoners of War) of the 1949 Geneva Diplomatic Conference, the representative of the ICRC (Wilhelm) referred to “the distressing experiences of the last war” which had occurred during the evacuation of prisoners of war. 2A \textit{Final Record} 252. He was undoubtedly referring primarily to such well-publicized incidents as the “Death March” which followed the fall of Bataan. \textit{I.M.T.F.E.} 1043–45; \textit{ibid.}, Pal Dissent 1171–72. Less well-publicized atrocities of this nature were the subject of charges in a number of other war-crimes cases such as the \textit{Trial of Masao; Trial of Heering} and \textit{Trial of Mackensen}. According to one commentator, 35–40 percent of the Germans captured at Stalingrad died while being evacuated. Reiners, Soviet Indoctrination 18.

\textsuperscript{14} Experiences during the hostilities in Korea indicate that the treatment of prisoners of war by the North Koreans and the Chinese Communists during the period of evacuation (as well as during the rest of the period of captivity) reached a new level in inhumanity. With regard to the prisoner-of-war evacuations by the Communists, one American investigating body had this to say: “The first ordeal the prisoner [of war] had to suffer—and often the worst—was the march to one of these camps. . . . So the journeys to the prison camps were ‘death marches’. . . . On one of these marches, 700 men were headed north. Before the camp was reached, 500 men had perished.” U.S., \textit{POW} 8. \textit{See also} U.S., \textit{Communist Interrogation} 16–17. The Viet Minh followed the identical procedure with the French prisoners of war captured at Dien Bien Phu—and with equally fatal results. Fall, Indochina 7–9.

\textsuperscript{15} Articles 122, 123, and 124. For a fuller discussion of this problem, \textit{see} pp. 153–158 \textit{infra}. 
for the furnishing of the information contained in such lists of evac­uees through neutral channels to the Power upon which the prisoners of war depend. While it is true that front-line troops are rarely equipped to do administrative work, even a rifleman or truck driver or military policeman could perform the simple function of listing the prisoners of war whose evacuation he is supervising. Moreover, this act of listing the prisoners of war being evacuated is actually of value and an advantage to the Capturing Power, as it is then in a much better position to account for prisoners of war who die or escape during the evacuation and thus to avoid charges of enslavement which have—and not without justification—been leveled against the countries which have failed to account for individuals who presumably were once prisoners of war in their hands.

Where the evacuation process takes place over a period of time, and intermediate stops are necessary, the last paragraph of Article 20 contemplates that such stops will be made at “transit camps” and directs that prisoners of war be held in such camps for as brief a period as possible. Experience has shown that these transit camps were frequently nothing but rude barbed-wire enclosures offering none of the required amenities such as protection from the elements, sanitary 16 These were among the many provisions of the 1949 Convention which the North Korean and Chinese Communists refused to implement during the Korean hostilities, despite an early promise by the North Koreans to comply with the Convention. In August and September 1950 the North Koreans furnished two token lists containing the names of 110 Americans taken prisoners of war early in the fighting. 1 ICRC, Conflit de Corée, Nos. 176 & 178. However, they thereafter refused all requests for further information of this kind, and the Chinese Communists never furnished any lists. During the armistice negotiations the United Nations Command demanded a list of all prisoners of war held by the Communists before it would embark on any discussion of the prisoner-of-war problem. It then developed that the Communists were completely unable to account for many thousands of members of the armed forces of the nations composing the United Nations Command and of the Republic of Korea, who were missing in action and many of whom had presumably been captured. It is probable that a majority of these missing individuals—for whom the Communists were never able to account—were among those who died on the evacuations marches, no lists of such evacuees having ever been made.

17 It must be admitted that even a crude list may be well-nigh impossible of preparation at this level if the capturing troops and the prisoners of war use different alphabets, or if one uses an alphabet and the other uses ideographs. However, even this difficulty can be easily overcome by the use of the duplicate identity cards provided for in the third paragraph of Article 17. Thus, one of the members of the United States Delegation to the 1949 Geneva Diplomatic Conference has said: “This provision [for duplicate identity cards] offers an easy solution to the problem of hasty evacuation. The duplicates of each identity card may be collected prior to evacuation and they constitute a basis for a nominal roll. The provision that the identity card “may in no case be taken away from him” does not preclude the taking of the duplicate. The intent of the provision is that the prisoner of war shall at no time be without means of identification.” Dillon, Genesis 50.
facilities, etc. Article 24 provides that where transit camps are used on a regular basis they must meet all of the conditions required of permanent prisoner-of-war camps and evacuees must receive the same treatment there as the 1949 Convention entitles them to in such permanent prisoner-of-war camps.\textsuperscript{18} Unfortunately, there is little likelihood of general compliance with these provisions. Actually, in many areas of the world intermediate stops made during the course of evacuation will usually be made at what are merely convenient stopping points in that particular march, where no facilities whatsoever are available, and compared to which even a rough transit camp would offer considerable comfort.\textsuperscript{19}

Finally, it must be pointed out that in at least one respect this particular facet of the 1949 Convention inexplicably contains less protection for the prisoner of war than did the 1929 Convention. The last paragraph of Article 7 of the latter Convention limited daily foot marches during the evacuation to 20 kilometers (about 12 miles) a day except in certain specified situations. No comparable provision is to be found in the 1949 Convention.\textsuperscript{20} If this deletion was made because it was thought that future evacuations would be accomplished entirely by mechanical means, events have already disclosed the incorrectness of such an assumption.\textsuperscript{21} While the distance fixed in the 1929 Convention as a maximum might have been considered as somewhat low (perhaps it was intentionally set low because of the number of walking wounded who will normally be among those evacuated on foot), there is little doubt but that some reasonable maximum should have been included, if for no other reason than to furnish the commander of the capturing troops with an international standard as a guideline for his own protection against subsequent charges of maltreatment of prisoners of war.

2. Transfer of Prisoners of War between Detaining Powers

One problem which may arise as early as the evacuation is that

\textsuperscript{18} The 1929 Convention had no provision establishing minimum requirements for transit camps. Those maintained by both sides in Europe during World War II were found to be grossly inadequate. 1 ICRC \textit{Report} 245. The ICRC takes the position that a distinction must be made between the type of transit camp referred to in the last paragraph of Article 20, used for evacuations, and the more permanent type of transit camp referred to in Article 24, used for intercamp transfers. Pictet, \textit{Commentary} 175–76.

\textsuperscript{19} Of course, if the transit camp is located in the hinterland, remote from the combat zone, and is used primarily in connection with transfers between permanent prisoner-of-war camps, the applicability of Article 24 can scarcely be questioned.

\textsuperscript{20} Its deletion was recommended by the 1947 Conference of Government Experts (1947 GE Report 128) on the theory that this type of protection would be covered by the broad principles that were to be included in the proposed new first paragraph of the article. The propriety of the action was not challenged at the 1949 Diplomatic Conference.

\textsuperscript{21} The numerous deaths which occurred during prisoner-of-war evacuations by
relating to the transfer of prisoners of war from the custody of one Detaining Power (the Capturing Power) to another Detaining Power, an ally. Suppose, for example, that a small Belgian tactical unit, such as a battalion, is operating under attachment to a French division which is furnishing it complete logistical support. The Belgians capture a number of prisoners of war. They have no facilities for the evacuation of, nor prisoner-of-war camps to which to evacuate, these prisoners of war. In accordance with their overall logistical reliance on the French, the Belgians turn the prisoners of war over to the French for evacuation and custody. Which Power is thereafter responsible for ensuring that these particular prisoners of war receive the full protection accorded them by the 1949 Convention, the Belgians or the French? The solution to this problem was sharply disputed at the 1949 Geneva Diplomatic Conference. The Stockholm Draft which had resulted from the prior efforts of the ICRC provided for the joint responsibility of the Capturing Power and the actual Detaining Power. The United Kingdom and the Netherlands had each submitted a memorandum prior to the convening of the Conference opposing joint responsibility and recommending that responsibility be placed solely on the actual Detaining Power, basically because of the difficulty of enforcing joint responsibility, but also because of the likelihood of its causing friction between allies. The provision which was finally adopted, and which appears in the second and third paragraphs of Article 12, was a United Kingdom compromise proposal placing primary responsibility for the proper care and treatment of the transferred prisoners of war on the Power which accepts them, and which thereby becomes their Detaining Power (France, in our example), but pro-

the Communists in Korea (see note 14 supra) were indubitably directly related to the daily marches of 50 and 60 kilometers which the prisoners of war were required to make, frequently in subzero weather and always with inadequate clothing, food, and water, and with no medical attention for the wounded and sick.

The situation could, in fact, be far more complex than outlined above. See Baxter, Constitutional Forms 325. And, of course, the Power to whom custody is transferred must be a Party to the Convention.


24 See Article 11, Revised Draft Conventions 56. The United States and the Soviet Union both supported this proposal. 2A Final Record 328. Although the 1929 Convention contained no provision concerning the transfer of prisoners of war from one Detaining Power to another, during World War II the United States had accepted the view that it continued to be ultimately responsible for the welfare of the prisoners of war captured by it whom it had turned over to the custody of its allies. Feilchenfeld, Prisoners of War 87; 1 ICRC Report 242, 336 & 544-45; Lewis & Mewha 240.

25 Diplomatic Conference Documents: Memorandum by the Government of the United Kingdom, Document No. 6, at 5-6; Proposition by the Netherlands Government, Document No. 8, at 6.
viding that if the Protecting Power advises the Capturing Power (Belgium) that the transferred prisoners of war are not being treated as required by the 1949 Convention in some material respect, the burden is then on the Capturing Power either to see that the deficiency is corrected or to request the return of the transferred prisoners of war.26 There is thus created the normal absolute responsibility of the actual Detaining Power and a type of contingent responsibility on the Capturing Power.27 All of the Communist countries have followed the lead of the Soviet Union and have filed reservations to this provision of the 1949 Convention.28 The Soviet reservation, which is typical, states that it does not "consider as valid the freeing of a Detaining Power, which has transferred prisoners of war to another Power, from responsibility for the application of the Convention to such prisoners of war while the latter are in the custody of the Power accepting them."29

3. Interrogation of Prisoners of War

From the moment of capture there also arises the problem of the extent to which the Detaining Power may seek or extract information from the new prisoner of war.30 In Article 17 the 1949 Convention has attempted, to a rather limited extent, to remedy the deplorable situation in this regard which existed during World War II. However, this Article merely elaborates somewhat on its predecessor, Article 5 of the 1929 Convention; and like so many of the other provisions of the new Convention, the ultimate efficacy of the redrafted provisions will depend almost entirely upon the extent to which the belligerents direct and require compliance with these provisions of the 1949 Convention by their troops despite the not abnormal military expediency to the contrary.

26 This was, generally speaking, the manner in which the United States had acted during World War II (1 ICRC Report, 544-45) and it apparently voted in favor of the United Kingdom compromise proposal which was adopted. The Soviet Union did not. 2A Final Record 330-31.
27 Yingling & Ginnane 407. The second paragraph of Article 12 requires that before making the transfer the Capturing Power must have "satisfied itself of the willingness and ability" of the proposed Detaining Power to apply the Convention.
29 Shindler & Toman 505. One ICRC legal expert has stated with respect to the reservations to Article 12 that "this reservation cannot be considered as binding on States which have not made it. As it is not intended to limit or modify the obligations of the States which did make it, it constitutes in reality a unilateral declaration by those States, indicating the attitude which they will adopt if the situation arises. They are not entitled, however, to rely on the Convention itself to require that other States adopt the same attitude." Pilloud, Reservations, 11 R.I.C.R. Supp. 195-96.
30 See generally Glod & Smith, Interrogation.
Prohibitions on the use of force to compel prisoners of war to divulge information to the enemy are not a recent development. They were already well established in 1863 when Lieber included in his Code a provision which stated that “the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information or to punish them for having given false information.” Oddly enough, Article 9 of the Regulations annexed to the Second Hague Convention of 1899 and to the Fourth Hague Convention of 1907, which were identical, each merely required the prisoner of war to give his “true name and rank” and provided for loss of privileges if he refused to do so—thus imposing obligations in this area on the prisoner of war, but none whatsoever on the Detaining Power. This defect of the Hague Conventions was soon recognized, and the special prisoner-of-war agreements negotiated by the belligerents during the course of World War I frequently remedied the omission with rather detailed restrictive provisions. The 1929 Convention rectified the omissions of 1899 and 1907 but, unfortunately, its provisions were all too frequently disregarded; and, as has already been stated, the 1949 Convention does little more than to elaborate on some of the relevant provisions.

In order to ensure the correct identification of every prisoner of war the first paragraph of Article 17 of the 1949 Convention requires each of them to answer questions regarding his full name, rank, serial number, and date of birth. Moreover, if the prisoner of war refuses to furnish these items of information to his interrogators, he may have restrictions placed on the privileges to which his rank or status might otherwise entitle him, unless his failure to respond is due to his

31 Lieber Code, Article 80. Article 130 of the 1949 Convention makes “torture or inhuman treatment” a “grave breach” of the Convention. For a discussion of this grave breach and its relationship to the interrogation of prisoners of war, see pp. 357–358 infra.

32 See, e.g., Article XXIX of the 1918 Agreement between the British and German Governments concerning Combatant Prisoners of War and Civilians.

33 For a problem created by the disparity between the requirements of the first paragraph of Article 17 and those of the fourth paragraph of Article 122, see note 216 infra.

34 The word “status” in the second paragraph of Article 17 refers to the categories of persons covered by Article 4A(4), such as war correspondents, who, while not actually members of the armed forces, are normally granted the status of officers if they are captured. Pictet, Commentary 169.

35 For a list of these privileges, see ibid., 159–60. The statement is also there made (at 159) that “[u]nder the Convention, a prisoner who wilfully makes an inaccurate statement or who refuses to give the particulars specified in the first paragraph [of Article 17] may be liable to ‘a restriction of the privileges accorded to his rank of status’. It is assumed that the ‘inaccurate statement’ refers to one concerning identification. There is certainly nothing in Article 17, or anywhere else in the 1949 Convention, that makes it improper for a prisoner of war to give incorrect information on any subject other than identification.
physical or mental condition. This, however, is the outer limit of the pressure which may be applied upon a prisoner of war incident to his interrogation.

It must be borne in mind that nowhere does the 1949 Convention prohibit the interrogation of prisoners of war which goes beyond the items listed above. Moreover, there is no prohibition against obtaining information from a prisoner of war by trickery. What the fourth paragraph of Article 17 of the 1949 Convention does prohibit is the use of physical or mental torture, or any other form of coercion, to compel a prisoner of war to answer questions propounded to him; and it further provides that a prisoner of war who refuses to answer such questions may not be “threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind” because of his refusal.

36 The penultimate paragraph of Article 17 specifies that if a prisoner of war is unable to provide the identifying material because of his physical or mental condition, he is to be handed over to the medical service and other means are to be used to establish his identity. Presumably this would include recourse to the identification card, identification tags, interrogation of other prisoners of war captured at the same time and place, etc. And the last paragraph of Article 17 requires that interrogations be conducted in a language understood by the prisoner of war being interrogated.

37 In Korea a situation arose which had not been foreseen by the draftsmen of the Convention—prisoners of war who did not desire to be identified and who would give false names, switch identities, etc. Meyers & Bradbury, Political Behavior 221; U.S., MP Board, Korea, I, at 101.

38 U.S. DA Pam 27-161-2, at 99. The laws or military regulations of the Power of Origin may provide sanctions against members of its armed forces who, as prisoners of war, respond to such interrogation; sanctions which, of course, will only be imposable subsequent to repatriation. Khadduri, War and Peace 129; Secs. IV and V, Code of Conduct; Sec. 29, U.S.S.R. Law of 25 December 1958. (While the Soviet law does not specifically refer to giving information to the enemy, a Soviet commentator on this section is quoted as stating that it requires the Soviet soldier who is taken prisoner of war to “sacredly protect military and state secrets.” Ramundo, Soviet Criminal Legislation 81.) After the repatriation of prisoners of war from North Korea (1953), several American servicemen were court-martialed for informing against fellow prisoners of war. See, e.g., United States v. Batchelor; United States v. Floyd; United States v. Dickenson.

39 In the notes on the Trial of Killinger, 3 LRTWC at 68, the following appears: “During his closing address one of the Defense Counsel made three submissions regarding the scope of the [1929] Convention. The first was that under the Geneva Convention interrogation was not unlawful. The second was that to obtain information by a trick was not unlawful, under the same Convention. The third point was that to interrogate a wounded prisoner was not in itself unlawful unless it could be proved that that interrogation amounted to what could be described as physical or mental ill-treatment. The Court expressed its agreement with these three principles.” And in Pictet, Commentary 163–64, this statement is made: “Be this as it may, a State which has captured prisoners of war will always try to obtain military information from them. Such attempts are not forbidden; . . .” See also Flory, Prisoners of War 94; Spaight, Air Power 386; U.S. POW 58–61.

40 After World War II there were a number of war crimes trials arising out of illegal interrogations of prisoners of war. See, e.g., Trial of Killinger.
The front-line unit which captures a prisoner of war will frequently, and understandably, attempt to exploit that event by seeking to obtain information from him concerning tactical positions and plans and order of battle before evacuating him to the rear. Psychologically, this is probably the most fruitful time to interrogate a prisoner of war because of the state of shock from which he will be suffering, and his fear of the unknown, including how he will be treated by the enemy in whose complete power he now so suddenly finds himself. The capturing unit may seek such information without in any way violating the provisions of the 1949 Convention, provided that it does not use any form of coercion and provided that it evacuates the prisoner of war from the combat zone as soon as practicable.

Certain prisoners of war (airmen, submariners, missilemen, nuclear specialists, etc.) may be considered as having important and unique intelligence value, and they will probably be evacuated through special evacuation channels and to special interrogation centers. It is this special type of prisoner of war, in particular, who was the victim of maltreatment of the most vicious nature during World War II, both in Germany and in Japan.

41 It has been found that a prisoner of war is most amenable to answering questions when he is still suffering from the shock of capture. Toppe, German Methods 23. As long ago as 1936 the Soviet Army prepared a lengthy questionnaire which was to be completed by the capturing troops so that it would be available during subsequent interrogations. Olson, Soviet Policy 110.

42 In U.N. Human Rights, A/8052, para. 118, the statement is made that “one of the important rights of prisoners of war was that they should not be interrogated until they have been medically attended and were in a fit condition for interrogation.” Without in any way condoning interrogation by withholding medical treatment from those who are in immediate need of it, or by brutal methods, no such “right” exists. See note 39 supra. Paragraph 119 of the United Nations report is even more unrealistic. It states, in part: “Other basic right of prisoners of war under interrogation would include the right, when possible, to some independent advice before interrogation; . . . He should have the right not to be interrogated incessantly or for unduly long periods of time, and should have the right to food and rest during periods of questioning.” The interrogation of a prisoner of war in a search for tactical information of immediate urgency cannot be equated to the interrogation of an individual arrested for questioning in connection with the possible commission of a crime, as the United Nations report attempts to do.

43 It will be a long time before any interrogators are able to match the cruelties inflicted upon captured American naval personnel at the Ofuna Naval Interrogation Center in Japan during World War II. See the Schacht Statement. The Nazis maintained a special interrogation center for all captured airmen (except Russians) at Auswerstelle West, Oberursel, Germany, but while, rather than torture, was normally employed there. American Prisoners of War 3; U.S., POW 58–61; Glod & Smith, Interrogation 148. An opinion of the Judge Advocate General of the United States Army states that “truth serum” may not be used in interrogating prisoners of war. JAGW 1961/1157, 21 June 1961.
4. Property in the Possession of the Prisoner of War

Our discussion has so far dealt exclusively with the safety and well-being of the new prisoner of war—and this is certainly an area which the 1949 Convention emphasizes, and rightly so. By the fact of his capture the prisoner of war has lost his liberty for the duration of hostilities; but the Powers which drafted the Convention, and those which have since become Parties to it, have, presumably, by their ratification or adherence thereto, indicated that they entertain the humane belief that there is no reason why he should also be deprived of his health or his life. Indeed, they have gone a step further, taking the position that his loss should be limited to the temporary deprivation of his liberty and that even his property (and, as we shall see, his civil rights) should be protected. Here, too, the protection accorded to the prisoner of war begins at the moment of capture and continues throughout the period of captivity.

While it is only natural to expect that the prisoner of war will be thoroughly searched immediately upon his capture, both to ensure that he has no hidden weapons or other articles which might facilitate escape, and to ascertain whether he has in his possession any documents or other items of intelligence value, the Convention preserves to him his own personal property as well as certain types of equipment of military issue.

Once again we find that the provisions dealing with this subject in the 1949 Convention are basically mere elaborations of the cognate provisions of the 1929 Convention. It will therefore be useful to ascertain what defects, if any, were found to exist in this area during World War II and to see how these defects have been remedied, if at all.

Article 6 of the 1929 Convention protected the prisoner of war in the continued possession of "effects and objects of personal use," helmets and gas masks, identification documents, insignia of rank, decorations and objects of value. Because it is impossible to foresee

44 The United States practice with respect to such matters during World War II is summarized as follows: "Each prisoner was searched and disarmed immediately upon capture and contraband articles were taken from him, including all equipment issued to him by his government, except clothing. He was permitted to retain his helmet and gas mask in combat zones. Contraband included cameras, binoculars, signalling devices, compasses, and such other articles as might be useful to him in an escape. All military papers, documents, maps, and diaries were retained for intelligence examination." Rich, Brief History 492. This statement was concerned with the implementation of POW Circular No. 1, para. 35 of which established four categories for personal property found in the possession of a prisoner of war at the time of his capture:

35. . . . Property found in the possession of a prisoner [of war] may be in one of four classes:
   a. Personal effects which he may be allowed to retain.
   b. Personal effects taken from him temporarily but returned as soon as practicable.
what weapons will be used in a future war, the Greek Government suggested that the provision for the retention of the helmet and gas mask be enlarged to include other protective devices. This was accomplished by adding the words “and like articles issued for personal protection” to the former provision when it was redrafted into the first paragraph of Article 18 of the 1949 Convention. This added clause will cover such items as bulletproof vests, antiradiation garments, radiation badges, etc.

It has already been noted that the 1929 Convention provided for the retention by the prisoner of war of any identification documents which he possessed. The third paragraph of Article 17 of the 1949 Convention now provides for the issuance by the Power of Origin of identity cards in duplicate containing all of the information as to identification that a prisoner of war is required to furnish his captors, and, if desired, the individual’s signature and fingerprints and any other information the particular belligerent may wish to include thereon; and also contains a specific prohibition against taking identity cards away from prisoners of war, a practice which had caused numerous problems during World War II. The second paragraph of Article 18 contains the further provision that where a prisoner of war has no

c. Personal effects which he is not permitted to retain while interned, including money and any article which may be used to facilitate escape.

d. Articles which he is not permitted to retain at any time and which will be confiscated.

For another type of classification, see Pictet, Commentary, 166 n.2.

Diplomatic Conference Documents: Memorandum by the Greek Government, Document No. 11, at 8. The language actually adopted was suggested by a Canadian representative. Final Record 251.

During World War II none of the belligerents construed the provision concerning the retention of helmets and gas masks as applying once the prisoner of war had reached a permanent prisoner-of-war camp. See note 44 supra, and SPJGW 1944/6900, 5 July 1944. Whether this will continue to be a reasonable interpretation of the new provisions is doubtful, given the developments of modern warfare.

However, entitlement to the status of prisoner of war does not depend upon the possession of an identity card. Nordic Experts 167–68. See also p. 62 supra.

The provision of the 1949 Convention which calls for the individual to be supplied with two identity cards, rather than one, was proposed by a member of the United States Delegation to the 1949 Geneva Diplomatic Conference (Parker). Final Record 251. He gave no reason for his proposal, which was adopted without discussion. Ibid., 351. For a possible reason, see note 17 supra.

For a discussion of fingerprinting, see pp. 118–119 infra.

During World War II the ICRC found that some 26,000 German noncommissioned officers (NCOs) had had their identity papers taken from them in England, before being shipped to prisoner-of-war camps in the United States, with the result that they were denied NCO status and were required to work. 1 ICRC Report 339. German Regulations, No. 13, para. 54, specifically directed the confiscation of all identification papers “[i]n order to render escapes of prisoners of war more difficult.” The United States Army considered this and other similar direc-
identity card, the Detaining Power shall supply him with such a document. Thus three separate efforts have been made to prevent a recurrence of the situation which so frequently arose during World War II when prisoners of war were unable to establish their actual grade because their identification documents had been taken from them.

During World War II a rather unusual situation arose with respect to the right of a prisoner of war to retain his uniform. There was no specific reference in the 1929 Convention to the right of a prisoner of war to retain his uniform or other items of clothing. However, this was apparently a generally accepted proposition. Nevertheless, German guards at prisoner-of-war camps were taking from prisoners of war certain uniforms which, with minimum changes, could be made to resemble items of clothing used by the civilian population and thus could facilitate escape, substituting other uniforms of the same belligerent which were less easy to convert. In July 1943 the German military command issued a directive prohibiting this practice. Despite this directive, the practice seemingly continued because six months later it was called to the attention of the American military authorities, who expressed the opinion that the German guards were not acting improperly inasmuch as even personal and other specifically exempted property may be taken from a prisoner of war and impounded when

51 The United States Army has implemented this requirement with U.S. Army Regs. 633–50, para. 19, which directs that if a prisoner of war does not have an identity card, one will be issued to him.

52 The United States Army apparently continues to take the position that prisoners of war who do not possess identification documents should be treated as privates (other ranks), although provision is now made for them to submit requests to their own governments for proof of their true grades. U.S. Army Regs. 633–50, para. 30.

53 German Regulations, No. 27, para. 410, read as follows:

The uniforms of prisoner of war officers, particularly French light infantry officers, French and British naval officers, and British aviation officers, have been frequently confiscated for reasons of security and replaced by others less objectionable as to cut and color. Such procedure is not permissible. The prisoner of war officer has a right to his uniform. It must be left in his possession even if it should make a stricter surveillance of the prisoner of war necessary.
it is of a character to facilitate escape.\textsuperscript{54} The specific authorization for prisoners of war to retain “articles used for their clothing and feeding” even if they are of military issue, now included in the first paragraph of Article 18 does not appear to have changed the situation; and it is probable that this unwritten limitation on the protection of prisoner of war property rights continues to exist.\textsuperscript{55} Thus, a prisoner of war might have an antique pocket watch with a compass in the stem. Even though such a watch falls within the category of “articles of personal use” [Article 18, first paragraph] or of “articles having above all a personal or sentimental value” [Article 18, third paragraph], which prisoners of war may normally retain, no Detaining Power could be censured for taking the watch and placing it in safe-keeping until the owner is repatriated.\textsuperscript{56}

Money in the possession of the prisoner of war at the time of his capture is placed in a category by itself. Article 6 of the 1929 Convention merely provided that money could only be taken from a prisoner of war by order of an officer, that a receipt had to be given, and that the amount taken had to be credited to the individual’s prisoner-of-war account. These provisions were found to be inadequate to provide answers to the numerous problems which arose during World War II with regard to money so taken and it is doubtful that they have been resolved by the provisions of the 1949 Convention, despite the fact that the draftsmen were undoubtedly aware of these problems and did elaborate to some extent on the former provisions.

If the prisoner of war has in his possession at the time of capture a reasonable amount of the currency of the nation in whose armed forces he was serving at the time of his capture (the Power of Origin), no real problem arises. But what if he has an extraordinarily large amount of such currency? Or if he has currency of the Detaining Power? Or of third Powers, belligerent or otherwise? Or so-called invasion or occupation money, currency issued by his military authorities solely for use in a particular area? Each of these questions arose

\textsuperscript{54} In SPJGW 1944/2037, 11 February 1944, the view was expressed that “the German position [of confiscating leather flying suits and work coveralls on the ground that they would facilitate escape] is correct. There is an established principle in international law allowing the detention of articles useful in aiding espionage, or escape, even though they fall within the class of property that a prisoner of war may ordinarily retain. It is believed that that principle is properly applied in this case to the clothes in question which might well be taken for civilian clothes.”

\textsuperscript{55} U.S. Army Regs. 633–50, No. 24 (a), permits the retention of their mess equipment by prisoners of war in accordance with the provisions of Article 18, but, nevertheless, specifically excludes knives and forks, items which could be used as weapons or tools.

\textsuperscript{56} Ibid., para. 24 (b). This could in any event probably be justified under the fifth paragraph of Article 18, which permits the withdrawal of articles of value from prisoners of war “for reasons of security.”
during World War II. None of them is really answered directly by the 1949 Convention.

As in the 1929 Convention, the fourth paragraph of Article 18 of the 1949 Convention provides that money may be taken from a prisoner of war only by order of an officer,\textsuperscript{57} that a receipt must be given, and that the amount taken must be credited to the prisoner-of-war account which Article 64 of the 1949 Convention requires to be established for each individual prisoner of war. It has two additional features intended as protective devices: a requirement that the receipt be itemized and that it be "legibly inscribed with the name, rank, and unit of the person issuing the receipt"; and a provision for a "special register" in which the transaction is to be recorded at the time it takes place, with particulars as to the amount of money taken and the identity of the prisoner of war from whom it was taken. Unfortunately, no convention provisions of this kind can possibly be effective with the numerous rapacious individuals to be found in every armed force in time of war and who may happen to be the captors; and it is extremely doubtful if any newly captured prisoner of war, even one fully familiar with these provisions of the 1949 Convention, is going to be sufficiently assertive and courageous to question the act of his captor in taking his money and either not giving him a receipt, or giving him one which is completely indecipherable.

But let us suppose that the captor and searcher is one of the more honest individuals who probably constitute the great mass of the members of most armed forces. He finds that the prisoner of war has only a nominal amount of money on his person and that all of such money was issued by the Power of Origin. The appropriate receipt would be issued, the appropriate entry would be made in the special register, and subsequently, if so requested by the prisoner of war, the amount would be credited to his prisoner-of-war account; if no such request is made, the currency will be kept with other objects taken from the prisoner of war for safekeeping and will be returned to him at the time of his repatriation. No problems are encountered and the provisions of the 1949 Convention are fully adequate to cover the transaction.

Now let us suppose that this same captor finds that the prisoner of war has in his possession a sum of money in the currency of the Power of Origin many times in excess of that which he could normally be expected to have. There is much to be said for the position adopted by some Powers during World War II of requiring the prisoner of

\textsuperscript{57}In Pictet, Commentary 169, the suggestion is made that the officer need not actually be present, that he may instruct a clerk to carry out the operation, but that the officer remains responsible. As a practical matter, this is probably how the search for, and the removal of, money will be accomplished in the great majority of cases.
war to justify his possession of an inordinately large sum of money.⁵⁸ Article 18 is concerned with protecting the personal property of the prisoner of war and the portion of paragraph 4 thereof which is concerned with the giving of the receipt for money taken from a prisoner of war refers to the "owner." Under these circumstances, it is believed that the Detaining Power is warranted in requiring the prisoner of war to justify his possession of unusually large sums of money.⁵⁹

A somewhat similar problem arises when the newly captured prisoner of war is found to be in possession of currency issued by the Detaining Power or its allies. There is rarely, if ever, any valid justification for a member of the armed forces of one belligerent having in his possession currency of an enemy belligerent. When he does, it usually indicates one of three things: that he has taken it illegally from members of the armed forces of the Detaining Power captured and searched by him before his own capture;⁶⁰ that he has looted the...

⁵⁸ SFGGW 1944/11874, 3 November 1944, stated:
4. A prisoner of war is not entitled, under the quoted provisions of Article 6 of the [1929] Convention, to have all money found upon his person credited to his account. It is only money belonging to the prisoner of war that is to be so credited, and where a reasonable doubt arises as to ownership, the prisoner of war may be called upon for proof thereof.
5. The possession by a prisoner of war of a large sum of cash likewise indicates the probability that such money is not his property. The practice of diffusing public funds among individuals when capture or military occupation impends is almost as old as war itself.

⁵⁹ To the same effect, see Downey, Captured Enemy Property 491–92. Substantially the same result was reached in German Regulations, No. 27, para. 395. The United Kingdom and the United States have both taken this same position in their post–World War II military manuals. See British Manual para. 141 nn.1 & 2; and U.S. Manual para. 94c. [The frequent similarities which may have been noted in these two manuals is no mere coincidence. See Baxter, The Cambridge Conference on the Revision of the Law of War, 47 A.J.I.L. 702.]

⁶⁰ At the beginning of the German offensive which later became known as the "Battle of the Bulge," an American division was overrun while its finance officers were in possession of several hundred thousand dollars in cash which had just been issued to them for payroll purposes. Most of these officers elected to burn or bury the cash in their possession before their capture. Had they decided to retain it on their persons, or to distribute it to a few trustworthy soldiers, it would still have been governmental, and not personal, funds. There would, therefore, have been no basis for not considering it to be "war booty," public property of one belligerent captured by another. Downey, Captured Enemy Property 491–92.

⁶⁰ Of course, it is possible that he has lawfully taken the money from prisoners of war in accordance with the provisions of the fourth paragraph of Article 18, given them the required receipt, and entered the transaction in the special register; and that he was himself captured before he had an opportunity to turn the money over to the appropriate authorities of his armed force. However, if such is the case, once again the fund belongs to his Power of Origin, not to the prisoner of war in whose possession it is found; and it is properly seized by the Detaining Power as war booty. (This does not affect the right of the original owner to a credit on his prisoner-of-war account; provided that the two belligerents concerned are able to overcome the administrative problems involved.)
bodies of the dead and wounded of the Detaining Power; or that it has been given to him by his military authorities for subversive or other similar purposes. It is therefore somewhat surprising, to say the least, to find the fourth paragraph of Article 18 provides that "[s]ums in the currency of the Detaining Power . . . shall be placed to the credit of the prisoner's account." Just as there is no valid justification for his possession of enemy currency, so there is no valid justification for permitting him to profit from a possession which in all probability originally came about through illegal acts. Perhaps it will be possible to circumvent this undesirable result by requiring that here, too, the prisoner of war establish that he is, in fact, the "owner" of the currency involved.

The possession by a prisoner of war of the currency of a neutral Power is not immediately suspect as it is possible for him to be legitimately in the possession of this currency. However, the circumstances here are likewise such as to warrant an investigation. If it develops that the currency actually is the property of the Power of Origin, the Detaining Power may treat it as war booty and confiscate it. If the prisoner of war establishes ownership, he may, pursuant to the last paragraph of Article 18, ask to have it converted into the currency.

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61 In SPJGW 1945/2240, 19 February 1945, the following statement appears:

Since enemy governments do not pay their soldiers in United States money or issue it to them, the presumption is justified, in the absence of satisfactory evidence to the contrary, that United States money found in the possession of a prisoner of war at the time of initial search upon capture was unlawfully taken from an American soldier, living or dead. When United States money is found upon a prisoner of war at such time, an informal investigation will be made by an officer of the legality of his possession of it. As this is not a criminal but an administrative investigation, proof beyond a reasonable doubt is not required in order to decide the question either way. If the investigating officer concludes that the statement of the prisoner and other evidence (if any) presented by him outweighs the prima facie presumption above mentioned, the officer will give the prisoner a receipt for the money and deposit it to his credit in a trust fund account. Otherwise the money will be confiscated. . . .

See also German Regulations, No. 4, para. 13; and Rundell, Paying the POW 122.

62 Similarly, Article 59 provides that "[c]ash which was taken from prisoners of war . . . at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts"; and the first paragraph of Article 64 provides that the account of a prisoner of war shall be credited with "the sums in the currency of the Detaining Power which were taken from him." In this regard, see note 222 infra.

63 During World War II aircraft crews were frequently furnished with "escape kits" containing currency of the countries over which they might fly, or which they might be able to reach if they were shot down. Obviously, they were not the owners of such currency and were not, and would not be, entitled to have it credited to their prisoner-of-war accounts. German Regulations, No. 39, par.: 737. This would also be true as to the gold coins which were furnished to aircraft crews operating in certain parts of the world.
of the Detaining Power and credited to his account; otherwise it will be placed in safekeeping for ultimate return to the prisoner of war upon his repatriation.

Finally, there arises the question of the action to be taken by the Detaining Power with respect to “invasion” or “occupation” money, currency printed by the Power of Origin for use in a specific area and during a specific period, and which has no actual value. It is probably possible to dispose of this problem by considering such currency as falling within the ambit of the phrase “currency other than that of the Detaining Power” contained in the last paragraph of Article 18.64 The Detaining Power would then unquestionably be justified in refusing any request for the conversion of such currency for credit to the prisoner-of-war account, and would maintain in safekeeping the very bills taken from the prisoner of war, just as it would do with any nonmoney “articles of value,” returning them to the prisoner of war “in their original state” upon the termination of his captivity. This was the procedure followed by the Germans during World War II65 and no objection was made to it, nor can any be perceived. While this currency may, at the later date, be completely worthless, this is a problem to be resolved between the individual and his Power of Origin, the nation which originally issued it.

From the foregoing, it is fairly apparent that while the 1949 Convention has added a few provisions intended to ensure that the new prisoner of war will be safeguarded in the possession of his money—the effectiveness of which will, as heretofore and necessarily, depend in large part upon the controls maintained by the Detaining Power upon its personnel—it has made no perceptible attempt to solve some of the technical problems which have previously arisen in this area and which will undoubtedly arise once again in any future major conflict. However, these are basically problems of administration which can probably be solved by a commonsense approach and by reciprocity.66

One other problem which has arisen with respect to the personal property of the prisoner of war is worthy of mention—his right to sell such property and the right of military personnel of the Detaining Power to buy it from him. Neither the 1929 nor the 1949 Convention has any provision relating to this problem.

64 If the “invasion” or “occupation” money was issued by the Detaining Power, the problem is the same as if it were actual currency of that Power.
65 German Regulations, No. 43, para. 802.
66 The provisions of the 1949 Convention just discussed are, of course, concerned solely with the problem of the disposition of cash found in the possession of a prisoner of war at the time of his capture. The more general problem of the finances of individual prisoners of war is discussed at pp. 194–212 infra.
In August 1944 The United States Army issued a circular which authorized its personnel to purchase articles from prisoners of war. The British, on the other hand, took the view that because of the unequal bargaining positions of the two parties, to permit such purchases might be to open the way to abuse. Accordingly, British military personnel were subject to disciplinary proceedings if they trafficked with prisoners of war by way of the purchase or barter of the latter's personal property. The United States has now accepted the British position and its post–World War II manual, like that of the United Kingdom, prohibits such transactions. Presumably, this will not prevent military agencies, such as post exchanges, from buying and offering for sale items produced by the prisoners of war as a pastime, such as art work, handmade jewelry, novelties, etc. Nor is there actually any basis for asserting a legal, conventional prohibition against the basic practice, potentially pernicious though it may be.

5. Fingerprinting Prisoners of War

Although the use of fingerprinting as a means of identification dates back to the late nineteenth century, the matter of fingerprinting prisoners of war did not arise until World War I. During that conflict the German Government protested against the United States practice of photographing and fingerprinting prisoners of war in its custody. The United States Government replied that it did not consider fingerprinting for the purposes of identification to be inhumane, humiliating, or disrespectful, and that it would welcome similar action by the Germans with respect to American prisoners of war held by them. The

67 U.S. War Department Circular No. 353, 31 August 1944. It is reproduced substantially in extenso in Downey, Captured Enemy Property 500–02. The circular was based upon an opinion contained in SPJGW 1944/6900, 5 July 1944, which stated:

There is nothing unlawful in a soldier of our Army picking up and retaining small objects found on the battlefield, or buying articles from prisoners of war, of the sort which, under the articles quoted, it is unlawful for him to take from a prisoner, the wounded, or the dead.

68 Lauterpacht, Problem 380 n.1. One ICRC expert believed that while the practice could be dangerous, and that it would be preferable to prohibit it, the United States War Department circular was, on the whole, a satisfactory implementation of the relevant provisions of the 1929 Convention, particularly because it authorized each commander to take any measures he considered necessary to prevent violations of either the letter or the spirit of the Convention. Pilloud, Captured Enemy Property, 32 R.I.C.R. at 831.

69 U.S. Manual para. 94b; British Manual para. 140 n.3.

70 A visit which the author paid late in 1951 to the prisoner-of-war camps maintained by the United Nations Command at Koje-do in Korea revealed that the main occupation of many prisoners of war was the production for sale of a multitude of novelty items made from used tin cans. See Hermes, Truce Tent 236.

1929 Convention again made no mention of fingerprinting. Neverthe-
less, during World War II both sides photographed and fingerprint
prisoners of war.\textsuperscript{72}

When the Government Experts met in 1947 the question of finger-
printing arose, but only in connection with what became the penulti-
mate paragraph of Article 17, concerning prisoners of war who, be-
cause of their physical or mental condition, were unable to furnish
the required identifying information.\textsuperscript{73} Even this limited reference
to fingerprinting by the Detaining Powers was eliminated at the Dip-
losamic Conference without anything in the record to explain the
reason for, or the meaning of, the action.\textsuperscript{74} Presumably, it was felt that
the phrase, \textit{"[t]he identity of such prisoners [of war] shall be es-
}tablished by all possible means" (emphasis added) was sufficiently
broad to include the use of fingerprinting if the Detaining Power
desired to employ this method of identification. Certainly, there is no
indication that the draftsmen considered fingerprinting to be \textit{"inhuma-
ne, humiliating, or disrespectful."} In fact, the indications are quite
to the contrary, as the third paragraph of Article 17 provides that the
identity card which a State is required to provide to its own personnel
who may become prisoners of war may include fingerprints; and
Annex 4A to the Convention,\textsuperscript{75} the model identity card, provides space
for both fingerprints and a photograph.\textsuperscript{76}

There appears to be no question but that the United States con-
strues the Convention as permitting both the fingerprinting and the
photographing of prisoners of war. After the identification fiasco early
in the Korean conflict,\textsuperscript{77} prisoners of war were both photographed and
fingerprinted.\textsuperscript{78} The same procedure was followed in Vietnam.\textsuperscript{79}

\textsuperscript{72} Concerning the German practice during World War II, see Maughan,
\textit{Tobruk} 773; concerning the practice of the United States in Korea, see U.S., MP
Board, Korea, I, at 101.

\textsuperscript{73} 1947 GE Report 124. The fifth paragraph of Article 17, as approved at Stock-
holm, contained a final sentence which stated: \textit{"The identity of such prisoners
[of war] shall be established by all possible means, particularly by the taking of
fingerprints."} (Emphasis added.) Revised Draft Conventions 58.

\textsuperscript{74} See 2A Final Record 350–51; 2B Final Record 173.

\textsuperscript{75} See Annex 4A to Appendix A hereof.

\textsuperscript{76} For some unknown reason, the draftsmen elected to refer Annex 4A of the
Convention solely to Article 4 thereof (see Article 4A(4) and pp. 60–62 \textit{supra})
which, of course, provides for the issuance of identity cards to \textit{"[p]ersons who
accompany the armed forces without actually being members thereof."} However,
this is undoubtedly the identity card which would also be issued in compliance with
the requirement of the third paragraph of Article 17.

\textsuperscript{77} See note 37 \textit{supra}.

\textsuperscript{78} See note 72 \textit{supra}.

\textsuperscript{79} The subject was covered by a number of directives of both the Military As-
war who lack such documents;\textsuperscript{80} and the fingerprinting of all prisoners of war. \textsuperscript{81} It is extremely doubtful that this procedure will engender any protests from enemy Powers of Origin. More probably, they will follow the same path if they have the technical competence to do so.

### C. LIFE IN THE PRISONER-OF-WAR CAMP

We have seen our prisoners of war captured, searched, interrogated, and evacuated to the rear, perhaps through a transit camp. Now, what of their subsequent life as prisoners of war? The Detaining Power is, of course, specifically authorized to subject them to internment (Article 21); and, as a corollary to that right, it has the duty to provide them with maintenance and medical care without charge (Article 15). This combined right and duty relates to many of the usual problems of life: a roof over one’s head and a place to sleep, food to eat, clothes to wear, protection against illness, care when sick, a way to pass the time when well,\textsuperscript{82} etc., etc. And, wisely, the draftsmen of the 1949 Convention attempted to lay down specific minimum requirements on the Detaining Power in many of these areas, as well as in other areas which affect the day-to-day life of the prisoner of war. For our purposes, it will be necessary not only to analyze these various minimum requirements, but also to attempt to determine their probable adequacy in actual practice and the extent to which Detaining Powers may be expected to comply with them.

### 1. Establishment of Prisoner-of-War Camps

During the wars of the twentieth century it has been generally customary to intern prisoners of war in camps established for that specific purpose. The preliminary question as to where such prisoner-of-war camps may be located is itself of major importance. As we have already seen, the prisoners of war must be expeditiously removed from the dangers of the combat zone (Articles 19 and 23);\textsuperscript{83} but this

\textsuperscript{80} U.S. Army Regs. 633-50, para 19b and Figure 1 (at 86).

\textsuperscript{81} Ibid., para. 20 and Figure 2 (at 87). The NATO directive on this subject provides for both photograph and fingerprints. STANAG No. 2044, Annex A.

\textsuperscript{82} This latter item is more important than it might seem. Boredom and idle hands have frequently been the cause of the lack of discipline in, and many of the attempted escapes from, prisoner-of-war camps. Lewis & Mewha 57. Much of the disorder in the prisoner-of-war camps maintained by the United Nations Command at Koje-do unquestionably stemmed from the fact that the prisoners of war were not kept busy, a situation upon which Communist techniques batten. See note 70 supra.

\textsuperscript{83} The problem of transfers from one prisoner-of-war camp to another is discussed at pp. 187-194 infra. However, it should be noted at this point that the second paragraph of Article 47 covers a situation which, depending upon the amount of territory available to a Detaining Power, may frequently arise in a war of movement—the approach of the combat zone to an established prisoner-of-
is not the only limitation on the Detaining Power's right to locate a prisoner-of-war camp where this can be most easily accomplished, or where it will be most usefully located as a ready source of labor. Article 22 of the 1949 Convention sets forth the general requirements and prohibitions governing the selection of prisoner-of-war camp sites. They must be located on land; they must afford every guarantee of hygiene and healthfulness; they must not, except in unusual circumstances, be located in a penitentiary; and they must not be in unhealthy areas, "or where the climate is injurious for them." If this latter contingency occurs, perhaps because the prisoners of war are originally interned in the region of the place of capture, they "shall be removed as soon as possible to a more favorable climate."

The problem of the climate of the place of internment has long been a source of difficulty. During the Boer War (1899–1902), the actions of the British Government in transporting Boer prisoners of war to India, St. Helena, and Ceylon for internment were protested (by members of the British Parliament, by the Boer Government, and by the United States in its capacity as Protecting Power) because of the allegedly unhealthful climate in each of those places. During World War I, the German Government protested against the French transfer of prisoners of war captured in Europe to Algeria and Morocco, again on the basis of allegedly unhealthful climates. Article 9 of the 1929 Convention attempted to remedy the situation by providing that persons "captured in unhealthful regions or where the climate is injurious for persons coming from temperate regions, shall be trans-

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84 This was formerly of more importance than it is now. During the Napoleonic Wars, for example, ship hulks were the usual place of internment for prisoners of war. Lewis, Napoleon 58–60. Nevertheless, the problem did arise again during World War II. 1 ICRC Report 248.

85 Article 22 authorizes this where it is "justified by the interests of the prisoners themselves." During World War II the ICRC found at least one instance where the use of a penitentiary as a place of internment was considered to be to the advantage of the prisoners of war. Ibid.

86 The United States exhibited concern in this regard and included provisions intended to alleviate the problem if it should occur as long ago as in its Treaties of Amity and Commerce with Prussia of 10 September 1785 (Article 24), and of 11 July 1799 (Article XXIV); and in Article XXII, paragraph II, of the Treaty of Guadalupe Hidalgo with Mexico of 2 February 1848. One pre–World War II author credits the provision of the 1785 Treaty with being the progenitor of the cognate article of the 1929 Convention. Meitani, Régime 26 & 29.

87 Flory, Prisoners of War 46–47. In no case was the protest based upon the distance from the place of capture to the place of internment.

88 Ibid., 47.
ported, as soon as possible, to a more favorable climate." Obviously, this provision did not meet, and was not even directed at, the actions specifically protested in the previous conflicts, which involved transfers from the place of capture to an unhealthful region. On the other hand, in attempting to solve the problem to which it was related, it probably went too far. Problems of this nature were minimal during World War II, despite the fact that fighting was going on all over the globe, and the changes made in drafting Article 22 of the 1949 Convention, which were not even the subject of floor debate, were probably not intended as changes in the substance of the provisions of the 1929 Convention.

The provisions of the 1949 Convention have been interpreted literally and as imposing upon the Detaining Power the obligation to transport prisoners of war from internment in a place where the climate is unfavorable for any reason, even though it may have been the place of capture. When, for example, soldiers of a country located in a temperate climate are transported by their Government to fight against the armed forces of an equatorial nation and some are captured, can the Detaining Power be required to remove them from that area, its national territory, in order to intern them in a "more favorable" climate (which, normally, will be a climate more closely resembling that to which they are accustomed)? A literal interpretation of the second paragraph of Article 22 would require that this question be answered in the affirmative. Or, if the troops from the temperate climate capture soldiers of the equatorial Power, would lack of adequate territory under their control, or problems of logistical support, justify transporting the prisoners of war to the national territory of the Detaining Power, even though this might mean interning them in a "less favorable" climate (less favorable in the sense that it will be one to which they are not accustomed)? A literal interpretation of that second paragraph of Article 22 would require that this question be answered in the negative. It remains to be seen, but it ap-
pears extremely doubtful, whether, apart from exceptional cases, Detaining Powers of the future will so construe this provision. 93

This problem of the location of prisoner-of-war camps raises a collateral, but related, question—should the enemy be advised of the location of camps in which captured members of its armed forces are interned, or should this information be withheld for military reasons? Two measures included in Article 23 of the 1949 Convention were intended to require that this information be divulged in order to afford protection to prisoner-of-war camps against unwitting attack by the armed forces of the Powers of Origin of the prisoners of war interned therein. The third paragraph of Article 23 requires that the Detaining Powers provide “the Powers concerned” (the Power of Origin of the prisoners of war and its allies) information as to the geographical location of prisoner-of-war camps; and the last paragraph of Article 23 provides that prisoner-of-war camps (and only prisoner-of-war camps) shall, “whenever military considerations permit,” be marked with the letters “PW” (prisoners of war) or “PG” (prisonniers de guerre) so as to be visible from the air. 94 No such provisions were contained in the 1929 Convention, and prisoner-of-war camps were sometimes attacked by aircraft of the Power of Origin of the prisoners of war, or of its allies, unaware of the actual nature of the installation being attacked. While, at the urgent behest of the Protecting Powers and the ICRC, some belligerents permitted the furnishing of information as to the location of prisoner-of-war camps maintained by them to their enemies, others did not. 95 The substance of the provi-

93 In considering the question of climate, the draftsmen of both the 1929 and the 1949 Conventions appear to have had in mind primarily persons from temperate European countries or their equivalents, and only such widespread conflicts as World War I and World War II, where prisoner-of-war camps could be located in many areas of the globe; and to have given little, if any, consideration to nationals of other types of countries and to conflicts of a more limited territorial extent.

94 One military pilot who was an Australian representative at the 1949 Diplomatic Conference stated that such markings would afford no protection whatsoever because of the height at which modern bombers fly and the speed at which low-flying aircraft travel. 2A Final Record 354. If this was true in 1949, and there is no reason to doubt the statement, it has become even more true in the light of subsequent technological developments. However, this alone should not be the basis for denying the prisoner-of-war camps this type of protection if it might possibly be effective in even a few rare instances.

95 1 ICRC Report 305–19. The British were particularly opposed to the required exchange of such information and at the 1949 Diplomatic Conference they adhered to their World War II opposition, pointing out that marking prisoner-of-war camps in a country with a relatively small geographical area had the effect of pinpointing military objectives. 2A Final Record 354, 347, & 354. It is rather difficult to understand why this opposition, which resulted in the inclusion of the clause “whenever military considerations permit” in the fourth paragraph of Article 23 did not extend to the preceding paragraph of that Article which requires
sions now included in the 1949 Convention were originally proposed by the ICRC. With the methods of electronic navigation and target finding developed after World War II, it is probable that if information as to the geographical location (longitude and latitude) of a prisoner-of-war camp is furnished pursuant to the third paragraph of Article 23, the need for marking in order to be able to identify such a camp from the air will be greatly reduced. If this is so, the “military considerations” limitation with respect to marking will not be too important.

2. Quarters

The physical requirements for prisoner-of-war camps are set forth in the first paragraph of Article 25 of the 1949 Convention which, basically, specifies that “prisoners of war shall be quartered under conditions as favorable as those for the forces of the Detaining Power who are billeted in the same area.” This obviously establishes each Detaining Power’s national standard as its minimum international standard, the one which must be met by it under any and all circumstances. However, it is possible that the conditions under which the forces of the Detaining Power are normally billeted in an area are such that they would be detrimental to the health of prisoners of war accustomed to quite another standard. To meet this situation, the first paragraph of Article 25 continues with two added requirements: that the conditions according to which the prisoners of war are billeted must take into consideration their “habits and customs”; and that in no case shall those conditions be such as to be prejudicial to their health. While the desirability of these two additions to the Detaining Power’s national standard can probably not be denied, it is extremely difficult to envision a situation wherein a Detaining Power would provide prisoners of war held by it with quarters superior to those provided for its own troops in the same area.

The basic general requirements are enumerated in the first paragraph of Article 25, and the specifics are set forth in the second paragraph thereof. The requirement of conditions as favorable as those furnished the Detaining Power’s own troops in the same areas means that dormitories for prisoners of war must have at least the same total surface and minimum cubic space, the same general installations (presumably the giving of “all useful information regarding the geographical location of prisoner of war camps.” The ICRC construes this latter provision to encompass adequate information in order “to enable the camp to be pin-pointed on a map.” Pictet, Commentary 190.

96 This is referred to as the “principle of assimilation.” Ibid., 192 n.2.

97 We will find that in other areas, also, the Convention establishes a better than national standard as the standard of treatment of prisoners of war. See, e.g., note III-94 infra. Idealistic as its policies naturally are, the ICRC has, to some extent, also recognized this problem, Pictet, Commentary 194.
the same proportion of sanitary facilities such as washbasins, showers, toilets, washtubs, etc.), the same bedding, and the same number of blankets. Further, the third paragraph of Article 25 requires that the quarters furnished prisoners of war must be protected from dampness, must be adequately lighted and heated (particularly between dusk and lights-out, which is usually “free” time for the prisoners of war), and must have adequate precautions taken against the dangers of fire.\footnote{The second and third paragraphs of Article 25 of the 1949 Convention are little more than redrafts of Article 10 of the 1929 Convention. It has been stated on behalf of Switzerland, which acted as Protecting Power for some 34 countries during World War II, that there was general compliance with Article 10 during that conflict, except in the Far East and to some extent in Germany. Janner, Puissance protectrice 53-54. For statements of United States practice during World War II, see McKnight, POW Employment 50; Rich, Brief History 395.}

Assuming complete compliance with the foregoing requirements, let it not be thought that the prisoner of war will be living in pampered comfort and luxury. Far from it! A Detaining Power can follow the provisions of Article 25 of the 1949 Convention to the letter and for many prisoners of war their quarters will still be barely more than marginal. Nevertheless, they will unquestionably afford comfort and luxury compared to those furnished where the 1949 Convention is not applicable, or where applicable not honored by a belligerent.\footnote{As a practical matter, only rarely will a new prisoner-of-war camp meet all of the physical requirements of Articles 25, 29, 30, 34, 38, etc., at the time of the internment there of the first prisoners of war. ICRC Report, 248-49. However, the Detaining Power would be expected to exert itself to meet these requirements as soon as possible.}

It is appropriate to note that in addition to the requirements of the 1949 Convention aimed at physical comfort, there is also a very important provision aimed at physical protection. This is the second paragraph of Article 23, which imposes upon the Detaining Power the obligation of providing the prisoners of war with shelters against air bombardment and other hazards of war equal to those which are provided for its civilian population.\footnote{Here, again, we have the national standard applied to prisoners of war—but the civilian standard, not the military, and with no provision which would require, under some circumstances, a better than national standard.} The same rule is applied to any other types of protection which are furnished to the civilian population.\footnote{Conceivably, this could include antiradiation garments, protective masks, decontamination chemicals and equipment, etc.} Moreover, the prisoners of war must be permitted to avail themselves of the use of such shelters upon the sounding of the alarm, the only exceptions being those prisoners of war assigned to specific protective duties related to their quarters, presumably such as fire wardens, etc.
3. Food

Naturally, food is an extremely important part of the "maintenance" which the Detaining Power is required by Article 15 of the 1949 Convention to provide free of charge to prisoners of war.

Article 7 of the 1907 Hague Regulations provided that in the absence of a special agreement with respect to "board," prisoners of war should be "on the same footing as the troops of the Government who captured them." During World War I most of the belligerents found it necessary to negotiate special agreements covering, among numerous other subjects, that of food for prisoners of war. One such agreement provided that "the daily food ration which the prisoner of war receives ought not to be less than that of the civilian population [of the Detaining Power];" but with the caveat that such ration would necessarily depend upon the availability of food in the country in which the prisoner of war was interned.102 Other agreements adopted the formula of specifying the minimum daily caloric intake for prisoners of war, who were placed in three categories: nonworkers (2,000 calories); ordinary workers (2,500 calories); and workers performing strenuous labor (2,850 calories).103

When the 1929 Convention was drafted, a modification of the provision contained in the 1907 Hague Regulations was adopted. While retaining the ration of the troops of the Detaining Power as the standard for prisoners of war, it was specified in Article 11 that the "troops" referred to were those "at base camps" ("troupes de dépôt"). Experience during World War II disclosed numerous objections to this provision. Some belligerents had no "base" or "depot" troops to furnish the required standard.104 Rations for the base troops of the different belligerents varied widely, so that it was possible for a Detaining Power to comply with the obligation imposed upon it in this respect and still have great suffering among the prisoners of war.105 National diets also varied widely, so that the adequacy of the ration furnished when judged on a caloric standard did not always

102 Final Act of the Conference of Copenhagen, Title IV, Chapter III, Article I.
103 Article 26 of the 1918 Agreement between France and Germany concerning Prisoners of War. (Article 27 of that Agreement provided that prisoners of war were to receive the same meat ration as the civilian population.) Article XLVI of the 1918 Agreement between the British and German Governments concerning Combatant and Civilian Prisoners of War contained a similar approach to the problem, with an additional specific provision with respect to the daily ration of bread.
104 I ICRC Report 254.
105 Thus a survey made after World War II disclosed that "during good times the Japanese base troops received approximately 1500 calories per day, the German base troops approximately 2500 calories per day, Italian base troops approximately 2300 calories per day, but American base troops receive approximately 3300 calories per day." Feilchenfeld, Prisoners of War 36.
ensure the maintenance of health.\textsuperscript{106} Of course, the major problem in this area is that when war conditions and a blockade reduce a country’s food supply to a bare subsistence level, or even lower, how can that country possibly be expected to meet the obligation which it has undertaken with respect to prisoners of war?\textsuperscript{107}

The draftsmen of the 1949 Convention were fully aware of these many difficulties and attempted to meet them insofar as possible. The use of the “depot troop” ration as a standard was eliminated and the use of either a caloric or a national standard as a substitute was rejected. Instead of an absolute standard, the continued health of the individual prisoner of war was adopted as the standard. Thus, the first paragraph of Article 26 of the 1949 Convention provides that “the basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies.” Moreover, it also contains a requirement that the Detaining Power take into consideration the “habitual diet” of the particular prisoner of war. While the overall effect of the first paragraph of Article 26, with its relative, rather than absolute or national, standard, will very probably turn out to be an improvement over that of its predecessor, it would be extremely naive to believe that even loss of health or weight, or the development of nutritional deficiencies, will cause the Detaining Power to increase and improve the diet furnished prisoners of war at a time when its own civilian population (and perhaps its armed forces) is subsisting on a substandard diet.

It has been suggested that the problem is not without solution and that there are, in fact, two remedial courses of action available to the

\textsuperscript{106} The experience in the United States during World War II was that there was actually a waste of food when the national dietary habits of the prisoners of war were ignored. Tollefson, Enemy Prisoners of War 57. The United States included such dietary habits in its regulations governing the furnishing of rations for prisoners of war. \textit{POW Circular No. 1}, para. 59; Mason, German Prisoners of War 207. So did the Germans. \textit{German Regulations}, No. 11, para. 21. The American prisoners of war in Japanese hands were not so fortunate (see Kunz, Treatment 102) despite a proposal made by the United States on 13 February 1942 [\textit{10 Dept. State Bull.} 146 (1942)] and a promise made by Japanese Foreign Minister Togo shortly thereafter. \textit{I.M.T.F.E.} 1100–01.

\textsuperscript{107} Feilchenfeld, \textit{Prisoners of War} 13 & 39. Relief packages from the Power of Origin, allied States, neutral States, and international relief organizations (see Articles 72 and 73 and Annex III to the Convention, discussed at pp. 158–163 \textit{infra}) can, of course, be extremely helpful in this regard. However, even these will not fully remedy the situation if the Detaining Power does as Germany did during World War II—consider that the receipt of food packages reduces pro tanto the obligation to furnish prisoners of war with even the substandard ration which it had previously been furnishing. 1 \textit{ICRC Report}, 255. Maughan, \textit{Tobruk} 796. The second paragraph of Article 72 of the 1949 Convention now specifically prohibits such action by the Detaining Power.
Detaining Power under these circumstances: (1) the transfer of the prisoners of war to another Party to the 1949 Convention pursuant to Article 12 of the Convention; or (2) repatriation pursuant to Article 109 thereof. As any ally of the Detaining Power would probably also have less than the food supply required for its existing needs (otherwise it would already be furnishing direct assistance to the Detaining Power), the only possible transfer of the custody of prisoners of war which would avoid repatriation but would remedy the situation would be to a neutral nation. This could be accomplished under Articles 6, 109, and 111 of the Convention. The prisoners of war would then, of course, be lost to the former Detaining Power and its allies, as a labor force but would be interned in a neutral country and would be equally unavailable to the Power of Origin. On the other hand, while a special agreement for repatriation pursuant to which the repatriated prisoners of war would be excluded either wholly or in part from further military service during the then current war could be negotiated under Articles 6, 109, and 117 of the Convention, such an agreement would probably be difficult to reach inasmuch as it would at least add the repatriated prisoners of war to the labor force of their Power of Origin and, to that extent, would increase its war-making potential.

While the internationally accepted obligation to provide prisoners of war with an adequate ration to maintain health is, of course, the major problem in this area of protection afforded to prisoners of war by the 1949 Convention, there are several related problems. It is obvious that to maintain the health of a prisoner of war performing heavy labor will require more food than to maintain the health of a prisoner of war who is performing work of a sedentary nature, or no work at all. Even though this will automatically increase the requirement on the Detaining Power under the relative standard already

108 Dillon, Genesis 45. A third possible course of action (relief shipments) is discussed at pp. 158–163 infra.

109 The first paragraph of Article 6 provides for special agreements between the belligerents provided that such agreements do not “adversely affect” the prisoners of war concerned, “nor restrict the rights” conferred upon them by the Convention; the second paragraph of Article 109 provides for special agreements between belligerents for internment of longtime prisoners of war in a neutral country; and Article 111 provides for tripartite agreements between the Detaining Power, the Power of Origin, and a mutually acceptable neutral Power for the internment of prisoners of war in neutral territory. Concerning such internment, see pp. 413–416 infra. For a discussion of agreements between the opposing belligerents, see pp. 84–86 supra.

110 Concerning Articles 6 and 109 see the preceding note. Article 117 provides that no repatriated prisoner of war “may be employed on active military service.” See note VII–92, infra.

111 It would undoubtedly also improve morale and the will to fight in the country to which the prisoner of war had been repatriated.
discussed, it was, nevertheless, made the subject of special provision. The second paragraph of Article 26 again adopts a relative standard to meet this situation, requiring the Detaining Power to provide prisoners of war who work "with such additional rations as are necessary for the labor on which they are employed." However, the first paragraph of Article 51 appears to adopt the national standard for civilian workers in similar work as the minimum standard.\(^{112}\)

An adequate supply of drinking water can, at times, be even more important than food.\(^{113}\) For this reason, the third paragraph of Article 26 contains the flat requirement that "sufficient drinking water shall be supplied to prisoners of war."\(^{114}\)

The preparation and distribution of the food issued to prisoners of war is another aspect of the problem which it was felt necessary to cover with particularity in the 1949 Convention. Thus the fourth paragraph of Article 26 authorizes and requires the Detaining Power to use prisoners of war in connection with the preparation of their food (including both the food supplied by the Detaining Power and any other food in their possession, such as that received in relief packages, that purchased at canteens, etc.). The fifth paragraph of Article 26 requires the Detaining Power to provide adequate messing facilities; the third paragraph of Article 44 requires the Detaining Power to facilitate the supervision of officers' messes by the officer prisoners of war; and the second paragraph of Article 45 contains a similar provision with respect to the supervision by enlisted prisoners of war (noncommissioned officers and other ranks) of their messes.

Finally, there is one further very important provision of the 1949 Convention concerning food. The third paragraph of Article 87 prohibits collective punishments generally. Nevertheless, because of the

\(^{112}\) The first paragraph of Article 51 provides that working conditions, *including food*, "shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work." This, of course, establishes a national standard. Presumably, the Detaining Power would be expected to furnish the working prisoner of war with the higher of the two standards, relative under the second paragraph of Article 26, or national under the first paragraph of Article 51. Concerning the diet of prisoner-of-war patients, see note 129.

\(^{113}\) In the French version of the 1949 Convention, Articles 20, 26 and 46 all use the term *"eau potable."* In the English version, the second paragraph of Article 20 refers to "potable water," but the third paragraphs of Articles 26 and 46 refer to "drinking water." It appears that this was merely careless draftsmanship. See 2A *Final Record* 347.

\(^{114}\) During the "Death March" in the Philippines in April 1942, in semitropical heat, a great many deaths resulted from the lack of water—or from frantic attempts by the marching prisoners of war to obtain water. *I.M.T.F.E.* 1043–45. The requirement that the Detaining Power provide an adequate supply of water (and food) during such an evacuation is now specifically covered by the second paragraph of Article 20 of the 1949 Convention. See pp. 101–102 *supra*. The third paragraph of Article 46 contains a similar provision with respect to transfers between prisoner-of-war camps.
alacrity with which many Detaining Powers have had recourse to the reduction of food allowances as a method of punishing groups of prisoners of war for the alleged misconduct of some few of them, it was felt necessary to specifically prohibit collective measures with respect to food and the last paragraph of Article 26 so provides.\textsuperscript{115}

4. Clothing

The first paragraph of Article 18 provides that captured prisoners of war may retain "articles used for their clothing." Article 27 elaborates upon the requirements imposed upon the Detaining Power with respect to the supplying of prisoners of war with clothing. This Article places upon the Detaining Power the requirement that it supply prisoners of war with "sufficient quantities" of clothing, allowance being made for "the climate of the region where the prisoners are detained." It further authorizes the issuance to prisoners of war of captured uniforms of the forces to which they belonged, if such captured uniforms are suitable for the climate in which they are to be used. Moreover, the requirement that clothing in sufficient quantities be supplied to prisoners of war is a continuing one, the second paragraph of Article 27 requiring that "regular replacement and repair" of clothing shall be assured by the Detaining Power. Finally, this Article makes provision for the issuance to prisoners of war by the Detaining Power of clothing appropriate to the work to which they are assigned.\textsuperscript{116}

The provisions of Article 27 are substantially those contained in Article 12 of the 1929 Convention. Few problems arose during the course of World War II with regard to the issuance of clothing to prisoners of war. The main difficulty which did arise was that a point was reached in the war at which a number of countries found it im-

\textsuperscript{115} The last sentence of Article 26 of the 1949 Convention is actually a verbatim reproduction of the last sentence of Article 11 of the 1929 Convention; and the third paragraph of Article 87 of the 1949 Convention (prohibiting collective punishments generally) is an amplification of the provisions of the last sentence of Article 46 of the 1929 Convention. A violation of the provisions of the last sentence of Article 26 by a belligerent would, in most cases, constitute a violation of the relatively more important provisions of the first paragraph of Article 26. [During the rioting at Koje-do in Korea in 1952 (see note V-8 infra), in order to move recalcitrant Communist prisoners of war to smaller, more manageable, prisoner-of-war compounds where control by the Detaining Power could be reestablished, the military authorities of the United Nations Command made food available in the new, small compounds and refused to make it available in the old, large compounds. If the prisoner of war wanted to eat, he had to move to the new compound. The ICRC Delegate took the position that this was collective punishment involving food. The United Nations Command took the position that as food was available in the new compounds, to which the prisoners of war were free to move, there was no denial of food to them. Harvey, Control 142-43; Vetter, Mutiny 177.]

\textsuperscript{116} This requirement is, in effect, reiterated in the first paragraph of Article 51.
possible to comply with the requirement for the issuance of adequate clothing. When this occurred, the Powers to which the prisoners of war belonged remedied the situation by sending uniforms through relief channels to the enemy prisoner-of-war camps. These shipments were made with the understanding that they were not to be considered as in any way releasing the Detaining Power from the obligations imposed upon it by the provision of the 1929 Convention and that the uniforms so furnished were to be regarded as a supplement to, and not as a replacement for, those which the Detaining Power was required to furnish. With the exception of Germany, the Detaining Powers concerned accepted and applied this principle. 117

5. Hygiene and Medical Care

The maintenance of the health of prisoners of war is perhaps the major problem with which these Conventions are concerned. 118 The provisions of the 1949 Convention relating to this problem are numerous and detailed, and full compliance with them would unquestionably mean the survival of many prisoners of war who, under less favorable conditions, would succumb to the illnesses and diseases which are endemic in crowded prisoner-of-war camps. Unfortunately, however, here once again we find that, despite the broad coverage of the subject in the 1949 Convention, there are actually only a few instances where its provisions go beyond the limits of the predecessor 1929 Convention. Perhaps the draftsmen at Geneva felt that the provisions of the 1929 Convention in this area were adequate if complied with and only required minimum clarification in order to accomplish the desired purposes.

The basic provision concerning medical care is Article 15, which binds the Detaining Power to provide prisoners of war with "the medical attention required by their state of health." This provision is, of course, merely a general requirement containing no standards—but it sets the stage for what is to come. The detailed provisions with respect to the hygienic conditions which the Detaining Power is required to maintain and the medical attention which it is bound to provide to the prisoners of war are contained in Articles 29, 30, and 31.

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117 1 ICRC Report 258. This limitation would appear to be rather meaningless. If a Power of Origin feels the imperative need to furnish clothing for its military personnel held as prisoners of war by the enemy because the enemy Detaining Power is itself completely unable to furnish that clothing, it accomplishes very little to assert that the Detaining Power is not relieved of its basic responsibility in this regard—a responsibility which it concededly is not in a position to meet. The problem here is quite different from that with respect to food. See note 107 supra.

118 Obviously, the provisions of the Convention which are concerned with shelter, food, clothing, etc., are all of major importance in maintaining the health of the prisoner of war.
It is primarily with the provisions of these Articles that we will be concerned.

Article 29 is substantially the same as Article 13 of the 1929 Convention. It places upon the Detaining Power, in a number of specified areas, the duty to take all measures necessary to maintain a standard of sanitation which will "ensure the cleanliness and healthfulness of camps and . . . prevent epidemics." Specifically, the Detaining Power must provide prisoners of war with clean and hygienic toilet facilities, accessible 24 hours a day, bath and shower facilities and the time to use them; and, finally, water and soap in sufficient quantities both for their personal cleanliness and for washing laundry. Actually, the only substantive changes from the 1929 Convention are that the requirement that prisoners of war be provided with a suffi-

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119 The health of the prisoner of war is also frequently referred to in the context of other problems, several of which have already been discussed and others of which will be discussed below. Thus, wounded and sick prisoners of war need not be evacuated from the battlefield immediately after capture [Article 19, discussed at pp. 99–100 supra]; health limitations are placed on the locating of prisoner-of-war camps [the first two paragraphs of Article 22, discussed at pp. 120–123 supra]; the quarters provided for prisoners of war must not be such as to be "prejudicial to their health" [Article 25, discussed at pp. 124–125 supra]; the food with which they are provided must be such as to keep them "in good health" [Article 26, discussed at p. 127 supra]; wounded and sick prisoners of war may not be transferred between prisoner-of-war camps [Article 47, discussed at p. 191 infra]; etc. See also, the provisions of the 1949 Convention setting the standards of medical care required for a prisoner of war who is the victim of an industrial accident or who contracts an industrial disease [Article 54, discussed at pp. 250–251 infra]; and outlawing acts which would "seriously endanger the health of a prisoner of war" and providing sanctions for so doing or for subjecting a prisoner of war to "physical mutilation or to medical or scientific experiments" or to "biological experiments" [Articles 13 and 130, discussed at pp. 358–360 infra].

120 The fourth paragraph of Article 13 of the 1929 Convention is now found, in substance, in the second paragraph of Article 38 of the 1949 Convention.

121 Article 29, first paragraph. During World War II the United States apparently discovered that the problem of general sanitation and personal cleanliness existed in both directions as it found itself obliged to issue a directive requiring prisoners of war to "observe all sanitary measures necessary to assure the cleanliness and healthfulness of camps and to prevent epidemics. Insanitary habits will not be tolerated." POW Circular No. 1, para. 68. Such a directive is unquestionably authorized by virtue of the Detaining Power's duty to ensure cleanliness. Pictet, Commentary 208.

122 Article 29, second paragraph. In the discussion of this Article contained in Pictet, Commentary 207, the authors refer to the finding of the ICRC that during World War II toilet facilities ("conveniences") were frequently not accessible during the night, and then state that "the new Convention makes an express stipulation in this regard." As the provisions relating to this matter contained in the official French versions of the 1929 and 1949 Conventions are absolutely identical ("jour et nuit"), it is difficult to see how the implications of the Commentary statement can be justified. If a Detaining Power does not meet its obligations in this respect, it will be in violation of the provision of the 1949 Convention just as other Detaining Powers were in violation of the same provision of the 1929 Convention.
cient quantity of water for bodily cleanliness is increased to require the Detaining Power to provide both sufficient water and soap, not only for bodily cleanliness but also for washing personal laundry; and the further requirement that installations, facilities, and time also be provided to the prisoners of war for these purposes.123

The duty to take all measures necessary to prevent epidemics contained in Article 29 must not be overlooked. It is this duty which both obligates and authorizes the Detaining Power to provide prisoners of war with the inoculations and vaccinations needed to immunize them from the outbreak and spread of the numerous diseases such as typhus, typhoid, paratyphoid, cholera, smallpox, plague, etc., which have historically appeared where men were closely confined over long periods of time.124

The medical care and attention to which the prisoners of war are entitled and which the Detaining Power is obligated to give them is set forth in Articles 30 and 31. Basically, there is a dual coverage with respect to the problem of the ascertainment of the need of any individual prisoner of war for medical treatment. At least once a month every prisoner of war must receive “medical inspections.” This “inspection” includes weighing and weight recording, determination of general health condition, technological tests to detect the presence of contagious diseases, etc.125 The purpose of this procedure is obviously to permit the identification of ailments before the appearance of subjective symptoms, particularly those ailments which could

123 Article 29, third paragraph. The 1929 Convention stated that camps “shall be as well provided as possible” with baths and showers. The 1949 Convention contains the flat admonition that the camps “shall be furnished” with these facilities. This change would seem to have closed the loophole of self-excuse under which the Detaining Power might previously have attempted to justify failure to comply with the requirements of the Convention in this respect.

124 The term “authorizes” is used intentionally. If a Detaining Power considers it essential to give all prisoners of war held by it, or all prisoners of war in a particular camp, a generally recognized and medically accepted immunization, even by force if necessary, such a procedure is entirely within its authority in the execution of its obligation to prevent epidemics among the prisoners of war in its custody. Of course, should the medication used not be one recognized and accepted by the medical profession generally, or should it be a known defective medication, the individuals involved on the part of the Detaining Power would lay themselves open to the charge that the prisoners of war were being used as human guinea pigs, in direct violation of the first paragraph of Article 13, and they would be subject to the sanctions of Articles 129 and 130. See the discussion of this subject at pp. 358–360 infra.

125 Article 31. The United States contemplates a medical “examination” of every prisoner of war upon arrival at the prisoner-of-war camp and a monthly “inspection” by a medical officer which will include the recording of the weight of the prisoner of war. POW Circular No. 1, para. 66 and Figure 3. For a further discussion of the monthly “medical inspection” required by Article 31 and the monthly “medical examination” required by Article 55 in connection with the working prisoner of war, see pp. 219–221 infra.
be transmitted to other prisoners of war and which can exist and even enter the contagious or infectious stage without the ailing person being aware of his condition.\textsuperscript{126} The other side of the coin, and the second aspect of the determination of the existence of a need for medical treatment, consists of the right granted to a prisoner of war by the Convention to seek medical examination on his own initiative.\textsuperscript{127} The prisoner of war who believes that he has a condition warranting medical attention must be permitted to obtain such attention so that a determination may be made by qualified medical personnel as to the actual existence of an ailment, its identity if it does exist, and the treatment required. The addition of this provision in the 1949 Convention undoubtedly resulted from the problems in this area encountered by the ICRC during World War II.\textsuperscript{128}

A second basic requirement in the medical field is that there must be an "adequate" infirmary in every prisoner-of-war camp. The size and capabilities of the infirmary will necessarily depend upon the manner in which medical care is organized by the particular Detaining Power—provided, always, that whatever the organization, it must be such as to provide the medical care required by the prisoner of war.\textsuperscript{129} Thus, one Detaining Power might organize the camp infirmaries so as to provide only day-to-day medical care, with the sick or injured prisoner of war being transferred to a more elaborate medical installation outside the prisoner-of-war camp when his illness or injury requires more sophisticated treatment than is available at the local infirmary.\textsuperscript{130} Under these circumstances, the Convention

\textsuperscript{126} This is similar to the efforts of voluntary civilian organizations during peacetime to have everyone submit himself regularly to the various technical checks for tuberculosis, diabetes, heart disease, etc.

\textsuperscript{127} Article 30, fourth paragraph. This right is established negatively—by prohibiting the Detaining Power from preventing a prisoner of war from applying for medical treatment. There are certain merits in establishing prisoner-of-war rights through the medium of prohibitions on the actions of the Detaining Power where such a procedure is appropriate. The potential dangers inherent in this particular provision, whether stated affirmatively or negatively, and which were apparently overlooked or disregarded by the 1949 Diplomatic Conference, are discussed in connection with Article 55, at p. 220 infra.

\textsuperscript{128} 1 ICRC Report 265. Even more reprehensible was the deliberate withholding by the Chinese in Korea of badly needed medical attention from prisoners of war who refused to accept the Communist ideological thesis—the so-called "reactionaries." U.K., Treatment 22.

\textsuperscript{129} Article 30, first paragraph. The infirmary must also be capable of providing an "appropriate diet" for the condition for which the prisoner of war is receiving treatment.

\textsuperscript{130} During World War II the United States pursued the following method of providing medical care at all levels: "The camp dispensary, under the supervision of the camp surgeon, held the usual daily sick call and gave the same infirmary treatment as afforded by any unit surgeon. Those in need of hospital care were sent to the station [camp] hospital. If need of specialized treatment or prolonged hospital-
specifically provides that the prisoner of war needing special treatment must be admitted to any medical installation, military or civilian, where the necessary treatment is available.\textsuperscript{131} Other Detaining Powers might organize their camp infirmaries in such a manner that each of them would be completely competent to provide any conceivable medical care which could be required by a prisoner of war—from first aid for a cut finger to heart or brain surgery.\textsuperscript{132}

In addition to the foregoing basic requirements, there are a number of other provisions relating to medical care which, while not of general application, are certainly of major importance in the circumstances under which they are applicable. Thus, there are requirements that, if necessary, isolation wards must be established for the treatment of cases of contagious and mental diseases;\textsuperscript{133} that a prisoner of war whose condition is such as to require special medical treatment or a special operation must be given such care even if his repatriation is imminent;\textsuperscript{134} that special facilities must be established for the care and rehabilitation of the disabled (presumably amputees and those who have suffered some similar disabling condition), and particularly of the blind;\textsuperscript{135} that the Detaining Power must, if requested by a prisoner of war, furnish to him an official certificate, and forward a duplicate thereof to the Central Prisoners of War Agency,\textsuperscript{136} containing information with regard to the nature of the illness or injury for which he was treated, and the duration and kind of treatment received; and that the costs of medical treatment, including the costs of any necessary “apparatus” must be borne by the Detaining Power.\textsuperscript{137}

\textsuperscript{131} Article 30, second paragraph.
\textsuperscript{132} This is probably a more utilitarian method of operation for a very large concentration of prisoners of war, as it obviates the need for prisoner-of-war transfers from camp to outside hospital, for prisoner-of-war wards in hospitals ill equipped for such an arrangement, etc. Moreover, there will frequently be sufficient prisoner-of-war or retained medical personnel (see discussion at pp. 70–73 supra) available to man a camp medical installation competent to provide complete medical services.
\textsuperscript{133} Article 30, first paragraph.
\textsuperscript{134} Article 30, second paragraph.
\textsuperscript{135} Ibid. The emphasis with reference to the blind resulted from the experiences of World War II and the belief that the sooner their rehabilitation began, the better their overall condition would be. 2A Final Record 259.
\textsuperscript{136} Concerning this agency, see pp. 154–158 infra. Similar provisions with respect to industrial illnesses and injuries are discussed at pp. 249–252 infra.
\textsuperscript{137} The second paragraph of Article 14 of the 1929 Convention provided merely that the Detaining Power would bear the costs of “temporary prosthetic equipment.” The last paragraph of Article 30 of the 1949 Convention attempts to elaborate in this regard, specifying that the Detaining Power must provide “dentures
The third paragraph of Article 30, provides that prisoners of war shall, preferably, receive medical attention from the medical personnel of the power on which they depend (the Power of Origin) "and, if possible, of their nationality." This provision, which has no real counterpart in the 1929 Convention, must be read in conjunction with Articles 32 and 33, which specify the functions to be performed by captured medical personnel of various categories, some of whom have a basic right to be repatriated and may be retained by the Detaining Power only insofar as the needs of the prisoners of war may require.

There is one other aspect of the problem of maintaining the health of prisoners of war which, although receiving comparatively little attention in the Convention, is of major importance. This concerns the availability of time and space for outdoor physical activities, such as calisthenics and sports. The first paragraph of Article 38 admonishes the Detaining Power to "encourage" the participation of prisoners of war in sports and games, and obligates it to provide them with "adequate premises and necessary equipment." The second para-

and other artificial appliances, and spectacles." While the intention of the draftsmen was undoubtedly to liberalize the provision by making specific references to dentures and spectacles, which had not always been provided by Detaining Powers during World War II (1 ICRC Report 266), the use of the phrase "dentures and other artificial appliances, and spectacles" to amplify the previous reference in the provision to "apparatus" may, in other respects, be found to be retrogressive. Does its use in place of "temporary prosthetic equipment" affect the obligation of the Detaining Power to provide artificial limbs for amputees? It is certainly to be hoped that no Detaining Power will so construe it—but Detaining Powers are not noted for the liberal construction of international conventions establishing their obligations to prisoners of war. It would have been much better had the term "prosthetic equipment" been retained in the enumeration in the provision of the Convention.

138 This paragraph was the occasion for some discussion at the 1949 Diplomatic Conference. The representative of the United States emphasized the need for a prisoner of war to be able to communicate with the medical personnel who were treating him, while the representative of the United Kingdom believed that the prisoner of war should be treated by medical personnel from the armed forces in which he was serving when captured. 2A Final Record 472. The decision was reached to include both suggestions. Ibid., 476 & 382.

139 And also with Article 28 of the First Convention.

140 For a discussion of "retained personnel," see pp. 70-74 supra.

141 Article 38 opens with the words "[w]hile respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games. . . ." (Emphasis added.) The italicized words were intended to constitute a prohibition on enforced attendance by prisoners of war at propaganda lectures, etc. See pp. 139-142 infra. Unfortunately, to be consistent, this means that the Detaining Power must also respect the individual preferences of prisoners of war who do not desire to exercise even though this can only be of benefit to their health. However, it is assumed that the Detaining Power would at least have the right to require attendance at morning calisthenics in the execution of its obligation to maintain the health of the prisoners of war.
graph of Article 38 provides that the prisoners of war shall have opportunities for these purposes and for being out-of-doors; and that sufficient open spaces shall be provided by the Detaining Power for this purpose in all prisoner-of-war camps.

It will thus be seen that the Detaining Power is obligated to provide the prisoners of war with (1) opportunities for physical exercise, including sports and games; (2) the equipment necessary for these purposes; (3) the open spaces likewise necessary for these purposes; and (4) opportunities to be out of doors. During World War II it was found that when the Detaining Power made such opportunities available to the prisoners of war, it improved not only their health, but also their morale. Unfortunately, there are times when it is simply beyond the ability of the Detaining Power to provide adequate and sufficient space for the purposes of exercise. When this occurs, or when the Detaining Power fails to furnish the necessary space for its own reasons, the result will frequently be “barbed-wire psychosis,” a mental condition which can be a greater drain on the resources of the Detaining Power than liberal compliance with the foregoing provisions of the Convention.

6. Morale

The preceding discussion has been directed primarily toward the provisions of the Convention aimed at ensuring the physical well-being of the prisoner of war. Now let us direct our attention to a number of other areas which are also of vital importance in the maintenance of individual esprit and the will to live.

The importance of keeping a prisoner of war fully occupied, without time hanging on his hands, cannot be overestimated, both from the point of view of the Detaining Power and from the point of view

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142 The comparable articles of the 1929 Convention (Articles 13, fourth paragraph, and 17) were lacking in detail and were nonmandatory. The provisions of the 1949 Convention in this area are a considerable improvement. (For a further discussion of some of the problems connected with physical exercise and organized sports, see note 141 supra.)

143 1 ICRC Report 264.

144 It should be comparatively rare that the Detaining Power could not even provide an area sufficient for walking or jogging.

145 For an example of complete noncompliance with most of the foregoing provisions of the Convention concerning life in a prisoner-of-war camp, see Bean, A Guest at the Hanoi Hilton, The Retired Officer, July 1973, at 28. Colonel Bean, a prisoner of war in North Vietnam for five years and two months, spent the first half of that period alone in a cell 7 by 8 feet in size, with no ventilation and very little light; was fed “a small loaf of bread and watery soup” twice a day; received only 2½ coffee-size cups of water a day; was provided with a “convenience” consisting of a bucket in his cell; and during 25 months was allowed out to “exercise” on only 37 occasions (an average of once every 20 days), each time for a period of 3–5 minutes. See also notes VI-35 and VII-94 infra.
of the prisoner of war himself. Keeping the prisoner of war fully occupied solves many disciplinary problems for the Detaining Power and, in many cases, it is all that makes life in a prisoner-of-war camp supportable for the prisoner of war. The Detaining Power may, within the limitations of the Convention, require prisoners of war to perform certain types of labor.\textsuperscript{146} but this alone is not the full story. There are many hours in the day other than those during which the prisoner of war will be performing the labor required by the Detaining Power. Some of these will be occupied in sleeping, eating, bathing, doing personal chores, etc. The Convention indirectly attempts to make specific provisions for the remaining hours. It is with this subject that we will now be concerned.

\textbf{a. RELIGIOUS ACTIVITIES}

Like Article 16 of the 1929 Convention, the first paragraph of Article 34 of the 1949 Convention provides for complete liberty in the exercise of religious duties, subject only to the requirement of compliance with the disciplinary routine of the Detaining Power.\textsuperscript{147} New in this area is the absolute requirement of the second paragraph of Article 34 that "[a]dequate premises shall be provided where religious services may be held."\textsuperscript{148}

As in the case of medical personnel, provision is made for the retention of chaplains for the purpose of ministering to the prisoners of war.\textsuperscript{149} While so retained, they have the same status as retained medical personnel.\textsuperscript{150} With respect to ministers of religion who were not engaged in their religious capacity while serving in their armed forces, special provision is now made in Article 36, permitting them to function as chaplains while in the custody of the Detaining Power and providing that they shall receive the same treatment as retained chaplains and that they shall not be required to perform any other

\textsuperscript{146}See pp. 225–240 infra.

\textsuperscript{147}Certainly, no one would contend that religious services could be scheduled so as to conflict with morning roll call or to interrupt the workday.

\textsuperscript{148}The enumeration in the first paragraph of Article 72 of the items which prisoner of war are allowed to receive through the post includes "articles of a religious, educational or recreational character which may meet their needs, ..." This matter will be discussed at more length in connection with the overall problems relating to relief packages. See p. 160 infra.

\textsuperscript{149}See the discussion of Articles 4C and 33, at pp. 70–74 supra. See also the restrictive provision of the last paragraph of Article 33.

\textsuperscript{150}Various special agreements entered into during World War II authorized the retention of anywhere from one chaplain per thousand prisoners of war (United States–Germany) to four chaplains per thousand prisoners of war (Germany–South Africa). 1 ICRC Report 202. Article 2(a) of the Model Agreement on this subject, drafted by the ICRC pursuant to Resolution 3 of the 1949 Diplomatic Conference (1 Final Record 361), calls for the retention of one chaplain per two thousand prisoners of war. ICRC, \textit{Model Agreement}. 
work. Finally, as a third source of spiritual advisers, when neither
retained nor prisoner-of-war ministers are available, provision is
made (in Article 37) for the designation—subject to the approval of
the prisoners of war constituting the religious community, the Detaining
Power, and, where appropriate, the local religious authorities of
the religion concerned—of a local minister or, where permitted by the
religion, a qualified layman, to perform the necessary religious func-
tions for the prisoners of war of that religion. The minister or layman
so designated is specifically required to comply with all of the regu-
lations of the Detaining Power with respect to discipline and military
security.

Details with regard to the functions to be performed by chaplains
are contained in Article 35 which, generally, permits them to minister
to prisoners of war “and to exercise freely their ministry among pris-
oners of war of the same religion.” Special privileges available to
them include the use of necessary transport for visiting prisoners of
war outside the camp where the chaplain is himself confined, presum-
ably where a group of prisoners of war have no other source of
spiritual guidance; and freedom to correspond, beyond the personal
quota but subject to normal censorship, with the ecclesiastical author-
ities of the Detaining Power and with international religious organi-
zations, on matters relating to his religious duties.

b. INTELLECTUAL, EDUCATIONAL, AND RECREA-
TIONAL PURSUITS

Provision having been made for the spiritual needs of the prisoners
of war, the draftsmen of the 1949 Convention directed their attention
to other types of activity: the intellectual, educational, and recrea-
tional.

Article 17 of the 1929 Convention merely provided that “so far as
possible” the Detaining Power “shall encourage intellectual diversions . . . organized by prisoners of war.” It is readily apparent that the
foregoing provision did not impose any measurable obligation on the

151 There was no comparable provision in the 1929 Convention. During World
War II many ministers and priests were found serving in the ranks as ordinary
soldiers. The United States used them in their religious capacities, but, in most
respects, continued to consider them to be prisoners of war. Lewis & Mewha 159,
160; Rich, Brief History 411.

152 During World War II the allocation of chaplains to the various prisoner-of-
war installations apparently caused some problems. 1 ICRC Report 274; Mason,
German Prisoners of War 201. One method adopted in the 1949 Convention for
reducing this problem for the future was to state specifically in Article 35 that they
were to be “allocated among the various camps and labor detachments.” (Em-
phasis added.)

153 This privilege should be read in conjunction with the first paragraph of
Article 125, which authorizes the representatives of religious organizations, among
others, to visit the prisoners of war and to distribute relief supplies.
Detaining Power. Moreover, it did not specifically preclude the Detaining Power from subjecting the prisoners of war to political propaganda and from attempting to convert them to its own ideology. During World War II a few Detaining Powers did construe the Convention provision as prohibiting such action on their part, at least to the extent that political propaganda, such as lectures on ideology, could not be forced on the prisoners of war through the medium of compulsory classes, although they considered that classes could be conducted on the basis of voluntary attendance. However, this interpretation of the Convention provision, which was unquestionably extremely liberal, was not uniformly made. Where it was applied, the system usually adopted was to permit the prisoners of war to organize their own intellectual activities, such as formal study courses, the publication of camp newspapers, the establishment and operation of camp libraries and reading rooms, etc.; and to install radio loudspeakers, variously located, upon which would be broadcast programs selected by the camp authorities. In this latter instance, in order to maintain the policy of voluntariness, provision would be made whereby prisoners of war who did not desire to hear the broadcast material could turn it off.

The Commission of Experts established by the ICRC to draft proposed revisions to the provisions of the 1929 Convention relating to the spiritual and intellectual needs of prisoners of war appreciated the necessity to be more specific in regard to the encouragement of intellectual, educational, and recreational pursuits by prisoners of war and attempted to redraft the Article to attain this objective. Conceding that some political propaganda on the part of the Detaining Power was inevitable, the Commission approved an ICRC suggestion for the inclusion of an additional provision covering the problem of

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144 Thus, as early as March 1943, the decision was made by the United States that while there would be no legal objection to making information on American history and government, and the workings of democracy, available in prisoner-of-war camps, attendance at any lectures, classes, motion pictures, etc., on these subjects would have to be completely voluntary and that it would be unlawful to compel such attendance. SPJGW 1943/4248, 29 March 1943; Rich, Brief History, 544; Tollefson, Enemy Prisoners of War 67.

155 The ICRC intervened to induce certain Detaining Powers to refrain from carrying on political propaganda among prisoners of war. This was deemed to be necessary in the case of the German authorities with Allied prisoners of war and in the case of the British authorities with Italian prisoners of war in India. ICRC Report 251.

156 POW Circular No. 1, para. 96; Lewis & Mewha 147, 160. By 1944 the program in the United States had grown to such an extent that prisoners of war were taking correspondence courses given by American colleges and universities and also courses specially prepared for members of the United States armed forces. Rich, Brief History 443.

forced versus voluntary attendance at propaganda meetings.\footnote{Ibid., 12.} Although the 1949 Geneva Diplomatic Conference did not completely agree with the terminology proposed, it did adopt substantially the proposal approved by the Commission. While once again stating the obligation of the Detaining Power to "encourage" the practice of intellectual, educational, and recreational pursuits, the draftsmen at the Conference agreed, without any controversy, that the first paragraph of Article 38—which has now become the relevant Article, and which again calls upon the Detaining Power to "encourage the practice of intellectual, educational, and recreational pursuits"—should open with the words "[w]hile respecting the individual preferences of every prisoner. . . ." Obviously, this clause was added in order to place it beyond dispute that a Detaining Power may not use compulsion on prisoners of war in this area.\footnote{Feilchenfeld, Prisoners of War 45.}

At the conclusion of World War II, when prisoner-of-war problems were being studied in depth, one commentator, while agreeing that prisoners of war should not be involuntarily subjected to political propaganda favoring the Detaining Power and detrimental to their own country, even had reservations with respect to permitting this type of activity on a voluntary basis. He pointed out that while the system would work where prisoners of war were receiving a sufficient quantity of food, to permit it where inadequate supplies of food were available might in effect result in a "no study, no eat" policy, the food allowances thus being used as a bribe to encourage, or even compel, attendance at propaganda classes and lectures.\footnote{Flory, Nouvelle conception 60; U.K., Treatment 4–10; U.S., POW 10–14.} The validity of his argument was fully demonstrated by what transpired in the prisoner-of-war camps maintained by the Communists in Korea during the 1950–53 hostilities in that country. While attendance at political indoctrination sessions in these camps were originally compulsory,\footnote{Hermes, Truce Tent 237. The fact that they did complain is indicative of the success that the voluntary program was having.} in time it became voluntary, with the so-called "progressives"—who attended such sessions regularly—receiving a substantially increased food allowance, and the so-called "reactionaries"—those who had proven immune to Communist blandishments—frequently receiving a food allowance which was far below the minimum subsistence level.\footnote{See U.S., POW 10; U.K., Treatment 21–22.} Nevertheless, it is believed that the policy contained in the 1949 Convention is a proper one and that the flagrant disregard thereof by the Communists in Korea, and elsewhere, does not warrant
denigration of the provision, but merely indicates that this is another area where, in the application of the provisions of the Convention, it is frequently necessary to rely largely on the good will and inherent desire to be law-abiding of the respective belligerents—even where some of them do not have a very good record of compliance with their voluntarily assumed international obligations.

In addition to their duty to “encourage” the prisoners of war to engage in intellectual, educational, and recreational pursuits, the Detaining Power also has an obligation under the first paragraph of Article 38 to “take the measures necessary to ensure the exercise thereof by providing them [the prisoners of war] with adequate premises and necessary equipment.”\textsuperscript{163} Obviously, more than time is required if prisoners of war are to be enabled to read, to study, to participate in sedentary games, to engage in musical activities, to produce entertainment, etc. They need places not subject to the vagaries of the weather in which to pursue these activities, and they need the items of equipment which are indispensable for many of them. The Convention places the basic responsibility for providing both premises and equipment directly on the Detaining Power. It places upon the Detaining Power a far more specific and measurable obligation than that which was contained in the parallel provision of the 1929 Convention which, as we have seen, merely obligated the Detaining Power to “encourage” these activities “as much as possible.”

Here, once more, the problem arises as to whether the Detaining Power may consider the receipt of equipment in these categories (intellectual, educational, and recreational) in relief parcels or collective shipments as relieving it pro tanto from the international obligation which it has assumed.\textsuperscript{164} There will obviously be considerably less excuse for such action by the Detaining Power in these areas than in the case of food. In any event, the prohibition against such a practice contained in the second paragraph of Article 72 is there stated to be applicable to all of the obligations of this nature assumed by the Detaining Power as a Party to the Convention.

c. PHYSICAL EXERCISE AND SPORTS

A third type of activity which contributes tremendously to the morale and well-being of the prisoner of war, and in many instances will so contribute to the exclusion of intellectual, and perhaps even spiritual, pursuits, is the opportunity for physical activities and organized sports and games. Both paragraphs of Article 38 impose new obligations on the Detaining Power in this area. As already noted in connection with intellectual, educational, and recreational pursuits, the

\textsuperscript{163} See note 148 supra. Article 80 likewise gives responsibilities in this area to the prisoners’ representative, See p. 305 infra.

\textsuperscript{164} See note 107 supra.
Detaining Power must now provide adequate premises and the necessary equipment. This obligation is equally applicable to physical activities. And the second paragraph of the Article imposes upon the Detaining Power the affirmative requirements of providing the prisoners of war with opportunities for taking physical exercise and for being out-of-doors, and of providing sufficient open space in every camp for these purposes. Once again, it is no longer left to the Detaining Power itself to determine its capabilities in this regard and what it considers to be "possible" on its part. All discretion is removed and the definite obligation is placed upon the Detaining Power to provide the prisoners of war with time and space for being out-of-doors, for physical exercise, and for sports and games. Actually, this will frequently contribute so much to the health of the prisoners of war as to substantially reduce the requirement for medical attention.  

**d. CANTEENS**

There is one further subject which contributes materially to the morale of the prisoner of war although it does not exactly fall within the general category of matters which we have just been discussing. This is the camp canteen, the store where the prisoner of war is allowed to purchase such ordinary items as may be available on the local economy, especially tobacco. The existence of the canteen and the availability for sale of canteen-type articles has an affirmative effect on morale the extent of which is incalculable.

Provisions for the establishment of canteens in each prisoner-of-war camp are contained in Article 28 of the 1949 Geneva Convention. This Article represents a considerable elaboration of the predecessor provision, Article 12 of the 1929 Convention. For example, while Article 12 referred only to "food products and ordinary objects," the new provision includes "food stuffs, soap and tobacco and ordinary articles in daily use." Again, while Article 12 provided that prisoners of war would be able to obtain the named items "at the local market price," the new Article 28, in the first paragraph, affirmatively states that "the tariff [price list] shall never be in excess of local market

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165 This is true only provided that the prisoners of war are receiving a sufficient food allowance to enable them to participate in physical exercise and sports. Inadequate diet reduces both the will and the power to indulge in activities which necessitate physical exertion; and the resulting reduced activity, while perhaps somewhat reducing the need for food, also reduces the ability of the body to fight infection.

166 See note 172 infra. The canteens may typically also stock such other items as toilet articles; candy, crackers, soft drinks, fruit, and other food items; and, in some cases, even light beer (or wine), McKnight, POW Employment 52; Mason, German Prisoners of War 208. The inventory will, as noted below, depend entirely upon the state of the local economy.
prices." And, while Article 12 provided that profits from the canteen "shall be used for the benefit of prisoners," the second paragraph of Article 28 not only so provides, but further specifies that "a special fund shall be created for this purpose," and that the prisoners' representative shall have a right to collaborate in the management of this fund (as well as in the management of the canteen itself); and the last paragraph of Article 28 states that when a camp is closed, the balance of any such fund shall be turned over to an international welfare organization (presumably one such as the ICRC, and not a national Red Cross Society) to be used for the benefit of other prisoners of war of the same nationality as those whose purchases have created the fund.

Of course, the stock available at prisoner-of-war canteens will depend largely upon the availability of canteen-type items in the territory of the Detaining Power. If there is, for example, a shortage of tobacco or soap or candy in the territory of the Detaining Power, there will likewise be a shortage of this item in the prisoner-of-war canteens. As in the case of food shortages, to expect any Detaining Power to maintain prisoners of war at a higher standard than that of its own civilian population is an excess of naivety. Unfortunately, the Convention does not contain any provision covering this situation. Presumably, if any such item is rationed to the civilian population, prisoners of war should, by analogy to other Convention provisions, receive a comparable ration. The unfortunate omission of such a provision in

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167 The author was told by a number of Pakistanis who had been held as prisoners of war in India that the Indian Government had given concessions to Indian entrepreneurs to operate the canteens on a profit-making basis and that the canteen prices were frequently four or five times that of the local economy.

168 During World War II the German Government stated that "prisoner of war canteens are establishments of the Reich and that their operations (resources) represent economic income and expense of the Reich." German Regulations, No. 41, para. 769. While the exact meaning of this statement is somewhat obscure, the section heading is quite specific. "Tax on turnover of prisoner of war canteens." The United States, on the other hand, determined that as Federal instrumentalities, prisoner-of-war canteens were not subject to State taxes, such as sales taxes, and that their profits were to be used for the benefit of the prisoners of war. SPJGT 1943/10442, 12 July 1943; Rich, Brief History 415.

169 Concerning the prisoners' representative, see pp. 293-307 infra. Under the third paragraph of Article 62 the pay of the prisoners' representative, and of his assistants, is chargeable against canteen profits.

170 The United States went even further and provided that in general when prisoners of war were transferred from one camp to another, "a proportionate share of the value of canteen stock and the Prisoner of War Fund will be transferred" with them. POW Circular No. 1, para. 75. For details of the directive concerning the administration of the camp canteens by the United States during World War II, see ibid., para. 71 et seq.; and Rich, Brief History 413. The last paragraph of Article 28 further provides that in the event of a "general repatriation" (cessation of hostilities?), accumulated canteen profits will be kept by the Detaining Power unless the Powers concerned otherwise agree.
the Convention is one which, it is to be feared, will offer an escape hatch to the Detaining Power so inclined.\textsuperscript{171} To some prisoners of war, the failure of the Detaining Power to make tobacco available through the canteens will be as serious an omission as its failure to provide an adequate food allowance.\textsuperscript{172}

7. Correspondence

The privilege of communicating with, and receiving communications from, his family is probably the greatest single factor in the maintenance of prisoner-of-war morale.\textsuperscript{173} The recognition of its importance is illustrated by the fact that no less than 11 articles of the Convention are in some way concerned with this problem.\textsuperscript{174}

\textsuperscript{171} This problem was discussed briefly by Committee II (Prisoners of War) at the 1949 Diplomatic Conference. The suggestion was there made that the present Article 28 should include a provision for special agreements under which the Power of Origin might supply the canteens if the Detaining Power was unable to do so. This suggestion was not favorably considered for two reasons: first, that the first paragraph of Article 6 already provided generally for special agreements between belligerents; and, second, that such a provision would encourage some Detaining Powers to refrain from stocking canteens. 2A Final Record 258-59. The first reason did not prevent the draftsmen from including in the same Article a provision which contemplates the possibility of a special agreement concerning the ultimate disposition of canteen profits. While there is considerable merit to the second reason, if shortages occur—as they inevitably will—there should be some established method, other than relief packages, for remedying the situation.

\textsuperscript{172} The importance of tobacco to the prisoner of war is illustrated by its inclusion in the few items specifically listed in the first paragraph of Article 28, as well as by the provision in the third paragraph of Article 26 requiring the Detaining Power to permit the use of tobacco by prisoners of war. Speaking of the British and Australian prisoners of war in Singapore early in 1942, one author says that "after food, tobacco was the prisoners' main preoccupation." Caffrey, \textit{Out in the Midday Sun} 226-27.

\textsuperscript{173} During World War II the Central Prisoners of War Agency (concerning this Agency, see pp. 154-158 \textit{infra}) received and forwarded almost 20 million communications from and to prisoners of war and civilian internees; and it estimated that this was only a very small proportion of the total of such mail. 2 ICRC Report 57.

\textsuperscript{174} Articles 48, 69, 70, 71, 74, 75, 76, 77, 78, 98, and 108. Annexes IVB and IVC are also relevant, as are Articles 72 and 73. One well-informed writer has said: "One of the most bitter features of captivity is the ignorance of the prisoners [of war] of conditions and news in general of home." Dillon, \textit{Genesis} 55. The reverse of this situation, the lack of the receipt of news of the prisoner of war by his family, is an equally bitter feature of captivity. During the hostilities in Vietnam the North Vietnamese took advantage of the prisoner-of-war hunger for news from home, and the family hunger for news of and from the prisoner of war, to use correspondence as a method of obtaining favorable propaganda. After a long period during which only a sporadic and extremely limited correspondence was permitted (see note 183 \textit{infra}), arrangements were made for an antiwar group in the United States to act as North Vietnam's postal agent with respect to prisoner-of-war mail. 1971 Hearings 237-38; Sullivan, Prisoners of War in Indochina 305-06.
Pursuing the subject chronologically, Article 70 provides that as soon as possible and, in any case, not later than one week after arrival at a transit or prisoner-of-war camp, every newly captured individual must be given the opportunity to send a "capture card" to his family in which he may inform them of the fact of his capture, his address, and his state of health. At the same time he may send a somewhat similar card to the Central Prisoners of War Agency, thus making doubly sure that the information reaches his family. The Detaining Power is specifically admonished to expedite the forwarding of these capture cards and is prohibited from delaying their transmission. Provision is also made for the sending of this type of card whenever the prisoner of war has a change of address because he is hospitalized or transferred to another prisoner-of-war camp. The first paragraph of Article 48 specifies that in this latter event the Detaining Power has an obligation to advise the prisoner of war of his new postal address in time for him to send the card to his next of kin.

While the dispatch of the capture card is of extreme importance both to the prisoner of war and to his family, of at least equal importance to them is the right to communicate with some degree of regularity over the period during which the prisoner-of-war status

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175 A capture card "similar, if possible" to Annex IVB to the Convention is to be provided by the Detaining Power for use by the prisoner of war in notifying the Central Prisoners of War Agency of his capture. As no form is provided by the Convention for use by the prisoner of war in notifying his family of his new status, the suggestion has been made that the capture card sent to the family could consist of the back (message side) of Annex IVB and the front (address side) of Annex IVC 1 (the Correspondence Card). Pictet, Commentary 342 n.1. However, this would involve unnecessary duplication of information. All that is really needed is a card identical to Annex IVB with a blank address side on which the prisoner of war could write the name and address of the member of his family to whom the information is to be sent.

176 The second paragraph of Article 36 of the 1929 Convention contained a very similar provision with respect to the notification of the family. Although it contained no provision for a capture card to be sent to the Central Prisoners of War Agency, during World War II the ICRC succeeded in persuading a number of belligerents to adopt such a procedure, particularly because the capture cards usually reached the Central Agency in Geneva long before the lists officially submitted by the Detaining Power pursuant to what is now Article 122. 1946 Preliminary Conference 78–79. This procedure also made the information centrally available when a displaced family failed to receive the card addressed to it by the prisoner of war.

177 Article 70 also provides for the dispatch of such a card "in cases of sickness." The meaning of this provision is unclear. Certainly, there was no intention to authorize the sending of such a card every time that a prisoner of war was on sick call because of a cold or some other equally routine ailment. Pictet, Commentary 341.

178 The third paragraph of Article 48 imposes upon the Detaining Power the correlative obligation of promptly forwarding to the prisoner of war at his new camp all mail and parcels received at the former camp after his departure therefrom. See p. 193 infra.
extends, which may be a matter of years. The subject is covered, at considerable length, in Article 71 of the Convention which opens with the flat statement that "[p]risoners of war shall be allowed to send and receive letters and cards." This is the blanket provision and it is followed by a number of specific provisions, some of which restrict the authority of the Detaining Power, and some of which provide the Detaining Power with a limited leeway to impose some restrictions in this area.

The tenor of the Convention is that the Detaining Power will permit prisoners of war to write and send an unlimited number of letters and cards. However, it is appreciated that the transportation of a massive bulk of mail and the censorship of correspondence which will probably be written in a language foreign to that of the Detaining Power may create problems requiring the imposition of some numerical limitations. The Detaining Power is therefore authorized, when it is deemed necessary, to limit each prisoner of war to not less than two letters and four cards per month.179 While Article 71 authorizes the monthly minimum, in exceptional cases, to be reduced below the foregoing figures, this may only be done when the Protecting Power (not the Detaining Power) concludes that it would be in the overall general interests of the prisoners of war to impose such a reduction because of the delay caused by the Detaining Power's inability to provide a sufficient number of translators to accomplish the necessary censorship without inordinate delay.180

One additional authorization for interference by the belligerent Powers with prisoner-of-war mail is contained in the third paragraph of Article 76, which permits a complete ban to be imposed, "either for military or political reasons," but with the admonition that such ban "shall be only temporary and its duration shall be as short as possible." Unfortunately, neither the drafting history of this provision (nor of its counterpart, the second paragraph of Article 40 of the 1929 Con-

179 The first paragraph of Article 36 of the 1929 Convention permitted Detaining Powers to establish numerical limits but did not provide for any specific monthly minimum. During World War II the United States at first permitted each prisoner of war to write and mail four letters and four cards per month. As the number of prisoners of war increased, the burgeoning censorship problem necessitated the reduction of this allowance to two letters and four cards per month. Tollefson, Enemy Prisoners of War 66-67. These same numbers were adopted by most of the belligerents. ICRC Report 349. They have now been incorporated into the first paragraph of Article 71 of the Convention. (It should be noted that under the third paragraph of Article 78, letters of complaint addressed to the Detaining Power, the prisoners' representative, or the Protecting Power, are excluded from the count.)

180 The sentence of the first paragraph of Article 71 which immediately follows the provision referred to in the text concerns the other aspects of the problem—mail to the prisoners of war. Here the limitations may be imposed only by the Power of Origin, "possibly at the request of the Detaining Power."
vention), nor any other provision of the Convention, discloses the intent and purpose of this authorization. It may be that it was included in order to enable the Detaining Power to put a blanket prohibition on prisoner-of-war correspondence prior to a major military operation which might otherwise be compromised by the many small bits of information which could be gleaned from such correspondence to form an overall recognizable pattern. However, the fact of the ban itself would probably be equally, or even more, revealing to the enemy intelligence service. So-called “disinformation” would probably be more effective than the total ban. And no justifiable “political reasons” can be envisaged for such a ban. All in all, this provision appears to be an unwarranted and unnecessary one which can be used by an unscrupulous Detaining Power, at least for limited periods of time, to justify legally what is really a premeditated violation of major provisions of the Convention.

Detaining Powers have, on more than one occasion, used the denial of mail privileges for disciplinary purposes: either to punish for alleged misconduct, or to compel or reward certain desired conduct. In the 1949 Convention every effort has been made to remove the mail completely from the disciplinary area. Thus: (a) the last clause of the first paragraph of Article 71 states that letters and cards “may not be delayed or retained for disciplinary reasons”; (b) the third paragraph of Article 87 prohibits collective punishment for the acts of individuals; (c) the second paragraph of Article 89 provides that

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181 Unlike the limitations on mail contained in the first paragraph of Article 71, which require the concurrence of the Protecting Power or of the Power of Origin before they may be imposed, the emergency limitations authorized by the third paragraph of Article 76 may apparently be imposed unilaterally by the Detaining Power.

182 I.M.T.F.E. 1135; U.K., Treatment 21; Miller, The Law of War 245. Writing of the procedures with respect to mail followed by the Chinese in Korea, a psychiatrist said: “Loyalties to home and country were undermined by the systematic manipulation of mail. Usually only mail which carried bad news was delivered to a man. If he received no mail at all, it was pointed out to him that his loved ones must have abandoned him.” Schein, Patterns, 257–58.

183 Maughan, Tobruk 796. While it denied the applicability of the 1949 Convention to the American prisoners of war shot down over its territory (see note I-68 supra), North Vietnam made the following statement in a letter to the ICRC dated 31 August 1965.

Authorization has been granted [to the captured American airmen] to correspond with their families. However, the regulations concerning mail with the exterior having been recently infringed, the competent authorities of the Democratic Republic of Vietnam have decided temporarily to suspend this correspondence. In future, if those concerned demonstrate their willingness to observe the regulations in force in the Democratic Republic of Vietnam, the competent authorities could reconsider the question with a view to finding an appropriate solution.

3 I.R.R.C. 528 (1965). Information concerning the nature of the “regulations” and
disciplinary punishment may include the discontinuance of only those privileges which have been granted by the Detaining Power "over and above" the minimum requirements stipulated in the Convention; (d) the first paragraph of Article 98 reserves to prisoners of war undergoing disciplinary punishment all of the benefits of the Convention; (e) the last paragraph of Article 98 specifies that prisoners of war undergoing disciplinary punishment shall have permission "to send and receive letters"; and (f) the third paragraph of Article 108 provides that prisoners of war serving sentences imposed after trial "shall be entitled to receive and dispatch correspondence." 184

A problem with respect to correspondence may arise by reason of the fact that the languages of prisoners of war usually differ from that of the Detaining Power. The third paragraph of Article 71 of the Convention, like Article 36 of its 1929 predecessor, provides that, as a general rule, prisoners of war shall use their "native language" in their correspondence but that the Detaining Power may allow them to use other languages. 185 The italicized clause was undoubtedly included for the protection of the prisoners of war, as a ban on any attempt to compel them to correspond in a language other than their own. 186 Unfortunately, it has apparently also been construed as meaning that, while generally the Detaining Power will permit correspondence to be conducted in the native language of the prisoner of war, it may, in exceptional cases, dictate otherwise. Thus, during World War II, certain prisoners of war held by the Germans were required to conduct their correspondence in German, a language with which they were totally unfamiliar as were, presumably, their correspondents at home. 187 Of course, this was the same as prohibiting them from sending any mail. While such action on the part of the Detaining Power may not always be totally unwarranted, as it may have available for

184 It should also be noted that the first paragraph of Article 87 prohibits the imposition upon prisoners of war of any punishment not imposed upon members of the armed forces of the Detaining Power who have committed the same act. Most armed forces permit their military prisoners to send and receive mail.

185 Presumably, the language of the Power of Origin will be the "native language" of the prisoner of war. However, this it not always true; and the privilege of using a different language will sometimes be sought because of unusual circumstances such as, for example, the fact that the prisoner of war was serving in the armed forces of a country other than his own (see note 204 infra), or the fact that the parents of the prisoner of war did not accompany him when he immigrated, or that while they have immigrated to the Power of Origin of their prisoner-of-war son, they are still not literate in the language of their adopted land.

186 This is the position taken by the ICRC which does not appear to accept the possibility of an alternative interpretation. Pictet, Commentary 350.

187 Tchirkovitch, Nouvelles conventions 105.
censorship purposes practically no personnel familiar with a particular language which is in limited use, nevertheless, the result can obviously be morale-shattering to the prisoners of war affected by such a ruling. It is to be regretted that despite the known existence of this problem under the provisions of the 1929 Convention, no effort was made to solve it in the 1949 Convention, which is identical except for minor drafting changes.188

It will have become obvious that differences in language, with the consequent difficulties encountered in censoring, constitute one of the major problems with respect to prisoner-of-war correspondence. As a further limitation on the Detaining Power in this area, the first paragraph of Article 76 requires that censorship be accomplished as rapidly as possible,189 be done only by the dispatching and the receiving States,190 and only once by each.

As one means of solving the problem of censorship of prisoner-of-war mail during World War II, the belligerents, as we have seen, found it necessary to place a numerical ceiling on the number of items a prisoner of war would be permitted to dispatch each month, a ceiling which has been included as a floor in the 1949 Convention. A number of belligerents in World War II went a step further and only permitted the use of letter forms with a limited number of words, or even with stereotyped messages.191 This procedure is indirectly prohibited by the first paragraph of Article 71, which requires that the cards and letters furnished to prisoners of war for their use conform "as closely as possible" to the forms annexed to the Convention.192 These forms provide a blank space for the message and carry the remark that the space "can contain about 250 words which the prisoner is free to write."193

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188 It should be noted that the German military authorities did attempt to solve this problem by issuing an order under which letters written in a number of languages little known in Germany (Urdu, Kurdish, Georgian, etc.) could be sent to Berlin for censoring. German Regulations, No. 25, para. 341. At the 1949 Diplomatic Conference the Indian delegation did make a proposal in this connection but it was not pressed. 2A Final Record 288.

189 Obviously, this is a provision which lends itself to subjective interpretation.

190 This would appear to be intended to preclude censorship by another belligerent should the prisoner-of-war mail pass through its territory while en route to its ultimate destination.

191 1 ICRC Report 348.

192 See Annexes IVC 1 and 2, respectively.

193 In the discussion of this matter in Pictet, Commentary 346, the statement is made, with respect to the model cards and letters, that it is "to be hoped that the Detaining Powers will adopt them, as recommended by the present provision." This is one of the few instances in which the present author's interpretation of a provision of the 1949 Convention is more liberal than that of the ICRC. "[C]onforming as closely as possible to the models annexed to the present Convention," the language of the first paragraph of Article 71, does not appear to be a simple recommendation. It is a requirement which can only be the subject of variation if the
Several other aspects of the prisoner-of-war mail problem are deserving of mention. Thus, prisoner-of-war mail has long been exempt from postage requirements and continues so to be.194 This provision for the postage-free carriage of prisoner-of-war mail applies not only to the country where the mail originates (the Detaining Power) and for which it is destined (usually, but not necessarily, the Power of Origin), but also to all intermediate countries (which may be belligerents or neutrals).195

Second, in respect of the anguish caused by lack of news, the provisions of the 1949 Convention amplify the cognate provisions of the 1929 Convention concerning the use of telegrams.196 The second paragraph of Article 71 specifies that prisoners of war (a) "who have been without news for a long period";197 or (b) who are unable to receive or send news by ordinary postal routes; or (c) who are at a great distance from their homes, may send telegrams, the cost thereof to be met by the prisoner of war concerned either by payment in cash

Detaining Power is able to show good cause for its action. Both the language and the intent of this provision differ markedly from the "similar, if possible," phraseology of Article 70. (See note 175 supra.)

194 The first paragraph of Article 16, 1907 Hague Regulations; the first paragraph of Article 38, 1929 Geneva Convention; the second paragraph of Article 74, 1949 Geneva Convention. The current provision on free postage is implemented by Article 16 (1) of the Rules applicable in common throughout the international postal service, Part I of the 1974 Universal Postal Convention.

195 In view of the free-postage provision of Article 16 (1) of the Rules applicable throughout the international postal service attached to the 1974 Universal Postal Convention, it appears that States which are Parties to that Convention, but not to the 1949 Geneva Convention, would still have a treaty obligation to permit the free passage of prisoner-of-war mail from, through, or to, their national territory. Moreover, the provisions of the Universal Postal Convention Common Rules are specifically extended to include prisoners of war interned in a neutral country.

196 International Telecommunications Convention and Article 4 of the Annex to the Telegraph Regulations are concerned with prisoner of war telegrams. Para. 4 of Recommendation F.1 of the International Telegraph and Telephone Consultative Committee Greenbook provides for a 75 percent reduction in the charge to prisoners of war for telegraphic services. Despite the wide use of wireless telegraphy for the transmission of messages prior to the 1949 Diplomatic Conference, the word "telegrams" was retained in the Convention. It is assumed that, nevertheless, if wireless telegraphy facilities are available, the Detaining Power will permit their use, under appropriate safeguards, in meeting its obligations under the second paragraph of Article 71. It has even been suggested that when neutral representatives are permanently stationed in a prisoner-of-war camp, they might be delegated the function of transmitting these messages (perhaps with their own transmitting set). Feilchenfeld, Prisoners of War 32.

197 There is no attempt to define the term "a long period." During World War II three months was usually the period required. Hoole, And Still We Conquer 51. Another method made available for the use of those without news for three months was the so-called "Express Messages," really a short airmail message sent via the Central Agency. 2 ICRC Report 62-63; POW Circular No. 1, para. 145.
or by being charged to his prisoner-of-war account. Because this cost was often found to be beyond the resources of prisoners of war during World War II, the 1949 Diplomatic Conference adopted a Resolution in which it requested the ICRC to prepare a series of specimen messages covering certain appropriate subjects ("personal health, health of relatives at home, schooling, finance, etc."). The ICRC has complied with the operative provision of the Resolution, a report with respect thereto having been submitted to the 1969 International Conference of the Red Cross. A series of specimen messages is therefore available to any Detaining Powers which may agree to permit their use by prisoners of war. Furthermore, the concluding paragraph of Article 74 calls upon all Parties to the Convention to reduce the charge for telegrams sent by or to prisoners of war.

Third, while a prisoner of war is denied his freedom for military reasons, it is not a dishonorable state and there is no military need to deny him the opportunity to transmit to his family documents, such as wills, powers of attorney, etc., of which they may have need. This was allowed during World War II, and the first paragraph of Article 77 of the 1949 Convention continues the practice in somewhat more specific language than was contained in the first paragraph of Article 41 of the 1929 Convention.

Fourth, while there is a tendency to consider the problem of prisoner-of-war mail as one involving solely the transmittal of mail both ways between the prisoner-of-war camp and the territory of the Power of Origin, this is not necessarily so. For example, the family of the prisoner of war with whom he wishes to correspond may live in a third country; or he may have close relatives in another prisoner-of-war

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198 There is a further provision in the second paragraph of Article 71 making the use of telegrams available "in cases of urgency." This was likewise the practice of some belligerents during World War II. *Ibid.*, para. 142.

199 Resolution 9, 1 Final Record 362.

200 ICRC, Proposed System of Standard Telegram Messages to and from Prisoners of War.

201 The third paragraph of Article 14 guarantees the retention of "full civil capacity." See the discussion of this subject at pp. 180–187 infra.

202 See 2 ICRC Report 75–76.

203 The first paragraph of Article 120 contains a special provision for the transmittal of a will to the Protecting Power, with a certified copy going to the Central Agency.

204 There has scarcely been a war fought during this century in which citizens of neutral States did not volunteer for service in the armed forces of at least one of the belligerents. Americans fought in the British and French armed forces during the 1914–17 period of World War I; Swedes fought in the Finnish armed forces during the 1939 Finnish-Russian war; Americans fought in the British and Canadian armed forces during the 1939–41 period of World War II; etc., etc.
If a third country—neutral or belligerent—which is a Party to the Convention is involved, it is obligated to take the steps necessary to effectuate the relevant provisions with respect to prisoner-of-war correspondence discussed above.

There are a number of more general provisions of the Convention dealing with the mail which also require at least a passing mention. Thus, as soon as a belligerent becomes a Detaining Power (by virtue of having taken members of the enemy armed forces into custody as prisoners of war), it has a duty to inform the prisoners of war and their Power of Origin, through the Protecting Power, of the procedures which it has adopted in order to implement the various provisions of the Convention which are concerned with prisoner-of-war mail (Article 69). Sacks containing prison-of-war mail must be securely sealed, labeled as such, and properly addressed (Article 71, fourth paragraph), and they must be shipped by the most expeditious method available to the Detaining Power (Article 71, first paragraph). And in the event that conditions prevent a belligerent from fulfilling its obligations to provide the necessary transport for prisoner-of-war mail, provision is made for this function to be performed by a neutral agency such as the Protecting Power, the ICRC, or some other organization approved by the belligerents (Article 75).

The many individuals who participated in the drafting of what eventually became the 1949 Convention were well advised to give the amount of attention which they did to the all-important subject of prisoner-of-war mail. Unfortunately, the policies adopted by the Japanese during World War II, by the North Koreans and the Chinese during the hostilities in Korea, and by the North Vietnamese during the hostilities in Vietnam were a far cry from the policies in this regard expressed in the provisions of the 1929 and 1949 Conventions. And when belligerents use this significant prisoner-of-war right to send and receive mail as a means of propaganda, as a means of coercing prisoners of war—as occurred in the latter two conflicts—much of the fabric of the Convention disintegrates.

8. Official Information concerning Prisoners of War

We have seen some of the efforts which were expended in order to ensure that the prisoner of war would be able to advise the members of his family of the fact of his capture, to keep them informed of his condition, and to receive news of them. But the efforts in this direction did not stop there. Based upon experiences of history, a number of other institutions were included among the provisions of the 1949 Convention and a number of other obligations were imposed upon Parties to an international armed conflict.

205 This apparently occurred frequently enough during World War II to cause the German military authorities to issue a regulation specifically authorizing correspondence in such cases. German Regulations, No. 5, para. 10.
Article 14 of the 1899 Hague Regulations had provided for the establishment of a Bureau of Information relative to prisoners of war in each of the belligerent States (and in any neutral State in the territory of which there were members of the armed forces of a belligerent). Each such Bureau was intended to provide what would now be called a “central data bank” for all information concerning prisoners of war held by that Detaining Power, so that any inquiry concerning an individual prisoner of war could be quickly answered. Such Bureaux were established during the Russo-Japanese War (1904–05).\(^{206}\) Also, during that conflict, France, the Protecting Power for Russia, requested the Japanese Government to provide it, on a regular basis, with lists of Russian prisoners of war. This was done on a reciprocity basis so that, for the first time, official lists of prisoners of war were exchanged by the opposing belligerents through the medium of the Protecting Power.\(^{207}\) Then, during the Balkan War (1912–13) the ICRC tried out the idea, which was really only fully implemented during World War I, of a central bureau in neutral territory which would receive and disseminate information on prisoners of war from all belligerents.\(^{208}\) This bureau was subsequently institutionalized in Article 79 of the 1929 Convention and then in Article 123 of the 1949 Convention.

Thus, through a process of evolution, there had come into being a “Central Prisoners of War Information Agency”\(^{209}\); national “Prisoners of War Information Bureaux”\(^{210}\) and an obligation on each belligerent to furnish its adversary promptly with certain specified detailed information concerning every prisoner of war taken into custody by it. With some exceptions,\(^{211}\) these institutions had functioned fairly successfully during World War II, with the result that the changes made with respect to them in the 1949 Convention were minimal and, for the most part, were concerned with amplification rather than with substance.

Once again national Information Bureaux are to be established in the territory of each belligerent State (and of each neutral or nonbelliger-


\(^{207}\) Franklin, *Protection* 77–78. Despite the adoption of this obviously humanitarian device, Article 14 of the 1907 Hague Regulations merely added the requirement that the data collected by the national Bureaux would be sent to the Power of Origin “after the conclusion of peace.”

\(^{208}\) Charpentier, 1929 Convention 146; 2 ICRC *Report* 5–6. The latter publication indicates that as early as the Franco-Prussian War (1870–71) the ICRC had opened an unofficial prisoner-of-war information bureau at Basle.

\(^{209}\) It is generally known simply as the “Central Agency.” For a review of the activities of the World War II Central Agency, see 2 ICRC *Report*, passim.

\(^{210}\) They are generally known simply as “Information Bureaux.” The United States has elected to call its Information Bureau the “United States Prisoner of War Information Center” (USPWIC). U.S. Army Regs. 633–50, para. 5.

\(^{211}\) Concerning the Soviet Union’s negative attitude in this regard, see ICRC *Report* 253–55.
ent State which is involved with prisoners of war) immediately upon
the outbreak of hostilities;212 and each such State is specifically re­
quired to provide its Bureau with adequate space, equipment, and
staff.213 Moreover, it is incumbent upon each State to furnish to its
Information Bureau “within the shortest possible period” all of the
specified identification material concerning every individual in its
custody whose status brings him within one of the various categories
listed in Article 4 of the Convention.214 However, this creates a prob­
lem. The first paragraph of Article 17, the 1949 Convention’s version
of the old “name, rank, and serial number,” has added only the date
of birth to the information which a prisoner of war is bound to give
to the Detaining Power.215 The fourth paragraph of Article 122 requires
the Detaining Power, “[s]ubject to the provisions of Article 17,” to
furnish its Information Bureau not only the foregoing data, but also
with the “place . . . of birth, . . . first name of the father and maiden
name of the mother, name and address of persons to be informed. . . .”
Just how the Detaining Power is to obtain this information is not
explained—and certainly no Detaining Power could be held to be in
default if a prisoner of war, exercising his rights under the first para­
gaph of Article 17 refused to furnish these items of personal identifi­
cation216 and the Detaining Power was therefore unable to provide
all of the information required by the fourth paragraph of Article
122 to its Information Bureau.

212 The first paragraph of Article 122, which provides for the establishment of
the Information Bureaux upon the outbreak of hostilities, as did Article 77 of the
1929 Convention, now also requires their establishment “in all cases of occupation.”
213 The first paragraph of Article 122 also provides that prisoners of war may
be employed in the Bureaux, subject to the provisions regarding the employment
of prisoners of war contained in Articles 49–57, inclusive, of the Convention. (See
note III-55 infra).
214 Article 122, second paragraph. For a discussion of the categories listed in
Article 4, see pp. 34–84 supra.
215 The Identity Card referred to in Article 4A(4), the model for which is re­
produced in Annex IVA of the Convention, includes information as to the place
of birth and religion. The Capture Card (Annex IVB to the Convention) and
the Correspondence Card and Letter (Annex IVC 1 and 2 to the Convention) also
call for identifying information beyond that required to be given by the first para­
graph of Article 17.
216 In its Information Note No. 4, at 15, the ICRC stated that while the prisoner
of war could refuse to furnish any information beyond that required by the first
paragraph of Article 17, “it will be to his advantage to give the officials of the
detaining Power who question him all the information provided for in Article 122.”
(Transl. mine.) Sec. V of the U.S. Code of Conduct forbids members of its armed
forces to give any information beyond that required by the first paragraph of
Article 17. This, like several other provisions of that Code of Conduct, is completely
unrealistic. Technically, every captured member of the armed forces of the United
States will violate this section of the Code of Conduct when he completes a Capture
Card or writes a Correspondence Card. See the preceding note.
With the information now in its possession, the Information Bureau should, in any event, have adequate identification for every prisoner of war. The requirement is then imposed upon the appropriate other agencies of the Detaining Power to furnish to its Information Bureau any and all data with respect to subsequent developments concerning each prisoner of war such as “transfers [between prisoner-of-war camps], releases, repatriations, escapes, admissions to hospital, and deaths”; and, with respect to a seriously ill or seriously wounded prisoner of war, the obligation is imposed of furnishing the Information Bureau with information regarding his state of health “regularly, every week if possible.”

Having thus accumulated complete and reasonably up-to-date personal information with respect to each and every prisoner of war in the custody of the Detaining Power, the Information Bureau is required, using “the most rapid means” available, to forward this information to the Protecting Power representing the Power of Origin of the prisoner of war and to the Central Agency. It is through this procedure that the basic list of captured personnel should reach the Power of Origin within a comparatively short period of time. It is the compilation made from these lists that establishes the overall accountability of the Detaining Power for enemy personnel at one point in time admittedly in its custody.

217 Article 122, fifth paragraph.
218 Article 122, sixth paragraph. The Finnish representative at the 1949 Diplomatic Conference suggested the deletion of the clause “every week if possible” as being too burdensome a requirement. His suggestion was rejected. Final Record 378.
219 The records containing this information with respect to each prisoner of war must be maintained even for prisoners of war who have died in that status as, under the seventh paragraph of Article 122, the Information Bureau must be in a position to answer inquiries concerning deceased prisoners of war. See Roxburgh, The Prisoner of War Information Bureau 25.
220 Article 122, third paragraph. The next paragraph of Article 122 states that the receipt of the information by the Information Bureau “shall make it possible to advise the next of kin concerned”; and the seventh paragraph of Article 122 makes the Information Bureau responsible for answering inquiries concerning prisoners of war. However, these provisions do not mean that anyone may send an inquiry to, and expect an answer from, the Information Bureau. While the Final Record is silent on the question, it appears that the Information Bureau will probably transmit information to, and answer inquiries from, official sources (the Protecting Power and the Central Agency) only. (This refers to inquiries concerning enemy prisoners of war. Of course, there is nothing to prevent a belligerent Power from using its Information Bureau as the center of information concerning its own personnel in enemy hands and, if it does so, the answering of inquiries concerning them would be subject to any ground rules that the Power desired to impose.)
221 The Communist countries have, when the occasion arose, uniformly refused to implement this provision. Concerning the Soviet failure in this regard during World War II, see note 211 supra; concerning the North Korean and Chinese failure in this regard during the Korean hostilities, see Hermes, Truce Tent 14–141;
The Information Bureau has one other function in addition to that of being a central data bank of prisoner-of-war personal information—it is the agency given the responsibility by the last paragraph of Article 122 for collecting and forwarding the "personal valuables" of prisoners of war who are no longer in the custody of the Detaining Power. The disposition of personal effects other than valuables is subject to arrangements to be agreed upon by the Detaining Power and the Power of Origin.

A Central Prisoners of War Information Agency (Central Agency) is to be established on neutral territory. The ICRC has defined the basic duties of the Central Agency as follows:

1. To centralize all information on PW... (announcement of capture, deaths, transfers, etc.)
2. To act as intermediary between the belligerent Powers for the transmission of this information.
3. To serve as an information bureau and on the basis of the data assembled in its card-indexes or of researches made, to answer enquiries from public or private organizations and private persons.

This statement is somewhat broader than is specified in the second paragraph of Article 123, but there can certainly be no objection to that as long as the added activities are not contrary to the national

and concerning the Chinese failure in this regard during the Sino-Indian border hostilities (1962) (while insisting that India furnish that very information with respect to civilian internees), see Cohen & Leng, Sino-Indian Dispute 296–97. As the North Vietnamese refused to apply the 1949 Geneva Convention in its entirety (see note 1-68 supra), they did not furnish lists of prisoners of war as required by Article 122, even though they were furnished lists by the Republic of Vietnam authorities covering all prisoners of war in the custody of that Power, no matter by whom captured. See, e.g., ICRC Annual Report 1968, at 30.

"Personal valuables" are specifically stated to include "sums in currency other than that of the Detaining Power and documents of importance to the next of kin." (Emphasis added.) See note 62 supra.

They will have been interned in a neutral country, or repatriated, or released, or have escaped, or died.

See the last sentence of Article 122 and note 480 infra. See also pp. 84–86 supra.

Article 123, first paragraph. Since the first such Central Agency was established informally by the ICRC during the Balkan War (1912–13) [or during the Franco-Prussian War (1870–71), note 208 supra], such Agency has always been established in Switzerland and pursuant to a proposal advanced by the ICRC.

2 ICRC Report 12. This volume of the ICRC’s report on its humanitarian activities during World War II is devoted exclusively to the operations of the Central Agency. Preparations having wisely been commenced long before the actual outbreak of hostilities, the ICRC was able to advise the belligerents on 14 September 1939 that a Central Agency had been established and was in operation in Geneva. (That Central Agency extended its operations beyond those stated in the text, providing information, for example, which permitted the reuniting of dispersed families, tracing lost individuals, etc.)
interests of a belligerent, which they certainly are not. If, for example, the Central Agency is willing to take upon itself the arduous task of answering inquiries from private organizations and private individuals, this cannot possibly have an adverse effect on a belligerent and it can only make the Central Agency more effective in accomplishing the objective for which it was created: the prompt delivery of complete and correct information concerning all prisoners of war held by all Detaining Powers.

Of course, the Central Agency will, for the most part, be only as effective as the cooperation which it receives from the belligerent Powers allows it to be. While it will have other sources of information to supplement that received from the Detaining Powers, the great mass of its information must come from them. If they do not supply it to the Central Agency, the latter will not be able to pass it on to the Powers of Origin. If the belligerent Powers do not provide it with the facilities to transmit the information which it has received, that information will be of little value. As has been noted immediately above, the third paragraph of Article 122 requires the national Information Bureaux to furnish the required information to the Central Agency and to do this without delay and by the most rapid means available. The second paragraph of Article 123 makes it the responsibility of the Central Agency to collect this information, and that obtained through private channels, and to transmit it to the Power of Origin as rapidly as possible; and obligates the belligerent Powers to assist it in so transmitting the information. Only with this type of all-around cooperation will the letter and the spirit of these provisions of the Convention be fulfilled.

9. Relief Shipments

Few Detaining Powers will be in a position to comply fully with their obligations under the Convention as to food and clothing, particularly if the armed conflict in which they are engaged continues over a considerable period of time. As has been seen, if the civilian population, and perhaps the armed forces, of the Detaining Power

227 Of course, it will have one other major source of information—the Capture Cards which the prisoners of war are entitled to send directly to the Central Agency under the provisions of Article 70. See note 175 supra.

228 The third paragraph of Article 123 requests all Parties to the Convention, and particularly the belligerent Powers, to provide the Central Agency with financial assistance; and Article 124 gives the Central Agency (and the national Information Bureau) the benefits of the free-postage provision which Article 74 gives to prisoners of war (see notes 194 and 195 supra) and either free use of the telegraph facilities or greatly reduced rates (see note 196 supra).

229 Some idea of the vastness of the operations of the Central Agency can be gathered from the fact that by June 1947 the World War II Central Agency had accumulated almost 36 million index cards (as compared to 7 million after World War I). 2 ICRC Report 9 & 316.
are on a limited and possibly inadequate food ration, it is highly un-
likely that prisoners of war will receive a sufficient ration to keep
them in good health and to prevent loss of weight.\textsuperscript{230} While there are
other possible courses of action which the "law-abiding" Detaining
Power can pursue in order to solve the problem,\textsuperscript{231} the one which has
been employed in past armed conflicts—and which will undoubtedly
be employed again in the future—involves relief packages. A discussion
of the extent to which the law relating to relief packages has evolved
will be helpful in understanding the overall problem.

Article 15 of the 1907 Hague Regulations provided for the distribu-
tion of relief to prisoners of war by societies constituted for that pur-
pose. The first paragraph of Article 16 of those Regulations provided
for free postage on "parcels by post, intended for prisoners of war." This
latter was the only reference in the Regulations with respect to
individual relief packages, if such it was. Because of the stabilized
fronts which characterized World War I, the belligerents were them-
selves able to transport and distribute both general relief shipment
for prisoners of war and individually addressed parcels.\textsuperscript{232} Neverthe-
less, the two provisions contained in the 1907 Hague Regulations were
repeated in almost identical form in the 1929 Convention;\textsuperscript{233} but, in
addition, Article 37 thereof contained a completely new provision
allowing prisoners of war "to receive individually postal parcels con-
taining foodstuffs and other articles intended for consumption or cloth-
ing;"\textsuperscript{234} and the third paragraph of Article 43 of that Convention
charged the prisoners' representatives\textsuperscript{235} with the responsibility for
"the reception and distribution of collective consignments."\textsuperscript{236}

The 1946 Preliminary Conference made a number of suggestions
concerning relief supplies: that the principles of both individual and
collective relief should be continued; that Detaining Powers should be
prohibited from unilaterally forbidding or limiting individual relief
parcels; that if any such limitations should be necessary, they should

\textsuperscript{230} See p 127 \textit{supra}.
\textsuperscript{231} See pp. 127–128 \textit{supra}.
\textsuperscript{232} See 3 ICRC \textit{Report} 5–6. This volume of the ICRC's report on its humanitar-
ian activities during World War II is devoted exclusively to relief activities.
\textsuperscript{233} See Article 78 and the first paragraph of Article 38, respectively.
\textsuperscript{234} (This unofficial English translation of the official French text is taken from
118 \textit{L.N.T.S.} at 371. It is a considerably better translation than the one used offi-
cially by the United States, which appears in 47 \textit{Stat.} at 2043.) More than 44
million individually addressed parcels were sent from Switzerland and through the
ICRC during the period 1940–45, inclusive. 3 ICRC \textit{Report} 11.
\textsuperscript{235} Concerning the "prisoners' representative," see pp. 293–307 \textit{infra}.
\textsuperscript{236} During the period 1942–45, inclusive, the ICRC alone handled over 380 million
kilograms of collective relief supplies. 3 ICRC \textit{Report} 271. It concluded that col-
lective relief for prisoners of war was much more efficient than individual parcels
when large numbers of prisoners of war were involved. \textit{Ibid.}, 202. So did the 1946
Conference of National Red Cross Societies. 1946 Preliminary Conference 85.
be accomplished by special agreements; and that the Power of Origin should be the one to fix the ratio between individual and collective relief supplies. All of these recommendations, except the last, are to be found in the several articles dealing with the subject of relief parcels which were included in the various preliminary drafts of what ultimately became Articles 72–76 of and Annex III to the 1949 Convention.

The first paragraph of Article 72 is the basic provision with respect to relief parcels. It not only includes the general requirement that the Detaining Power shall permit prisoners of war to receive relief parcels, but also imposes a number of specific requirements on the Detaining Power: that the relief parcels may be received "by post or by any other means"; that such relief may be individual or collective; and that, in addition to the food and clothing referred to in prior international agreements, such relief may include four other general categories of supplies (medical, religious, educational, and recreational), of which a number of specific examples are listed. On the other hand, the last paragraph of Article 72 imposes two limitations on the contents of relief parcels: books may not be included in the same parcel with food or clothing; and medical supplies should normally be included in collective, rather than individual, relief parcels.

As was noted in the discussion of the problem of food, the second paragraph of Article 72 specifically prohibits the Detaining Power from considering relief shipments, individual or collective, as in any way relieving it of the obligation to provide the prisoners of war with the ration provided for in the first paragraph of Article 26. While this prohibition applies to all of the supply obligations imposed upon the Detaining Power by the Convention, it is probably only with respect to food, clothing, and medical supplies that the problem will arise; and it is with respect to these three areas that many Detaining

237 Ibid., 83–84.
238 The term "medical supplies" was apparently considered, like foodstuffs and clothing, to be sufficiently all-embracing not to require elaboration (unless "scientific equipment" could be included here as well as under "articles of an educational character"); the term "religious character" would include specifically books and devotional articles; the term "educational character" would include specifically books, scientific equipment, examination papers, and miscellaneous materials; and the term "recreational character" would include specifically books, musical instruments, and sports outfits. (It must not be assumed that every item which falls within these categories must and will be permitted entry and distribution by the Detaining Power. For a list of items which were excluded during World War II and which undoubtedly will, at least for the most part, always be denied to prisoners of war, see 3 ICRC Report 12–13.)

239 The latter limitation was presumably imposed as a result of the experiences of World War II. Ibid., 13–14.
240 See note 107 supra. Concerning the same limitation with respect to clothing, see note 117 supra.
Powers can be expected to disregard the mandate of the second paragraph of Article 72, particularly where, as a result of individual and collective relief parcels, the prisoners of war are better off, or, at least as well off, as the members of the civilian population of the Detaining Power and, perhaps, as the members of its armed forces.

As in the case of correspondence, provision was made for the contingency that limitations might have to be imposed on the shipment of relief parcels in the interest of the prisoners of war themselves because of the possible inability of systems of transportation available to the belligerents to handle the tremendous weight and bulk which relief parcels might well engender.\textsuperscript{241} The third paragraph of Article 72 provides that such limitations may be instituted only on the proposal of the Protecting Power, although the ICRC or any other humanitarian organization engaged in relief activities, may, of course, place limitations on its own shipments if, for example, it is confronted with transportation problems.\textsuperscript{242}

Relief shipments, like correspondence, are entitled to move postage-free.\textsuperscript{243} They are also exempt from "import, customs and other duties."\textsuperscript{244} The third paragraph of Article 74 is a somewhat strange provision in that it states that if a relief shipment cannot be sent by parcel post because of its weight or for any other cause, the Detaining Power shall bear the cost of substitute transportation in any territories under its control and other Parties to the Convention (whether or not belligerents) shall bear the cost in their territories.\textsuperscript{245} It would have been more helpful overall if the Convention had specified maximum weights and dimensions for relief parcels sent by mail. This was the procedure followed during World War II, but since it was not prescribed by the 1929 Convention, each Detaining Power set its own

\textsuperscript{241} See p. 147 supra.

\textsuperscript{242} It will be recalled that the first paragraph of Article 71 has a provision concerning possible limitation on mail to the prisoners of war, if such limitations are deemed necessary. See note 180 supra. It would appear that this possibility is even more cogent in the case of parcels.

\textsuperscript{243} See the second paragraph of Article 74 of the 1949 Convention and Article 16(1) of the Rules applicable in common throughout the international postal service attached to the 1974 Universal Postal Convention.

\textsuperscript{244} Article 74, first paragraph. In June 1942 the United States Congress adopted a joint resolution exempting from duties and customs charges all articles addressed to prisoners of war (56 Stat. 461, 462).

\textsuperscript{245} States not parties to the 1949 Convention would have a similar obligation under Article 16(1) of the Common Rules attached to the 1974 Universal Postal Convention. In any event, the penultimate paragraph of Article 74 provides that costs not covered by the exemptions contained in the third paragraph of Article 74 shall be charged to the sender.
weight limit. Of course, it may be argued that a unilateral action of this nature is now proscribed by the provision in the third paragraph of Article 72 to the effect that "[t]he only limits which may be placed on these shipments shall be those proposed by the Protecting Power."

Once again, as in the case of letter mail, the first paragraph of Article 75 provides for the emergency transportation of relief parcels by the Protecting Power, the ICRC, or some other organization approved by the belligerents, when condition prevent a belligerent from fulfilling its obligation in this respect. If a belligerent prefers to make some arrangement other than the foregoing, it may do so; and barring agreement on another method of payment for the costs of the emergency transportation, the responsibility for such costs is placed proportionately on the Parties concerned.

Another novel provision, and one which was also conceived because of occurrences during World War II, is contained in the second paragraph of Article 76. It prohibits the Detaining Power from the pre-delivery inspection of individual relief parcels under conditions that will expose the contents of the parcels to deterioration (such as the inspection outdoors, in rain, of packages containing food or books); and which requires that such inspection be conducted in the presence of the prisoner of war to whom the parcel was sent, or his designee.

And just as in the case of correspondence, the Detaining Power is directed not to delay the delivery of individual or collective relief parcels because of censorship problems.

During World War II relief shipments of food, clothing, and medical supplies made the difference between survival or nonsurvival to literally tens of thousands of prisoners of war. There is no reason to doubt, and every reason to believe, that the same will be true in any

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246 ICRC Report 12. Eventually most of the Detaining Powers settled on a 5-kilogram (11-pound) maximum. Ibid. Article 16 (4) of the Common Rules attached to the 1974 Universal Postal Convention provides that free postage for prisoner-of-war parcels is limited to 5 kilograms but with a 10-kilogram allowance when the contents cannot be split up or when the parcel is sent to the prisoners' representative for distribution.
247 See p. 153 supra.
248 For one ICRC effort to obtain trucks and perform this service during World War II, see 3 ICRC Report 86–89. See also Felchenfeld, Prisoners of War 37; and Maughan, Tobruk 808.
249 Article 75, third paragraph.
250 Article 75, fourth paragraph.
251 Inspections of written or printed matter are specifically excepted from this latter requirement because it was feared that the presence of the prisoner of war might create difficulties which would react against him. 2A Final Record 370.
252 American Prisoners of War 72, 81.
future international armed conflict which continues for a considerable period of time.\textsuperscript{253}

10. Internal Discipline\textsuperscript{254}

\textit{a. THE CAMP COMMANDER}

Article 39 provides that the prisoner-of-war camp shall be "under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power." The importance of the selection of the proper individual for this position cannot be overemphasized.\textsuperscript{255} Unfortunately, just as bullies and sadists all too frequently find their way into the civilian prison administration system sometimes as wardens, so they also often gravitate into the prisoner-of-war camp administration system, some becoming camp commanders.

Article 18 of the 1929 Convention had specified merely that a prisoner-of-war camp should be commanded by a "responsible officer." During World War II noncommissioned officers were sometimes designated by Detaining Powers as camp commanders.\textsuperscript{256} It would appear that a good noncommissioned officer would make a better camp commander than a poor commissioned officer. Nevertheless, the 1949 Diplomatic Conference elected to eliminate this as a possibility by specifying that camp commanders must be \textit{commissioned} officers.\textsuperscript{257}

The 1947 Conference of Government Experts recommended that the basic provisions of Article 18 of the 1929 Convention be altered to provide that the camp commander must also be "an officer of the armed forces of the DP [Detaining Power]."\textsuperscript{258} The draft convention sub-

\textsuperscript{253} Two important facets of the problem of relief shipments are discussed elsewhere: the part played by the prisoners' representatives in the receipt and distribution of collective relief shipments (pp. 305-306 \textit{infra}); and the agreements which the opposing belligerents may enter into with respect to relief shipments (pp. 84-86 \textit{supra}).

\textsuperscript{254} This section is not concerned with the imposition of disciplinary and penal sanctions on prisoners of war for penal offenses, a subject which is discussed at length in Chapter V. It is concerned with the responsibilities of the camp commander, regulations applicable to prisoners of war, military courtesies, rank, etc.

\textsuperscript{255} One commentator has stated that "the attitude and tone of a camp for prisoners [of war] is often controlled by the attitude and the personality of its commandant." Grady, \textit{Evolution} 102. The camp commander also commands all attached labor detachments. \textit{See} p. 245 \textit{infra}.

\textsuperscript{256} 1 ICRC Report 250.

\textsuperscript{257} 2A \textit{Final Record} 264. Apparently the practice of naming noncommissioned officers as camp commanders was almost entirely limited to the Japanese.

\textsuperscript{258} 1947 GE Report 161. This was stated to be to prevent "the recurrence of certain unpleasant incidents." We are not enlightened as to what these "unpleasant incidents" were, or how selecting the camp commander from the armed forces would prevent their recurrence. (The ICRC Report, note 256 \textit{supra}, refers to occasions "when the camp commandant was not a national of the Detaining Power." This could conceivably have been the situation which gave rise to the "unpleasant incidents."
mitted by the ICRC to the Stockholm Conference went a step further, requiring the camp commander to belong to "the regular armed forces of the Detaining Power," and this requirement remained unchanged at Stockholm and was ultimately approved at Geneva. On the occasion of the only extensive debate on this Article none of the delegates at Geneva thought it necessary even to mention this change, so it is not possible to determine the problem which was thought to require solution. Moreover, as has already been stated in the discussion of Article 4, for the purposes of the Convention all full-fledged members of the armed forces of a belligerent, no matter how they became such, are members of its "regular armed forces."

The camp commander is responsible, "under the direction of his government," for the application of the Convention in the prisoner-of-war camp. This addition to the cognate provision of the 1929 Convention was added at Stockholm. It was objected to by the ICRC, which considered it to be "imprecise, and also superfluous" and recommended its deletion. This recommendation was supported by several delegations at Geneva, but was ultimately rejected by Committee II (Prisoners of War), and the added clause remains. While it undoubtedly is superfluous, as a military commander performs all of his functions under the direction of his government, no harm can be perceived from its having been included. Both the individual and the government remain fully responsible for any violations of the Convention occurring in the prisoner-of-war camp.

259 Draft Revised Conventions 76. (Emphasis added.)

260 See note I-138 supra. One explanation for the use of the term "commissioned officer belonging to the regular armed forces of the Detaining Power" here is that it was desired to prohibit a Detaining Power from designating as camp commanders commissioned officers of nonmilitary organizations such as the German S.S. and Gestapo, as was done during World War II. British Manual para. 159 n.1.

261 Revised Draft Conventions 66.

262 Remarks and Proposals 48.

263 2A Final Record 264 & 401. The Coordination Committee took the same position. 2B Final Record 149.

264 2A Final Record 401–02. The proposal to delete it had previously been rejected by the Second Committee's Drafting Committee. Ibid., 348.

265 The fear was expressed that the camp commander might be able to use this provision as a means of evading personal responsibility for unlawful acts committed by him against prisoners of war. Ibid., 401. The principle denying "superior orders" as a defense to a war crime is now too well established to cause such concern. I.M.T. 466; Nürnberg Principles, Principle IV, at 375; 1951 Draft Code of Offences, Article 4. Article 77 of the 1973 Draft Additional Protocol dealt with the subject of superior orders. It was not included in the 1977 Protocol I.

266 See Article 12, first paragraph.

267 When confronted with the problem of putting down the uprising that had occurred in the United Nations Command prisoner-of-war camp on Koje-do Island, Korea, in May 1952, General Boatner immediately requested "the assignment of a judge advocate [military lawyer] who was thoroughly familiar with
b. KNOWLEDGE OF AND AVAILABILITY OF THE CONVENTION

The very important Convention provisions respecting the requirement for the dissemination of, and instruction in, the contents of the Convention are discussed elsewhere. Compliance with the related provisions with respect to the camp commander and his personnel are at least of equal importance.

The second paragraph of Article 127 provides that any military "or other authorities" who are assigned prisoner-of-war responsibilities "must possess the text of the Convention and be specially instructed as to its provisions." The first paragraph of Article 39 repeats this requirement specifically as to the camp commander, providing as it does that he must have a copy of the Convention in his possession. Moreover, the latter Article places upon him the responsibility for the implementation of the requirement therein contained, that the provisions of the Convention be known to both his staff and to the members of the camp guard. Obviously, there can be no more important requirement than that the individuals responsible for the direct daily supervision of the activities of prisoners of war be fully instructed concerning the rights and obligations both of the prisoners of war and of the representatives of the Detaining Power. Absent that instruction and the knowledge resulting therefrom, the Convention serves no useful purpose except to lay down rules the violation of which will, in some cases, eventually result in the punishment of the violators. Certainly, the objective of the Convention is to procure humanitarian treatment for prisoners of war, not to serve solely as a vehicle for the punishment of uninformed guards for their perhaps unwitting violations of its provisions.

If there is to be some assurance that prisoners of war will receive the humanitarian treatment which was contemplated by the 1949 Diplomatic Conference and to which they are entitled under the provisions of the Convention, obviously they, too, must be fully informed as to just what that treatment is. Presumably, they will have received instruction in this regard during their training by the armed force

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268 See pp. 93-96 supra.

269 While a civilian could not legally be designated as a camp commander (see pp. 163-164 supra), there is no prohibition against the use of civilian guards who might be used either in prisoner-of-war camps, or more probably, for labor detachments. See pp. 246-247 infra.

270 The Convention limits the applicability of this provision to "in time of war." It surely was not intended that the provision would be inapplicable in the event of the "any other armed conflict" of the first paragraph of Article 2.
to which they belong. However, that instruction may have occurred at some considerable time in the past and the prisoners of war cannot be expected to have remained fully aware of the countless details of the many provisions of the Convention. The last paragraph of Article 41 provides, therefore, that the text of the entire Convention, including its annexes and any special agreements entered into between the Detaining Power and the Power of Origin, shall be posted in every prisoner-of-war camp in places where they will be available to be read by any prisoner of war. In addition, a copy must be supplied to any prisoner of war who requests it and who is, for some reason, unable to gain access to the posted copy (individuals who are ill and confined to bed or quarters, individuals in disciplinary or penal confinement, individuals on location in labor detachments removed from the camp, etc.).

There was a substantially similar provision in Article 84 of the 1929 Convention. Its value was demonstrated during the course of World War II. One American author, writing during the course of that armed conflict, said that "the most assiduous group of legal scholars in this country today are our Italian and German prisoners of war." In Korea it was only after a board of officers was appointed in February 1951 to investigate prisoner-of-war matters generally, and it had so recommended, that copies of the 1949 Convention were reproduced in Korean and posted in the United Nations Command.

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271 See pp. 93–96 supra.

272 The posted copies must, moreover, be in the language of the particular prisoners of war.

273 It is undoubtedly with all of the foregoing in mind that the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a somewhat similar provision for the treatment of prisoners serving sentences for having committed a crime. See Article 35, Standard Minimum Rules. Even though a set of Rules was approved by the League of Nations as far back as 1934 (See League of Nations, Official Journal, Special Supplement No. 123, VI.4, at 17 (1934)), we shall have occasion to note many resemblances between the 1949 Convention and the present Rules.

274 One author who was particularly concerned with German practices in this regard during World War II wrote that certain Detaining Powers, including Germany, "had deliberately prevented prisoners of war from becoming familiar with the text [of the 1929 Convention]. For the future, the new Conventions have remedied this lacuna." Tchirkovitch, Nouvelles conventions 106 (trans. mine). There was no such lacuna; and it is being overly optimistic to state with such assurance that the 1949 Convention has "remedied" the situation.

275 Brabner-Smith, Legal Aspects 44. He gives examples of several objections made by the prisoners of war to various types of work assignments based upon the wording of the 1929 Convention (picking cotton was alleged to have a "direct relation with war operations" because cotton is used in gunpowder; lumbering was alleged to be "unhealthful or dangerous work.") To the same effect, see Rich, Brief History 427.
prisoner-of-war camp. In Vietnam, the government of the Republic of Vietnam did not permit the posting of the Convention because it did not believe that all of the provisions of the Convention were applicable.

c. REGULATIONS

Every Detaining Power will have a number of different categories of regulations (and orders) that are applicable to prisoners of war. There will be the relevant regulations in force for its own armed forces; general regulations applicable only to prisoners of war; regulations peculiar to a particular prisoner-of-war camp, etc. The available to the Detaining Power (Article 71, first paragraph). And second paragraph of Article 41 provides that all such regulations, orders, etc., must, like the Convention itself, be posted and in a language which the prisoners of war understand; and all orders given orally to individual prisoners of war must likewise be in a language which they understand. These provisions of the Convention are clear and unambiguous and, while compliance with them may cause some problems for the Detaining Power, they will obviously be of great value to the prisoner of war.

d. RANK

Even Article 16, providing for the equal treatment of all prisoners

276 Meyers & Bradbury, Political Behavior 240. The Convention was not legally in effect during that conflict (see note I-114 supra). The Republic of Korea had agreed to be bound only by Article 3 (1 ICRC, Conflit de Corée 12-13) and the United States had agreed to be only “guided by the humanitarian principles” of the Convention, particularly Article 3. Ibid., 13. The Convention was never posted in North Korea.

277 Vietnam, Article-by-Article Review, Article 41. Of course, in both Korea and Vietnam any compliance whatsoever by the Republic of Korea or the Republic of Vietnam represented a more humanitarian approach to the treatment of prisoners of war than the complete noncompliance by the other side. Strangely, the Review itself did not indicate any specific provisions of the Convention which the Republic of Vietnam considered to be inapplicable.

278 Article 82, first paragraph, makes prisoners of war subject to these regulations. See pp. 318-319 infra.

279 Article 82, second paragraph, envisages such regulations. See pp. 320-321 infra.

280 Daily schedules, work assignments, class schedules, sports events, etc.

281 It will have been noted that while the first paragraph of Article 41 says “in the prisoners’ own language,” the next paragraph says “in a language which they understand.” It is probable that this was merely an oversight of the Drafting Committee. The difference in wording actually originated in the draft prepared by the ICRC for the Stockholm Conference (Draft Revised Conventions 76-77) and was never changed.

282 This will sometimes create major difficulties for a Detaining Power short of personnel who speak the language of the prisoners of war; but it is a great deal more logical than the giving of an order of which the prisoner of war does not understand a single word and then permitting his punishment for his failure to comply, a procedure frequently followed during World War II.
of war "without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria," makes an exception with respect to rank.283

Because of the difficulty frequently encountered in attempting to equate the ranks in various armed forces, the first paragraph of Article 43 calls upon the opposing belligerents to communicate to each other immediately upon the outbreak of hostilities "the titles and ranks of all the persons mentioned in Article 4"; as well as to communicate information from time to time concerning titles and ranks subsequently created. Most of the belligerents exchanged the required information during World War II,284 but they often found it difficult to equate the ranks involved.285 Even where there was no difficulty in equating ranks, problems arose with respect to this matter. Thus, when the Germans ordered members of the French armed forces back into custody in 1941, many noncommissioned officers at first claimed to be privates because of a rumor that privates would be released first. When they later found that there was no basis for this rumor and claimed their proper grade, the Germans refused to restore it to them;286 and in the reverse of this situation, the United States found that many German privates had been promoted to noncommissioned grade just before capture in North Africa, presumably in order to remove them from the category of prisoners of war required to perform labor for the Detaining Power;287 while others claimed to be noncommissioned officers but had no documentary proof of this status.288 This latter

285 German Regulations, No. 15, para. 117 (British midshipmen, warrant officers, and acting pilot officers); ibid., No. 25, para. 334 (American warrant officers); ibid., No. 29, para. 439 (commissioned officers in the Indian army); ibid., No. 33, para. 514 (noncommissioned officers in the British navy); ibid., No. 46, para. 841 (noncommissioned officers in the Royal Air Force). The United States also had difficulty with the ranks of the members of the German "quasi-military" organizations. Rich, Brief History 515.
286 German Regulations, No. 7, para. 9.
287 Rich, Brief History 515; Lewis & Mewha 157. The diary of one captured member of the German Afrika Korps reveals that after destroying everything of military value in anticipation of the impending surrender of the German forces in North Africa, he was promoted to NCO rank. Hoole, And Still We Conquer 9. Concerning the labor of noncommissioned officers, see pp. 221–224 infra.
288 Rich, Brief History 516. Their soldbucks (individual personnel records normally in the possession of each German soldier) had, in many cases, been taken from them for intelligence purposes and had not been returned. Perhaps because of the obvious hardship thus caused to prisoners of war through no fault of their own, U.S. Army Regs. 633–50, para. 30b now provides that where an individual has no documentary proof of his rank, he "may submit a request through channels to his government for proof of status."
problem may conceivably have been solved by the provisions of the
third paragraph of Article 17 for the issuance of identity cards in
duplicate showing, among other items, the rank of the individual, and
the provisions of the second paragraph of Article 18 which, in effect,
prohibit the taking from the prisoner of war of both copies of the
identity card furnished him by his own armed forces and requiring
the Detaining Power to provide such a card to any prisoner of war who
does not have one. 289

As a result of the discovery of the mass, last-minute, "precapture
promotions" accorded by the German command to many of its private
soldiers in North Africa during World War II, and as a method of
rectifying the situation with respect to at least a considerable number
of these promotions, the United States Army issued a directive deny­
ing recognition of any promotion if evidence of it was received after
the individual was already in custody. 290 Of course, this prevented
recognition of even legitimate postcapture promotions. The second
paragraph of Article 43 now provides that the Detaining Power must
recognize promotions of which it is notified by the Power of Origin.
Presumably, this would include promotions made both before and af­
after the individual becomes a prisoner of war. 291 This appears eminently
fair—except that a Power of Origin may now do legally what the
German command in Africa attempted to do as a subterfuge during
World War II. What will a Detaining Power do if it is officially advised
that the Power of Origin has promoted to noncommissioned officer
grade all of the members of its armed forces who are being held as
prisoners of war? Will it thereafter assign them to supervisory work
only as provided by the second paragraph of Article 49—with no one
to supervise? This appears extremely unlikely. It would seem that
any action of this nature by the Power of Origin would be such a
violation of the spirit of the Convention as to warrant the Detaining
Power in refusing recognition to the promotions to noncommissioned
officer grade so accorded.

There are numerous advantages for the prisoner of war in the rec­
ognition by the Detaining Power of the prisoner of war's rank, com­
missioned or noncommissioned. As we have just seen, noncommis­sioned officers may be required to perform only supervisory work.
Under the last paragraph of Article 49 commissioned officers may vol­
unteer for work but may not be compelled to perform any labor. They

289 See p. 111-112 supra.
290 Rich, Brief History 515.
291 U.S. Army Regs. 633-50, para. 31 provides that "[w]hen evidence is re­
ceived that a PW has been promoted, the promotion will be recognized."
(and prisoners of war of equivalent rank)\textsuperscript{292} are entitled to be treated "with the regard due to their rank and age."\textsuperscript{293} Special camps for officer prisoners of war are contemplated and enlisted men of the same armed forces are to be assigned as orderlies, which is to be their exclusive work assignment.\textsuperscript{294} Moreover, under the last paragraph of Article 44 commissioned officers are to be enabled to supervise their own mess. The first two paragraphs of Article 45 provide similarly that the other prisoners of war shall be treated with due regard for their rank and age and are to be enabled to supervise their messes.

Provisions of the Convention concerning insignia and the military courtesy of the salute are, to the prisoner of war, far more important than they might at first appear.\textsuperscript{295} As we have just seen, the first paragraphs of Articles 44 and 45 require the Detaining Power to treat all prisoners of war with due regard for their rank. Article 40 requires the Detaining Power to permit prisoners of war to wear insignia of rank and grade, badges of nationality, and decorations. The fourth paragraph of Article 87 goes a step further, forbidding the Detaining Power to deprive the prisoner of war of his rank or to prevent him from wearing his insignia.\textsuperscript{296}

Members of the armed forces of the Detaining Power are not required to salute prisoners of war of superior rank.\textsuperscript{297} Ordinary mili-

\textsuperscript{292} This might, for example, be persons who accompany the armed forces pursuant to Article 4A(4) (see pp. 60–62 supra) if the identification card which the Power of Origin has issued to them specifies an equivalent rank. 2A Final Record 268.

\textsuperscript{293} The Convention nowhere specifies what this "regard" is.

\textsuperscript{294} Article 44, second paragraph. During World War II the United States assigned to officer prisoners of war, in addition to cooks, "one orderly for each general officer, one for each group of three field officers [majors, lieutenant colonels, and colonels], and one for each group of six company officers [lieutenants and captains]." POW Circular No. 1, para. 45. (Lewis & Mewha, 159, gives a different ratio and adds that the enlisted men chosen for this duty were those who were incapable of doing a full day of labor.)

\textsuperscript{295} The recognition of their importance to morale was early recognized by the Chinese Communists in Korea and the denial of rank was used as a method of destroying prisoner-of-war morale. See pp. 172–173 infra.

\textsuperscript{296} This prohibition is in the context of punishment for a disciplinary or penal offense. It would, a fortiori, apply to conduct which, while perhaps objectionable to the camp commander or to a guard, did not attain the status of being judicially punishable.

\textsuperscript{297} It might be argued that the provisions of the first paragraph of Article 44 to the effect that prisoner-of-war officers "shall be treated with the regard due to their rank" requires members of the armed forces of the Detaining Power to salute prisoner-of-war officers of superior rank. However, the second paragraph of Article 21 of the 1929 Convention was substantively identical and it was not the practice during World War II, nor did any belligerent claim that it should be. As the matter was not even mentioned at the 1949 Geneva Diplomatic Conference, it must be assumed that there was no intention to change the prior practice. Hitler is quoted as having said that "the most humble German national is
tary courtesy, however, calls for them to return the salute of a prisoner of war.²⁹⁸ Prisoners of war other than officers must salute all officers of the armed forces of the Detaining Power and must comply with any other requirements for external marks of respect contained in their own military regulations.²⁹⁹ Officer prisoners of war are required to salute only the camp commander, whatever his rank may be, and officers of the armed forces of the Detaining Power who are their superior in equated rank.³⁰⁰

One other problem with respect to saluting arose during World War II—the type of salute to be given. The relevant clause in the second paragraph of Article 18 of the 1929 Convention merely said that “prisoners of war must salute all officers of the Detaining Power.”³⁰¹ Germany insisted that prisoners of war held by it use “the established military salute of their native country”;³⁰² while some Detaining Powers refused to permit prisoners of war to give the German Nazi and Italian Fascist extended-arm salutes and insisted that these prisoners deemed more important than the highest ranking [prisoner of war].” German Regulations, No. 14, para. 79. To a certain limited extent this is correct. The private who is a guard in a prisoner-of-war camp need not salute the prisoner-of-war field marshal—but neither need the latter salute the former. See text in connection with note 300.

²⁹⁸ The military salute is a twofold action: it is initiated by the lower in rank and returned by the superior. While the member of the armed forces of the Detaining Power need not initiate the salute even to a prisoner of war of superior rank, he should, as a matter of military courtesy, return it. Rich, Brief History 483.

²⁹⁹ Article 39, second paragraph. Other external marks of respect would include standing when the officer enters the room, remaining at attention while conversing with the officer, etc. These are not marks of obsequiousness, but of disciplined training. (One report on World War II comments on the high morale of prisoners of war who “showed their hostility toward the Germans by often refusing to salute [and] by failing to come to attention when a German officer entered the barracks.” American Prisoners of War 80. Their morale may well have been high, but they would have had no valid complaint had they been punished for their insubordinate violations of the Convention and German regulations.)

³⁰⁰ Article 39, third paragraph. Article 18, third paragraph, of the 1929 Convention had not included a provision requiring all prisoners of war to salute the camp commander, and this had occasioned a number of disputes when he was of inferior rank or a noncommissioned officer. 1 ICRC Report 250. The 1949 Convention provides a sort of compromise by requiring the camp commander to be a commissioned officer (Article 39, first paragraph) and by aberrantly requiring all prisoners of war to salute him even if they are his superior in rank (Article 39, last paragraph).

³⁰¹ The clause concerning compliance by prisoners of war with the regulations of their own armed force was so placed in the sentence as probably not to be applicable to the clause concerning the salute. (The ICRC felt otherwise. Ibid.)

³⁰² German Regulations, No. 16, para. 140. This position, of course, was consistent with the German argument for permitting the members of its armed forces who became prisoners of war to use the Nazi salute. See text in connection with notes 303 and 304.
of war give the form of salute used by the armed forces of the De-
taining Power. This was finally resolved by permitting all prisoners
of war to use the salute prescribed by the military regulations of the
armed forces of which they were members. This problem should not
arise again because of the precedent established by the World War II
decision, and because there is a more valid basis than there was under
the 1929 Convention for arguing that the clause "by the regulations
applying in their own forces" contained in the second paragraph of
Article 39 of the 1949 Convention applies to the form of the salute
as well as to external marks of respect. While, grammatically, the
paragraph as redrafted still leaves much to be desired, the members
of the national delegations at the 1949 Diplomatic Conference were
certainly well aware of the problem and of its World War II solution,
and can validly be assumed to have adopted that solution as their own.

While acting as the Detaining Power in North Korea, the Chinese
did everything in their power to destroy morale by breaking down
the military group structure. Officers were not permitted to wear
their insignia of rank; distinctions of rank were prohibited; and any
officer, commissioned or noncommissioned, who attempted to give an
order was humiliated and punished. The Chinese insisted that mem-
bers of the armed forces lost their rank when they became prisoners
of war—and they frequently and intentionally appointed the more
junior prisoners of war as leaders in the prisoner-of-war camps. The
Chinese practices were in direct violation of a number of the ar-
ticles of the Convention. They were also contrary to general military

303 1 ICRC Report 250; Rich, Brief History 482.
304 1 ICRC Report 250. The military authorities in the United States were
severely criticized for permitting prisoners of war to use the Nazi salute. Rich,
Brief History 482.
305 The discussion of Article 39 in its origin and at the 1949 Geneva Diplomatic
Conference is not helpful.
306 Schein, Patterns 257.
307 U.K., Treatment 19.
308 Ibid., 17. It was this practice against which part of Sec. IV of the Code of
Conduct was directed. Ineptly, it states: "If I am senior, I will take command. If
not I will obey the lawful orders of those appointed over me and will back them
up in every way." (Emphasis added.) Certainly, there was no intention to give
a legal status to the type of "appointments" made by the Chinese Communists in
Korea—but that would likely be the defense, and an arguable one, made by any
American prisoner of war who, after repatriation, was court-martialed for cooper-
ating with the enemy by obeying the orders of a fellow prisoner of war "appoint-
ed over him" by the enemy Detaining Power. (While the "Instructional Material"
under Sec. IV of the Code of Conduct does clarify the matter to some extent, it
certainly does not completely clear up the discrepancy.) The North Vietnamese
apparently followed the Chinese procedure. Naughton, Motivational Factors 11.
309 Article 39, last paragraph; 40; 44, first two paragraphs; 45, first para-
graph; 79, first two paragraphs; and 87, last paragraph, among others.
usage. It was part of a “brainwashing” technique which was only very marginally successful.

11. Miscellaneous Protections

a. COMMON TREATMENT

The preceding subsection opened with a quotation from Article 16 of the Convention—but only to point out that rank was one of the exceptions specified therein. What that Article does is to place upon the Detaining Power the duty to treat all prisoners of war alike, “without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.”

The 1907 Hague Regulations were criticized for not including a prohibition against discrimination in the treatment of prisoners of war. Article 4 of the 1929 Convention remedied this situation to some extent by providing that any difference in treatment accorded various prisoners of war was only lawful when it was based on rank, health, professional qualifications, or sex. However, despite the foregoing, there were extremes of treatment of different nationalities, and even of identifiable groups within nationalities, by the same Detaining Power during World War II. All, or nearly all, of the belligerents made national and political distinctions in assigning prisoners of war to par-

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310 See, e.g., British Manual para. 159 n.2, which states: “By Q.R. 286, when members of the British army become prisoners of war the ordinary relations of superior and subordinate remain unaltered.” See also U.S. v. Floyd; and Re Tassoli.

311 As yet not enough information is available to determine whether the North Vietnamese failure to follow the Chinese practice was because of its lack of quantitative success, because of the relatively small number of prisoners of war held by them, or because of some other reason.

312 See pp. 167-168 supra.

313 Phillimore & Bellot 60.

314 Article 1 of the 1929 Wounded-and-Sick Convention specifically required that individuals protected by that Convention be “treated...and cared for...without distinction of nationality,” a provision, which, for some unknown reason, was not repeated in the 1929 Prisoner-of-War Convention drafted at the same time and by the same Conference.

315 Germany at least generally attempted to apply this provision with respect to British and American prisoners of war, and 99 percent of the American prisoners of war held by Germany survived. The American Red Cross attributed this to reciprocal compliance with the provisions of the 1929 Convention. New York Times, 2 June 1945, at 8, col. 6. See also note 324 infra. Estimates of the mortality among Russian prisoners of war captured by the Germans go as high as 95 percent. Dallin, German Rule 414-15; Davidson, The Trial of the Germans 32-33. The 1929 Convention was not in effect as between Germany and the Soviet Union. See note 1-2 supra.
ticular camps. There is nothing inherently wrong with this procedure, providing all prisoners of war in all camps receive the same treatment. The objection to it is that, whatever the original motivation for the separation, there will inevitably be a tendency to give better treatment to the more pliant prisoners of war, and less favorable treatment to the more aggressive and antagonistic prisoners of war.

In an effort to remedy this situation, the 1946 Preliminary Conference recommended that the rights of all prisoners of war to like treatment be recognized "without distinction of opinion[,] race, religion, or nationality." This was just a general recommendation, unrelated to any particular article. However, in dealing with proposed revisions of the 1929 Wounded-and-Sick Convention, the Preliminary Conference specifically recommended that the appropriate article be changed to provide for like treatment "without any distinction whatever, particularly of nationality, race, sex, religion or political opinion." This was the source for much of what became Article 16 of the 1949 Prisoner-of-War Convention.

Although the general approach to the problem has been somewhat widened (while the 1929 Prisoner-of-War Convention enumerated only the items which would justify discriminatory treatment, the 1949 Convention enumerates both the items which will justify it and the items which may not be a basis for discriminatory treatment), it is doubtful that this has either ensured greater protection for the prisoner of war or imposed any obviously greater restrictions on the actions of the Detaining Power. If the Detaining Power may only lawfully discriminate in its treatment of prisoners of war by reason of rank, health, professional qualifications, or sex (as provided in the 1929 Convention and as more or less repeated in the 1949 Convention), then obviously

316 At least six different national and political groupings were established and maintained for the allocation of prisoners of war to permanent prisoner-of-war camps in the United States; (1) German army anti-Nazis; (2) other German army; (3) German navy anti-Nazis; (4) other German navy; (5) Italian; and (6) Japanese. Lewis & Mewha 91 n.44; see also, Tollefson, Enemy Prisoners of War 59.

317 One commentator asserts that the only objective of categorizing by political conviction is inequality of treatment. Flory, Nouvelle conception 66. That this is a possibility cannot be doubted. See text in connection with notes 332–334 infra. However, the official ICRC discussion of Article 16 states that "[t]he wording excludes differentiation only when it is of an adverse nature." Pictet, Commentary 154. And in Korea the ICRC Delegate specifically recognized the urgent need that in establishing a new camp for officer prisoners of war "the two political categories [Communist and anti-Communist] would be kept apart and every group could have an adequate amount [sic] of orderlies recruited among volunteer E.M. [enlisted men] of the same political colour." 2 ICRC, Conflit de Corée, No. 341. See also the discussion of the third paragraph of Article 22 at pp. 175–178 infra.

318 1946 Preliminary Conference 68.

319 Ibid., 19.

320 Draft Revised Conventions 60-61.
it may not lawfully discriminate by reason of race, nationality, religious belief, or political opinions, or any other distinction founded on similar criteria. In other words, while perhaps somewhat more specific, the provisions of Article 16 of the 1949 Convention do not really go beyond those of Article 4 of the 1929 Convention.\textsuperscript{321}

Moreover, the third paragraph of Article 22 actually requires the Detaining Power to allocate prisoners of war to its various prisoner-of-war camps on the basis of nationality, language, and customs. The 1907 Hague Regulations had contained no prohibition against the mixing of prisoners of war of different nationalities, races, and colors in a prisoner-of-war camp. It was criticized for thus permitting the bringing together of individuals who could communicate to each other infectious diseases\textsuperscript{322} against which the infected individuals would not have a natural immunity. Perhaps as a result of this criticism, when the 1929 Convention was drafted, it contained a provision in its third paragraph of Article 9 prohibiting the Detaining Power, \textit{so far as possible},\textsuperscript{323} from "assembling in a single camp prisoners of different races or nationalities." We have already seen that many nations did segregate by nationality during World War II.\textsuperscript{324} They were thus actually complying with the requirements of the 1929 Convention, whatever their motive in so doing may have been.

The portion of the third paragraph of Article 22 discussed above could, under some circumstances, result in an unintended hardship either for the Detaining Power or, of more importance, for the prisoner of war. Some armed forces are composed of individuals of many nationalities, languages, and customs, mirroring the nation of which they are a part. When these individuals become prisoners of war, should the Detaining Power be required to separate them into those constituent categories, perhaps even against their desires? And what of the national of one country who is captured while serving in the armed force of another? Should he be separated from the men with

\textsuperscript{321} Article 6 (1) of the Standard Minimum Rules, while obviously deriving from Article 16 of the 1949 Convention, has clearly benefited from the latter's birth pains.

\textsuperscript{322} Phillimore & Bellot 56-60.

\textsuperscript{323} For example, a Detaining Power might hold a very limited number of prisoners of war of a particular race or nationality. It might then put them in a separate compound which was part of a larger prisoner-of-war camp. This complied with the third paragraph of Article 9 of the 1929 Convention. 1 ICRC Report 248.

\textsuperscript{324} See text in connection with note 316 supra. Germany attempted to go a step further and to separate Jewish prisoners of war from the other prisoners of war of the same nationality, with the admonition that "in all other respects" they were to receive treatment identical to that received by their fellow nationals. \textit{German Regulations}, No. 48, para. 876. Sometimes the German camp commander was successful in complying with this mandate (American Prisoners of War 90-91) and sometimes he was unable to overcome the resistance of the non-Jewish prisoners of war of the same nationality (ibid., 75).
whom he has served and, perhaps, with whom he has been captured? The provision approved at Stockholm would probably have mandated such procedure in each of these cases.\textsuperscript{325} At the 1949 Diplomatic Conference the United Kingdom representative proposed an amendment which was directed at preventing the separation of an individual from other members of the armed force in which he was serving at the time of his capture.\textsuperscript{326} After some colloquy between the representatives of the Soviet Union and the United Kingdom, the proposal which had been made by the latter was adopted by Committee II (Prisoners of War);\textsuperscript{327} but at the Plenary Meeting the Soviet proposal, with a British amendment permitting a prisoner of war to be separated from other members of the armed force in which he was serving at the time of capture only if he consented to such separation, was approved.\textsuperscript{328} Thus, the individual who is serving in the armed force of an ally of his country at the time of his capture will normally be confined in a prisoner-of-war camp with other members of that armed force. However, if the Detaining Power so desires, and if the prisoner of war consents, he may be transferred to confinement with the members of the armed forces of his own country.\textsuperscript{329}

What of the situation where an armed force is composed of individuals of many nationalities, languages, and customs? Although the travaux préparatoires referred to above indicate that this problem was not mentioned during the discussion and amendment of what is now the third paragraph of Article 22, it is fairly obvious that this was a motivating factor in the position taken by the Soviet representative.\textsuperscript{330} The Soviet Union and, hence, the Soviet armed forces, is composed of people of many nationalities, many languages, and many cus-

\textsuperscript{325} Revised Draft Conventions 60.
\textsuperscript{326} 2A Final Record 347.
\textsuperscript{327} Ibid., 353–54. Actually, it is somewhat difficult to discern how the Soviet proposal differed substantively from that of the United Kingdom proposal of that time.
\textsuperscript{328} 2B Final Record 281.
\textsuperscript{329} Thus, in a situation such as that which occurred during World War II, where many Americans had joined the British or Canadian armed forces before the United States became a belligerent, and had elected to continue to serve in the allied armed force after that event, if they were captured they were normally confined with other members of the armed force in which they were serving at the time of capture. See note 1-299 supra. However, with their consent, they could now be confined with other American prisoners of war, i.e., with American nationals who were serving in the United States armed forces at the time of capture.
\textsuperscript{330} It is also why he objected to the United Kingdom proposal to add the clause concerning the consent of the prisoner of war—until, probably, the Soviet Delegation concluded that this could be made to serve the Soviet interest. The Soviet representatives were not here concerned with problems which might arise when the Soviet Union was the Detaining Power, but only with those arising when members of their armed forces became prisoners of war. (The foregoing is not intended to have pejorative implications. It is the way every nation negotiates.)
toms. However, as they would all have been serving in the same armed force when captured, they would have a right to be confined together and could only be segregated with their consent. Of course, this does not mean that all of the prisoners of war of one armed force must be assembled in one prisoner-of-war camp. There may, and usually will, be a number of camps and in each camp there may, and usually will, be a number of compounds (or other smaller enclosures). In breaking the mass of prisoners of war down into camps and compounds, the Detaining Power will probably, for its own administrative purposes, put all of the prisoners of war of a particular nationality or language in the same compound or compounds, camp or camps. As the prisoners of war so combined in the compounds or camps would, in each case, as well as overall, all be members of the same armed force, not only is there no prohibition against such procedure, but it is actually contemplated and required by the third paragraph of Article 22.

Although Article 16 and the third paragraph of Article 22 certainly represent one of the basic “humanitarian principles” of the Convention with which the belligerents in Korea agreed to comply, there can be no doubt of its utter disregard by the Chinese Communists during the course of their participation in that armed conflict. For example, despite the prohibition against discrimination based on political opinions, the Chinese Communist treatment of prisoners of war held by them in North Korea was based entirely on a policy of good treatment for the so-called progressives (those prisoners of war who would cooperate with them in the political field) and bad treatment for the so-called reactionaries (those prisoners of war who refused to cooperate with them in the political field). The discrimination based on political opinion included good food for the progressives and poor food for the reactionaries.

While the maintenance of discipline and order in prisoner-of-war camps has frequently been somewhat of a problem, it only reached really serious proportions in Korea where the Communists, North Ko-

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331 For example, India, and its armed forces, is composed of many nationalities with different languages and different customs—Hindus, Sikhs, Bengalis, Panjabis, etc., etc. If any large number were captured the Detaining Power might, perhaps, try to identify and segregate in separate compounds or camps the members of each of these groups.

332 See note I-114 supra. Even though this commitment was made on the Communist side by the North Koreans only, it must be recalled that the People’s Republic of China insisted that the million or more fully equipped, trained, and organized Chinese troops in Korea were merely “volunteers” serving in the North Korean army.

333 U.K., Treatment 32. One student of the practices of the People’s Republic of China apparently considers it to be almost inconceivable that the PRC would not make that same distinction in any future international armed conflict in which it might be involved. Miller, The Law of War, 238 and 243.

334 See text in connection with notes 161 and 162 supra.
orean and Chinese, used the prisoner-of-war camps as a second battle-
front. The incidents which occurred in the prisoner-of-war camps there demonstrated that where ideology is concerned, and where there is a major schism within the prisoner-of-war group itself, segregation by political opinion may be an absolute requirement in order to ensure the safety of many of the prisoners of war. Once again, it is necessary to state that there is no valid objection to this procedure as long as there is, nevertheless, compliance with the provisions of the third paragraph of Article 22 and as long as there is no discrimination in the treatment received by the individuals confined in different camps or compounds.

b. WOMEN PRISONERS OF WAR

References to sex generally or to women specifically will be found in nine different provisions of the Convention. The provisions referring to women specifically have two basic aims: (1) to guarantee to women prisoners of war treatment as favorable as that accorded to male prisoners of war; and (2) to afford them protection from sexual molestation to the maximum extent possible.

During World War I comparatively few women participated as members of the armed forces in capacities which made becoming a prisoner of war a foreseeable possibility. Accordingly, it is understandable that Article 3 of the 1929 Convention, containing the only reference in that Convention to women, provided merely that they should be treated "with all consideration due to their sex." The situation changed radically during World War II with large numbers of women serving in the armed forces and in the resistance movements of many belligerents and in many capacities, including combat. It is not surprising, therefore, that the 1947 Conference of Government Experts proposed that to the clause quoted above there should be added the provision "and their treatment shall in no case be inferior to that accorded to men." Prior to the 1948 Stockholm Conference the ICRC made some editorial changes (which included making the pro-

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335 UNC., Communist War, passim. The extract of this study which was published in 28 Dept. State Bull. 273 covers this subject.
337 Ibid., 260. The United States Army now officially takes the position that under Article 16 prisoners of war may legally be segregated for the purpose of the maintenance of order. U.S. Manual para. 92b. Concerning the problem of the maintenance of order generally, see Harvey, Control, passim.
338 Pictet, Commentary 146–47. The second paragraph of Article 27 of the Fourth (Civilian) Convention accomplishes this much more succinctly than does the Third (Prisoner-of-War) Convention, specifically providing that "[w]omen shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault."
339 See, e.g., the comment at p. 66 supra.
vision affirmative instead of negative), and the provision as so enlarged became the second paragraph of Article 14 of the 1949 Convention. It is the basic provision concerning the rights of women who become prisoners of war. It states that “[w]omen shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.”

Having established that the basic norms for the treatment of women prisoners of war were to be regard for their sex and equality with the treatment received by men prisoners of war, additional provisions for the protection of women prisoners of war were added to the Convention in a number of areas considered to be particularly sensitive. Thus, the fourth paragraph of Article 25 provides that if women are interned in a prisoner-of-war camp with men, they are to be billeted in “separate dormitories”; and the second paragraph of Article 29, after providing that toilet facilities (“conveniences”) are to be available for the use of prisoners of war day and night, goes on to provide that separate such facilities shall be provided for women prisoners of war.

In the chapter of the Convention dealing with disciplinary and penal sanctions, the draftsmen deemed it appropriate to include four separate provisions with respect to women prisoners of war. Article 88, which is concerned with punishment generally, was amended by the 1949 Diplomatic Conference, upon the recommendation of the British delegation, by the addition of the middle two paragraphs. The second paragraph of Article 88 provides that a woman prisoner of war shall not receive a sentence to punishment which is more severe, nor be treated more severely while undergoing punishment, than a women member of the armed forces of the Detaining Power sentenced for the same offense; and the third paragraph of Article 88 repeats the same prohibitions but with respect to the standards applied to male members of the armed forces of the Detaining Power sentenced for the same offense.

As parallels to the “separate dormitory” provision of the last paragraph of Article 25, the last paragraph of Article 97 provides that

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341 Draft Revised Conventions 60.
342 One of the French delegates at the 1949 Diplomatic Conference thought that the second paragraph of Article 14 was sufficiently broad to cover all contingencies, but he nevertheless concurred in the repetition which resulted from the subsequent specific provisions. 2A Final Record 489.
343 Article 75(5) of the 1977 Protocol I uses the phrase “held in quarters separated from men’s quarters.” The Standard Minimum Rules are much more specific in this respect, Article 8(a) thereof providing that “in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate.”
344 See note 122 supra.
345 3 Final Record, Annex No. 150; 2A Final Record 489–90, 502, & 311.
women prisoners of war undergoing disciplinary punishment “shall be confined in separate quarters from male prisoners of war,” and the second paragraph of Article 108 contains the same provision with respect to women prisoners of war undergoing punishment after conviction of a penal offense. Both of these articles provide further that women prisoners of war so confined shall be under the supervision of women.

As has already been mentioned, Article 16 requires that in applying it provisions against discriminatory treatment, the other provisions of the Convention relating to sex should be taken into consideration. Those which have just been discussed can scarcely be said to provide for preferential treatment for women. What they actually require is “equal, but separate” treatment. The first paragraph of Article 49, which requires the Detaining Power to take sex into account in the utilization of the labor of prisoners of war, is probably the sole provision to fall within the ambit of the Article 16 exception. Presumably, the Detaining Power could favor women prisoners of war in making work assignments, excluding them from the more arduous tasks, without violating the “no discrimination” provision of Article 16.

All of those who had a hand in the drafting of the 1949 Convention did their utmost to provide the special protection which is unquestionably required for women prisoners of war, both from the representatives of the Detaining Power and from their male fellow prisoners of war. The provisions ultimately incorporated into the Convention appear to be adequate. However, once again, their effectiveness will depend almost entirely on the will of Detaining Powers to see them properly and fully applied.

c. CIVIL RIGHTS

It may appear anomalous to speak of the “civil rights” of a prisoner of war, particularly in the light of the fact that historically prisoners of war could be killed or enslaved—certainly a denial of rights far more important than those denominated “civil.” Although the principle that being a prisoner of war was not a dishonorable state and that captives were not held as prisoners of war as punishment, but only to prevent their further participation in the armed conflict, had evolved in the eighteenth century, the theory that a prisoner of war retained “civil rights” is a development which may be ascribed to the twentieth

346 See note 343 supra.
347 Article 75 (5) of the 1977 Protocol I is quite similar. Compare Article 53 of the Standard Minimum Rules. At the prisoner-of-war camp at Qui Nhon, in South Vietnam, there were separate facilities for women prisoners of war. Originally, women members of the Republic of Vietnam acted as guards, but this was discontinued when it was found impossible to maintain the morale of the women guards!
348 See note 283 supra, and the text in connection therewith.
349 See note 1-18 supra.
century and, really, to the events of World War I. The 1907 Hague Regulations contained no general provision with regard to civil rights. Such a provision made its first appearance in the second paragraph of Article 3 of the 1929 Convention with the rather broad and ambiguous statement that “[p]risoners retain their full civil capacity.” As we shall see in the following discussion of various specific civil rights, a number of problems arose in the implementation of this provision. Some prisoners of war (and some Detaining Powers) were misled into assuming that the quoted provision secured for them full civil rights in the territory of the Detaining Power. Actually, a prisoner of war had, in the territory of the belligerent in which he was held (or in the territory of the neutral in which he was interned), only the civil rights which that country elected to permit him to exercise.

The preparation of wills, together with their execution and transmission to the family of the prisoner of war, was probably the most important—and the least controversial—civil right possessed by prisoners of war during World War II. The first paragraph of Article 76 of the 1929 Convention (which derived from Article 19 of the 1907 Hague Regulations) constituted a specific mandate in this area of civil rights. It provided that prisoners of war should receive the same assistance in drafting their wills as did members of the armed forces of the Detaining Power. Moreover, the second paragraph of Article 41 provided for assistance in their authentication; and the first para-

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350 See, e.g., Article 93, Agreement between the United States of America and Germany concerning Prisoners of War, Sanitary Personnel, and Civilians (1918). Pictet refers to Article 72 of Lieber’s Code as part of the history of the evolution of prisoner-of-war civil rights; but this merely protected a prisoner of war’s personal property and money and is analogous to various provisions of Article 18 of the 1949 Convention, and not to the third paragraph of Article 14 thereof, the major provision with which we will here be concerned. Pictet, Commentary 148. [This portion of the Commentary is apparently a redraft of Preux, Le problème de la capacité civile des prisonniers de guerre . . ., 35 R.I.C.R. 925.]

351 In 1939 a lengthy article-by-article review of the 1929 Convention by Radu Meitani, a Roumanian, entitled Le régime des prisonniers de guerre (Régime) appeared in three parts in the Revue internationale françaize du droit des gens. It contained a discussion of the second paragraph of Article 3 of that Convention which could have been helpful had there been an opportunity for the study to become more universally known.

352 1947 GE Report 119–20. Under the laws of some Detaining Powers, prisoners of war were apparently placed on a par with “any ordinary resident.” McNair, Legal Effects 93–94. The more general rule is that a prisoner of war will not be considered a “resident” of the country in whose territory he is held in custody. Pictet, Commentary 149.

353 It can, of course, be argued that it would have been inappropriate, and could not have been intended, to secure for a prisoner of war in an international agreement the rights that he would retain in his own country, certainly a matter for domestic law only. 2A Final Record 248. However, it is equally clear that there was no intent to give prisoners of war “full civil status” under the laws of the Detaining Power.
graph of Article 41 provided for the furnishing of facilities for the transmission of these documents to the home of the prisoner of war.

Another legal document which ranked with the will in its frequent importance to the prisoner of war and to his family was the power of attorney. Because of this importance, the power of attorney was specifically mentioned in the first paragraph of Article 41 of the 1929 Convention, along with wills. Apart from these two, the phrase "instruments, papers or documents" was used to cover the whole gamut of legal documents which the prisoner of war might find it necessary to execute in his own or in his family's best interest. Needless to say, the Protecting Powers and the ICRC were very frequently called upon to ensure the delivery to the prisoner of war, the execution by him, and the return to his family, of these various documents, each of which was undoubtedly of major importance to the individual prisoner of war and to the family concerned. Normally, of course, a Detaining Power will have nothing to gain by denying assistance to the prisoner of war in the execution of any legal document and its transmission back to his family, as it will rarely have any impact within the territory of the Detaining Power. However, two comparatively minor problems in this regard did arise in Germany (and probably elsewhere) during World War II. The first of these problems was how to meet any legal fees or expenses (for example, fees for the services of notaries and for prothonotarial certificates) which might arise in connection with the legal problems of the individual prisoner of war. The German solution to this problem was that if the prisoner of war had no funds, payment would be made from canteen funds or prisoner-of-war funds. The second problem was with respect to the work time lost by prisoners of war, who were at first permitted to leave their work detachments in order to have consultations on personal problems with the legal adviser of the prisoners' representative. The German solution to this problem was to permit the legal adviser to make occasional visits to the work detachments; and to require that all such consultations take place during "free time." No objection can be seen to either of these decisions.

The area of civil rights in which problems apparently most frequently arose during World War II was, strangely, that of marriage. The position has been advanced, and appears to be correct, that a Detaining Power is free to permit or to prohibit marriage by a pris-

354 Janner, Puissance protectrice 55; 1 ICRC Report 295; Rich, Brief History 488.
355 German Regulations, No. 23, para. 293.
356 Ibid., No. 43, para. 798.
oner of war. Many Detaining Powers prohibited such marriages. However, a number of Detaining Powers permitted a prisoner of war to marry by proxy if the other party to the marriage resided in the territory of the Power of Origin of the prisoner of war. Of course, this could only be done if the laws of the Power of Origin permitted proxy marriages.

In modern wars Detaining Powers have required prisoners of war to perform labor, including services under contract to civilian employers. What were the rights of a prisoner of war who was injured, perhaps permanently, in an industrial accident? The last paragraph of Article 27 of the 1929 Convention made him eligible for "the enjoyment of the benefit of the provisions applicable to laborers of the same class according to the legislation of the Detaining Power" (emphasis added); and it further provided that if such legislation was inapplicable, the Detaining Power would seek compensatory legislation. Some belligerents permitted prisoners of war to make a claim against the responsible "employer," by way of either workmen's compensation or civil suit; however, probably the more general rule precluded either type of remedy for the injured prisoner of war.

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357 Sereni, Statut juridique 55; Werner, Croix-Rouge 276.
358 See, e.g., Rich, Brief History 445; and Meitani, Régime 281 & 301. The latter stated that in Roumania should a prisoner of war succeed, nevertheless, in getting married, the marriage would be valid.
359 1 ICRC Report, 294; Rich, Brief History 445. See German Regulations, No. 6, para. 3. For a detailed description of the festivities attendant upon a proxy marriage by a German prisoner of war in a camp in the United States, see Hoole, And Still We Conquer 48–50.
360 One commentator is of the opinion that under the second paragraph of Article 3 of the 1929 Convention a Detaining Power could not prevent a prisoner-of-war clergyman from celebrating a marriage between two prisoners of war. Sereni, Statut juridique 56 n.8. While a Detaining Power might permit such a marriage inasmuch as its own nationals are not involved, that it could not prohibit such a marriage if so minded appears to be a rather extreme position.
361 See Chapter III infra. Article 28 of the 1929 Convention specifically contemplated such a possibility.
362 It should also be noted that Article 71 of the 1929 Convention made work-injured prisoners of war eligible for repatriation—unless the injury was voluntary—on the same basis as other seriously sick or seriously wounded prisoners of war.
363 With respect to the rights of prisoners of war in this area, McNair says that "if he is allowed by the British Government to enter into a contract of service with a farmer, he may recover wages and he may sue for damages for an injury resulting from the negligence of his employer." McNair, Legal Effects 93. (If this was ever the method by which a prisoner of war came to work for a civilian employer, it is not the present method, at least in the United States, where the contract for prisoner-of-war labor is between the private employer and the government. Lewis & Mewha 108; U.S. Army Regs. paras. 633–50, sec. XI.)
364 A 1944 opinion of the Judge Advocate General of the United States Army held that prisoners of war were not residents of the United States and, therefore, were prohibited from having recourse to the courts of the United States because
These were the most prominent areas in which there had been an attempt to exercise civil rights, or an actual exercise thereof, during World War II. When the Conference of Government Experts met in 1947, some of the participants supported the inclusion in the Convention of a provision clearly specifying that prisoners of war enjoy no civil rights in the territory of the Detaining Power. They were dissuaded from this, and the Conference merely proposed the addition of a clause to the provision of the second paragraph of Article 3 of the 1929 Convention quoted above, which would state: “they may acquire and exercise all rights granted them by the DP.”

This was apparently felt to be an inadequate solution to the problem by the ICRC, which attempted to clarify the redrafted article to indicate beyond any question that the “full civil status” which prisoners of war retained under the Convention was that accorded by the legislation of their own country, while at the same time retaining the clause which had been proposed by the Government Experts.

With slight editing, this ICRC draft was approved at Stockholm and became the working draft for the 1949 Diplomatic Conference, where it was the subject of several rather extended debates.

When strong objections were voiced at the Diplomatic Conference to the provision as redrafted, the representative of the ICRC explained that what had been attempted was to draft language which would avoid giving prisoners of war the impression (which they had frequently drawn from the 1929 text) that they had full civil rights in the territory of the Detaining Power. This explanation was apparently considered to be inadequate by the representatives of several delegations and, thereafter, the Drafting Committee produced a substantially new version of the provision which was accepted, although not without further debate, and which became the third paragraph of Article 14 of the 1949 Convention. It reads:

Prisoners of war shall retain the full civil capacity which they

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365 1947 GE Report 119–20. It was also proposed to edit the original clause very slightly.
366 Draft Revised Conventions 60.
367 Revised Draft Conventions 57.
368 2A Final Record 248.
369 Ibid., 249.
370 Ibid., 350.
371 Ibid., 400 & 403–04.
enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

The Coordination Committee subsequently recommended the elimination of the words “which they enjoyed at the time of their capture,” stating that its proposal was made in order to permit the exercise of their civil rights by prisoners of war who reached their majority while in captivity.372 The British representative expressed the opinion that no Detaining Power would interpret that clause so as to deny their civil rights to such prisoners of war.373 A problem of far greater importance created by that clause is to find a reason why an international humanitarian agreement should restrict the civil rights granted to a prisoner of war by his own Power of Origin to those in existence on the date of his capture.374 If, for example, a Power of Origin has no law permitting proxy marriages at the time that a prisoner of war is captured, there does not appear to be any valid reason why he should be denied, by the terms of an international agreement, the benefit of a law subsequently enacted by his Power of Origin which permits proxy marriages and which, perhaps, is specifically stated to be applicable to then prisoners of war, among others.375 During and after World War II the lack of adequate existing legislation relating to the civil-rights problems of prisoners of war and their families was a matter of major concern in France.376 Under the clause above referred to, in a similar future situation, no corrective legislation enacted by the French Parliament would apply to the very persons whom it was desired to assist!

That the overall Article 14, third paragraph, will clarify the situation as it existed under the second paragraph of Article 3 of the 1929

372 Ibid., 400.
373 Ibid. The ICRC has since conceded that this is one possible interpretation of the clause; but has rejected it as “contrary to the spirit of the principle stated in the Article.” Pictet, Commentary 149.
374 This was stated to be the meaning of the provision. 2A Final Record 403-04.
375 In the United States a treaty such as the 1949 Convention is a part of “the supreme law of the land.” Article VI, United States Constitution. Suppose that, after a citizen of the United States is captured, the state in which he has his domicile enacts a statute authorizing proxy marriages, something which had previously been specifically prohibited. The prisoner of war thereafter marries by proxy in accordance with the provisions of the new law and with the permission of the Detaining Power. The validity of the marriage would be subject to attack as being contrary to the self-executing limitation contained in the third paragraph of Article 14, part of the supreme law of the United States.
376 Sevant, Le droit des prisonniers de guerre; Charrière & Duguet, Traité théorique et pratique des Prisonniers de Guerre, Deportés et Travailleurs en Allemagne en droit français; and Charon, De la condition du prisonnier de guerre français en Allemagne au regard du droit privé, (cited at Pictet, Commentary 150 n.1).
Convention appears doubtful in other respects as well. Prisoners of war are stated to have “the full civil capacity which they enjoyed at the time of their capture”; and the Detaining Power may not restrict the exercise of those rights, “either within or without its own territory . . . except in so far as the captivity requires.” A proxy marriage certainly does not so conflict with the status of captivity as to “require” the Detaining Power to prohibit it. Does this mean that the Detaining Power may no longer do so if proxy marriages were permitted by the laws of the Power of Origin at the time of capture and even if they are prohibited by the laws of the Detaining Power? Suppose that a prisoner of war owns property in the territory of the Detaining Power. May he sell that property if the laws of the Power of Origin at the time of capture permit him to do so and even if the laws of the Detaining Power prohibit such sales? These are but a few of the numerous problems which the provisions of the third paragraph of Article 14 raise, the answers to which will have to be given at some future date. Far fewer difficulties would have been created had the 1949 Diplomatic Conference accepted the provision approved at Stockholm378 without the extensive tinkering in which it engaged, the sole effect of which was to confuse what had been largely clarified.

The first paragraph of Article 120 and the first two paragraphs of Article 77 of the 1949 Convention are concerned with the drafting, execution, and transmission of legal documents, including wills and powers of attorney. It will be recalled that the first paragraph of Article 76 of the 1929 Convention required the Detaining Power to afford the same assistance to prisoners of war in the drafting of wills as it did to members of its own armed forces.379 The provisions of the 1949 Convention adopt a somewhat different approach. While the second paragraph of Article 77 again requires the Detaining Power to facilitate the preparation and execution of legal documents, it also specifically requires the Detaining Power (1) to allow prisoners of war to consult a lawyer,380 and (2) to arrange for the authentication of

377 The legislative history of the words “at the time of their capture” as used here (and in the third paragraph of Article 22) is rather strange for still another reason. The Rapporteur pointed out that the word “capture” had been deleted everywhere else “in order to give the Convention the widest scope possible by covering members of armed forces taken prisoner on surrender or in other circumstances which cannot, properly speaking, be described as capture.” 2B Final Record 324. (See note I-133 supra.) The words in the French version of the third paragraph of Article 14 [and of the third paragraph of Article 22] were accordingly changed to “au moment où ils ont été faits prisonniers”—but the words “at the time of their capture” were left untouched in the English version!

378 Revised Draft Conventions 57.

379 See p. 181 supra.

380 No mention is made as to how this is to be accomplished if there is no prisoner-of-war lawyer available. Under the 1929 provision, a military lawyer of the Detaining Power would have had to be made available if this was the procedure
Moreover, the first paragraph of Article 120 provides that prisoner-of-war wills be so drafted as to satisfy the requirements of the laws of the Power of Origin, the latter having the obligation to inform the Detaining Power of the legal requirements in this respect; the first paragraph of Article 77 requires the Detaining Power to provide facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency, of the executed documents; and the first paragraph of Article 120 provides that, at the request of the prisoner of war, the will shall be sent to the Protecting Power; and that, upon the death of the prisoner of war, the will shall be sent to the Protecting Power and a certified copy to the Central Agency.

Some degree of improvement may be found in these new provisions relating to the preparation, execution, and transmission of legal documents. However, in other respects it is very probable that the exercise of civil rights by prisoners of war will be even more restricted than during World War II, despite the very well intentioned, but badly executed, aims of the 1949 Diplomatic Conference.

12. Transfers Between Prisoner-of-War Camps

It would seem that the transfer of a prisoner of war from one camp to another would be a comparatively rare but routine procedure requiring only passing mention in an international agreement such as the 1949 Convention. On the contrary, the draftsmen found it necessary to deal with the subject in all or part of seven different articles, attempting, with considerable success, to cover every aspect of the matter in order to provide adequate protection, both physical and other, to the prisoner of war at a time when he is removed from that which is presumably afforded by a well-organized, permanent camp.

Chapter VIII of Section II of the 1949 Convention, consisting of Articles 46, 47, and 48, was given the title "Transfer of Prisoners of War after Their Arrival in Camp." This was done "so as to avoid any

381 If only witnesses to the signature are required, no problem arises. However, if a document must be notarized, it is extremely unlikely that a prisoner-of-war notary will be available and the use of a notary of the Detaining Power, even if one is made available by the latter, would very possibly create legal problems concerning the validity of the document.

382 Concerning the rights under the 1949 Convention of a prisoner of war injured in an industrial accident, see p. 183 supra and pp. 249–252 infra.

383 The subject was not specifically mentioned in the 1929 Convention.

384 The events of World War II clearly demonstrated that a "death march" can occur on a transfer from one prisoner-of-war camp to another, as well as on the original evacuation. See, e.g., I.M.T.F.E. 1047–49; Trial of Baba Masao; and Trial of Mackensen.
confusion with the Articles on evacuation.” While the provisions of the two sets of articles are, in many respects, substantially parallel, those concerned with intercamp transfers include a number of matters not covered by those concerned solely with the original evacuation from the place of capture. It is with these supplementary provisions that we will be primarily concerned here.

The second paragraph of Article 46 contains the basic policy statement with respect to intercamp transfers and, like the first paragraph of Article 20 dealing with evacuations, it is a specific reiteration of the fundamental rule expounded in the first paragraph of Article 13 that prisoners of war must at all times be humanely treated. Once again, as in the first paragraph of Article 20, there is the requirement that transfers shall be effected “in conditions not less favourable than those under which the forces of the Detaining Power are transferred.” Generally speaking the Detaining Power realistically should be able to, and therefore should, comply with this requirement, and the situation would be unlike that frequently presented upon the evacuation from the battlefield. Transfers between prisoner-of-war camps will usually take place in what one author very aptly calls “the hinterlands”; hence the Detaining Power should be able to furnish the same type of facilities for such transfers as it uses when moving its own troops in the same or similar areas. Moreover, the second paragraph of Article 46 provides that in camp-to-camp transfers the climate to which

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385 2A Final Record 268 (The Conference of Government Experts had suggested the use of the caption “Transfer between Base Camps” (1947 GE Report 164) but the ICRC had changed this because the term “base camp” does not appear elsewhere in the Convention. Draft Revised Conventions 79.) General Dillon, a member of the United States Delegation at the 1949 Diplomatic Conference, clearly errs when he asserts that Articles 45-47 were designed for the purpose of outlawing, among others, “the horrors of the Death March of Bataan.” Dillon, Genesis 51. As is well known, that was an original evacuation from the battlefield to a prisoner-of-war camp, and it would fall within the ambit of Articles 19 and 20. See pp. 98–104 supra. The presence of the quoted statement in the Dillon article is even less understandable when it is noted that at the Diplomatic Conference General Dillon himself stated, in the discussion of Article 38 (now Article 46), that “it was important to indicate, not only in the Article itself, but also in the Chapter heading, the fact that it dealt with transfers from camp to camp.” 2A Final Record 269.

386 This section should, of course, be read in conjunction with section B.1 of this chapter, pp. 98–104 supra.

387 See p. 101 supra.

388 Spaight, Air Power 229.

389 Of course, as we shall see, sometimes such transfers may be necessitated by the approach of battle and once again the Detaining Power may be unable to provide the transportation facilities normally used for moving its own troops. But even this would not excuse the inhumane methods adopted by the Germans (3 ICRC Report 88–89; Trial of Mackensen) and Japanese (I.M.T.P.E. 1047–51; Trial of Baba Masao) during World War II.
the prisoners of war are accustomed\textsuperscript{390} must be taken into account "and the conditions of transfer shall in no case be prejudicial to their health."\textsuperscript{391}

The third paragraph of Article 46 parallels the provisions of the second paragraph of Article 20 relating to evacuations. It requires the Detaining Power to provide prisoners of war being transferred with an adequate supply of food and drinking water, as well as clothing, shelter,\textsuperscript{392} and medical attention.\textsuperscript{393} And the last sentence of that Article requires the Detaining Power to take the precautions necessary to ensure the safety of the prisoners of war during the course of the transfer, "especially in case of transport by sea or air,"\textsuperscript{394} and to make a roster of all the prisoners of war involved in the transfer, presumably so that if casualties occur en route it will be possible to identify them. As long as States refuse to agree upon a special marking for vessels or planes being used for the purpose of transferring prisoners of war by sea or by air,\textsuperscript{395} it is somewhat difficult to envision exactly what precautions can be taken by a Detaining Power to ensure the safety of prisoners of war during the course of their transfer.\textsuperscript{396} Nevertheless, it is foreseeable that new techniques will be developed which

\textsuperscript{390} Presumably, they are "accustomed" to the climate of their homeland, usually that of the Power of Origin, and not to that of the prisoner-of-war camp from which they are being transferred.

\textsuperscript{391} These two provisions were added to the Working Draft as a result of a proposal made by the New Zealand representative at the 1949 Diplomatic Conference. 2A \textit{Final Record} 268 & 359-60. He undoubtedly had in mind instances, such as those mentioned in \textit{I.M.T.F.E.} 1047-51 and \textit{Trial of Baba Masao}, where prisoners of war from temperate climates (British, Australians, and Americans, and, probably, New Zealanders), many of them seriously ill, were required to make long marches in a tropical climate.

\textsuperscript{392} There is no mention of "shelter" in Article 20 except the inference which may be drawn from the reference to "transit camps" which appears in the third paragraph of Article 20 and the requirements for transit camps set forth in Article 24.

\textsuperscript{393} The urgent need for these provisions can easily be found by reference to the experiences which occurred during World War II cited in notes 389 and 391, supra.

\textsuperscript{394} During World War II there were several tragic incidents of Japanese vessels carrying Allied prisoners of war being torpedoed by American submarines. 12 Morison, \textit{History of United States Naval Operations in World War II} 400-01. It is estimated that 10,000 prisoners of war lost their lives in this manner. Remarks and Proposals 49.

\textsuperscript{395} The World War II belligerents would not consider the use of a special marking for the vessels being used to transport prisoners of war because of the strong likelihood of its misuse. 1947 GE Report 166-68; Remarks and Proposals 50. Such a possibility was mentioned at the 1949 Diplomatic Conference but not a single delegate spoke in favor of it. 2A \textit{Final Record} 269-70.

\textsuperscript{396} The ICRC would probably interpret this provision to be a general statement covering its specific proposal to require "life-boats, life-belts, etc. for transports by sea; anti-aircraft protection for those by land." 1947 GE Report 167; Remarks and Proposals 49-50. However, for some unknown reason, no reference is made to the foregoing in the discussion of the third paragraph of Article 46 which appears at Pictet, \textit{Commentary} 254-55.
will make it possible for the Detaining Power to afford the prisoners of war being transferred the safety which the third paragraph of Article 46 already requires.

The first paragraph of Article 46 is of debatable value. It provides that before deciding to transfer prisoners of war, the Detaining Power should “take into account the interests of the prisoners themselves”; and that particular account should be taken that the transfers do not increase the difficulty of repatriation. The first provision is, for all practical purposes, meaningless; and the second provision is almost so, given the physical problems which will frequently confront the Detaining Power plus the methods of transportation for repatriation which are available now as well as those which will undoubtedly become available in the future. Certainly, during World War II it would have made repatriation far less difficult if all Germans and Italian prisoners of war held by the United States after their capture in North Africa and in Europe had been detained in the United Kingdom or on the European continent. However, this was not feasible, primarily for logistic reasons but also because of the need for their use in the United States as a labor force. Accordingly, they were transferred from prisoner-of-war camps in the United Kingdom and on the Continent to the United States. It is extremely unlikely that were the identical situation to occur again the United States would act any differently even in the face of this paragraph of Article 46. It is equally unlikely that any other Detaining Power confronted with such a situation would act any differently.

Geography, the availability of the necessary space, logistics, labor requirements, and many other factors will be considered by a Detaining Power in making the decision as to whether prisoners of war should be transferred; and as long as the prisoners of war are not thereby deprived of any of the protections of the Convention, the fact that they are being moved farther away

397 Support for this conclusion can be found in the manner in which the provision is treated in ibid., 253-54.

398 The peak number of prisoners of war held within the territory of the continental United States was 425,871 in May 1945. Lewis & Mewha 90-91. By June 1946 all except 162 (who were serving prison sentences for postcapture offenses) had been returned to Europe. Ibid., 91, Table 2, n.a.

399 The movement of all Allied prisoners of war by the Japanese in Borneo from Sandakan and Kuching to Ranau (I.M.T.F.E. 1047-49; Trial of Baba Masao) was a logical one even though their removal inland from a port undoubtedly would have made their repatriation more difficult. An Allied landing was anticipated—and did occur. The Japanese army could not be expected to leave these prisoners of war in a place where they might well be retaken by their own forces. No Detaining Power would do so, even if their removal would inevitably make their ultimate repatriation more difficult. It was not the fact of their movement, but the methods employed in moving these prisoners of war, which were found to have violated the law of war.
from their homeland, and perhaps from airfields or ports, will make little difference.\footnote{Suppose that during World War II there had been 100,000 German prisoners of war in camps in the United Kingdom which had been built to accommodate 25,000—and the necessary additional space was just not available; while in the United States, prisoner-of-war camps, west of the Rocky Mountains, built to accommodate 100,000 prisoners of war, were almost empty. Wouldn’t the surplus 75,000 German prisoners of war in the United Kingdom have been better off overall if they were transferred to the camps in the United States even if this meant that when repatriation ultimately occurred they would be some 4,000 miles further away from Germany?}

It will be recalled that the second paragraph of Article 19 provides that wounded and sick prisoners of war may be temporarily retained in the combat zone, despite its inherent dangers, if evacuation would constitute an even greater risk to their well-being.\footnote{See pp. 99–100 supra.} The first paragraph of Article 47 contains a prohibition against the transfer of such prisoners of war if their recovery will be impeded as a result, “unless their safety imperatively demands it.”\footnote{In Article 25 of the 1929 Convention the escape clause was “unless the course of military operations demands it.” Obviously, the standard of that clause has been changed from one catering to the needs of the Detaining Power to one for the greater protection of the prisoners of war.} The transfer of seriously wounded and seriously sick prisoners of war whose recovery would be adversely affected by the move would be justified if, for example, they were in an installation located in an area which, because of military developments, had become subject to bombardment; it would not be justified merely because of the impending likelihood of its being overrun by enemy infantry. Moreover, the second paragraph of Article 47 carries this matter a step further, prohibiting the transfer of all prisoners of war from a camp which is threatened by the approach of the combat zone, unless such transfer can be safely accomplished under “adequate conditions”—which must be intended to mean under the conditions set forth in the last two paragraphs of Article 46; with an escape clause which permits their movement if “they are exposed to greater risks by remaining on the spot than by being transferred”\footnote{It will be noted that under the second paragraph of Article 19 wounded and sick prisoners of war may only be \textit{retained} in the combat zone if they would run greater risks by being evacuated; while under the second paragraph of Article 47 prisoners of war may only be \textit{transferred} from camp to camp if they would run greater risks by remaining on the spot. This seeming inconsistency is, in fact, logical. In the first instance, the tendency of the troops of the Capturing Power would be to care little if the newly captured prisoners of war were kept in the combat zone and thus continued to be exposed to the dangers of that area; in the second instance, the tendency of the Detaining Power would be to desire to move the prisoners of war in order to overcome the possibility of their rescue by their own or allied armed forces. In each case, the provision of the Convention is directed against the natural tendency of the Detaining Power or its agents.}—a decision which the Detaining Power will make unilaterally and
which will, of course, be based wholly upon subjective considerations. Most camp-to-camp transfers will be made in the self-interests of the Detaining Power. Thus, while the movement of a proportion of the prisoners of war from an overcrowded camp to one which is less crowded, or which, perhaps, is just being opened, will undoubtedly improve the lot of the prisoners of war, in most cases it will be done by the Detaining Power not for this reason but because it will ease logistic problems, or move prisoner-of-war labor to an area where it is more urgently needed, or because of the danger of losing control over an overcrowded prisoner-of-war camp.\textsuperscript{404} Similarly, while the transfer of prisoners of war from one camp to another because of the approach of the combat zone will usually mean that they are being moved from a place where they may suffer some harm to a place of comparative safety, it is an action which will be taken by the Detaining Power basically in its own interest in order to prevent escape or release. The Detaining Power is thus given the choice: transfer the prisoners of war under conditions which will ensure their safety and well-being; if that is not possible, do not move them, even is the possibility exists of the camp being overrun by the enemy. During World War II several Detaining Powers elected to move the prisoners of war in order to prevent their rescue, but moved them under conditions which were so horrendous that they cost the lives of a large proportion of the prisoners of war who were moved.\textsuperscript{405} Article 47 was drafted and included in the Convention in order to codify the requirements with which the Detaining Power must be able to comply if it proposes to move prisoners of war so as to prevent their being retaken by forces friendly to them. The provisions are clear even with the “escape clause” which is subject to the unilateral determination of the Detaining Power. If the Detaining Power elects to transfer the prisoners of war when it is, or should be, obvious that adequate supplies of food, water, proper clothing, etc., are not available, and, as a result, the prisoners of war are adversely affected by the move, the Detaining Power’s decision violated Article 47 and the individuals responsible for making that decision and for carrying it out would be subject to trial, conviction, and punishment.\textsuperscript{406}

\textsuperscript{404} The United Nations Command discovered the importance of this latter reason for transferring prisoners of war during hostilities in Korea (1950–53). Hermes, Truce Tent 255 et seq.

\textsuperscript{405} See notes 389 and 391 supra. Thus, the I.M.T.F.E. found that “less than one-third of the prisoners of war who began these marches at Sandakan ever reached Ranau.” I.M.T.F.E. 1048.

\textsuperscript{406} In interpreting these provisions of Article 47, one must not lose sight of the provisions of the first paragraph of Article 23, which contains the flat statement that “[n]o prisoner of war may at any time be . . . detained in areas where he may be exposed to the fire of the combat zone.” (Emphasis added.) The Detaining Power which elects to transfer prisoners of war as the combat zone draws close to
The other provisions of the Convention relating to transfers from one prisoner-of-war camp to another are, for the most part, administrative in nature, being directed toward maintaining the morale of the prisoner of war rather than his life and continued well-being. Thus, the first paragraph of Article 48 requires that the Detaining Power give the prisoners of war sufficient advance information concerning an impending transfer to enable them to pack their belongings and to send their new address to their families; the second paragraph of Article 48 authorizes the prisoners of war to take with them their personal effects, as well as "correspondence and parcels which have arrived for them," limited to what each can carry, with a 25-kilogram (roughly 55 pounds) maximum; the third paragraph of Article 48 imposes upon the Detaining Power the obligation to arrange for the prompt forwarding of mail and parcels arriving at the former camp after the transfer; and also provides that the camp commander and the prisoners' representative shall agree on the method for the delivery to the transferred prisoners of war of "community property" (such as collective relief shipments) as well as personal effects left at the former camp because of the 25-kilogram weight limit; the fifth paragraph of Article 81 provides that if the prisoners' representative is himself transferred, he must be allowed a reasonable time in which to orient his successor; and the third paragraph of the camps in which they are confined might well claim that to have left them in their original camps would have been to subject them to the hazards of the combat zone and would have been a direct violation of the first paragraph of Article 23, even though in making the transfer it could not fully comply with the provisions of Articles 46 and 47; and that it chose the course of action which, in its judgment, was the lesser of two evils.

407 Article 48 of the 1949 Convention is basically an edited version of Article 26 of the 1929 Convention.

408 Of course, if the transfer is being made under the emergency provisions of the second paragraph of Article 47, this might not be possible.

409 Article 70 also specifies that when a prisoner of war is transferred to another camp he must be given the opportunity to send a Capture Card (Annex IVB) to his family and to the Central Prisoner of War Agency; and the fifth paragraph of Article 122 places certain duties in this regard upon the Information Bureaux.

410 This would appear to mean any correspondence and parcels awaiting distribution and which are distributed immediately prior to departure. If these items have been received at an earlier date, and have been distributed and opened, they have become merged in the general category of "personal effects." (In fact, it is somewhat difficult to determine why any such special mention was considered necessary.)

411 Concerning these latter individuals, see pp. 293–307 infra.
Article 65 provides that upon transfer the personal financial account of each prisoner of war is to follow him.

It can readily be seen that a number of humanitarian provisions have been included in the 1949 Convention which clearly establish the responsibilities of the Detaining Power and the rights of the prisoners of war in connection with the transfer of the latter from one prisoner-of-war camp to another, whatever the reason for such transfer may be.413

13. Financial Resources

Unlikely as it may seem, a prisoner of war has a number of sources of personal funds and there are a great many provisions of the Convention which are concerned with this subject. Inasmuch as few Detaining Powers will allow a prisoner of war to retain or to receive cash, an important element of all escape attempts, the financial assets of each prisoner of war will be represented by book credits. We shall examine here the sources of these credits, the extent to which and the manner in which the prisoner of war may use them, and their ultimate disposition upon the termination of the individual's status as a prisoner of war.

Article 64 requires the Detaining Power to maintain a separate financial account for each prisoner of war consisting of the following items:

**Credits**

- Sums taken on capture:
  - In currency of the Detaining Power;
  - In other currencies but converted at his request into the currency of the Detaining Power;
- Advances of pay;
- Working pay;
- Amounts derived from any other source.

412 See pp. 209–211 infra. It will be noted that there is no specific provision for the transfer of the proportionate shares of canteen profits—unless these can be considered to fall within the category of "community property." The ICRC apparently believes that they do (Pictet, Commentary 258), although at no time was any mention made of them in the discussion of Article 48 (then Article 40) at the 1949 Diplomatic Conference. For the United States practice during World War II, see note 170, supra.

413 The last sentence of Article 48 provides that the costs of the transfers shall be borne by the Detaining Power. This was merely a retention of the equally useless provision of the last sentence of Article 26 of the 1929 Convention. Apart from the fact that Article 15 makes the Detaining Power responsible for all of the expenses of maintaining prisoners of war, it is inconceivable that any Power of Origin could ever be prevailed upon to meet the expenses of a transfer of prisoners of war by the Detaining Power from one camp to another, an action which, as has already been noted, will most usually be accomplished by the Detaining Power in its own interests. See p. 192 supra.
Debits

Payments made to him;\footnote{The second paragraph of Article 64 refers to “payments made to the prisoner [of war] in cash.” However, as we shall see, the likelihood of any Detaining Power permitting such payments is rather remote.} Payments made on his behalf;
Sums transferred at his request.

Each of the foregoing items is based upon substantive provisions appearing elsewhere in the Convention.

a. CREDITS

(1). Sums Taken on Capture

It will be recalled that the fourth paragraph of Article 18 provides that when money in the currency of the Detaining Power is taken from a prisoner of war upon capture, it will be credited to his personal account.\footnote{See pp. 115–116 supra.} When money so taken is not in the currency of the Detaining Power, the prisoner of war has a choice between two alternatives: under the fourth paragraph of Article 18 he may request that it be converted into the currency of the Detaining Power and credited to his personal account;\footnote{For some inexplicable reason the early conferences redrafting the Convention thought it necessary to repeat in the section dealing with financial resources the foregoing provisions of the fourth paragraph of Article 18. Despite the close review of all of the relevant articles by a special “Sub-Committee of Financial Experts of Committee II” (2A Final Record 529–58), these totally redundant provisions were perpetuated by the complete acceptance of what is now Article 59—which states in two fairly lengthy paragraphs what is stated in the last sentence of the fourth paragraph of Article 18.} if he elects not to do so, then, under the last paragraph of Article 18, it will be retained “in [its] initial shape” by the Detaining Power, together with the other articles of value which have been taken from the prisoner of war for reasons of security.\footnote{“In [its] initial shape” obviously means that the actual currency itself will be placed in safekeeping along with other articles of value taken from the prisoner of war and impounded because they might be useful to a prisoner of war in an escape attempt.}

One other aspect of the problem of the possession of actual cash by prisoners of war must be mentioned at this point. It has been stated above that no Detaining Power can be expected to allow a prisoner of war to retain or to receive cash, primarily because of its importance in escape attempts. The first paragraph of Article 24 of the 1929 Convention provided that the maximum amount of cash (“ready money”) that a prisoner of war might have in his possession would be determined by agreement between the belligerents. Few such agreements were reached during World War II,\footnote{1 ICRC Report 282. Italy and the United States agreed that prisoners of war would not be allowed to have any “negotiable money,” but only the Detaining Power’s special monetary substitute. [1942] 3 For. Rel. U.S., Europe at 25 & 30.} and other restrictive measures, such as the issuance by the Detaining Power of special token money...
for prisoners of war (scrip, canteen coupons, etc.), frequently negotiable at only the prisoner-of-war camp of issue, were taken by Detaining Powers in order to prevent prisoners of war from having cash in their possession which might facilitate escape.\footnote{McKnight, POW Employment 62; Kisch, War-prisoner money 452 \& 455; Rundell, Paying the POW 123; ICRC Report 288. Substantially the same procedure had been followed during World War I. Belfield, Treatment 144.} The first paragraph of Article 58 of the 1949 Convention modified its predecessor by providing that the maximum amount of money "in cash or in any similar form" (emphasis added) that a prisoner of war may have in his possession shall be determined, not by agreement between the belligerents, but by agreement between the Detaining Power and the Protecting Power, with the right in the Detaining Power to establish a maximum amount until an agreement covering the subject had been reached.\footnote{The authorization for the Detaining Power to set a temporary maximum (which may become semipermanent, or even permanent, if difficulty is encountered in reaching an agreement with the Protecting Power) necessarily implies that some maximum amount will be set, even though it may well be limited to special prisoner-of-war money.} Thus, this provision legalizes the use of special "prisoner-of-war money," the use of which had not previously been specifically authorized, even though it had rarely been disputed; authorizes the Detaining Power to establish unilaterally a temporary maximum amount of money, actual or special, which a prisoner of war will be entitled to have in his possession in the prisoner-of-war camp; and substitutes the Protecting Power for the Power of Origin as the other party to the permanent agreement, with the Detaining Power setting the maximum amount which a prisoner of war will be authorized to have in his possession. While this last modification may result in more agreements on the subject in any future international armed conflict than were reached in past conflicts, it is still extremely unlikely that any Detaining Power will agree to permit prisoners of war to retain in their possession any actual cash, particularly in the currency of the Detaining Power.

Another new provision of the first paragraph of Article 58 is also worthy of note. The United Kingdom delegation thought it appropriate to permit a Detaining Power to confiscate any money in excess of the specified maximum found in the possession of prisoners of war and, accordingly, proposed that the wording of the draft provision be amended to read that "[a]ny amount in excess [of the permitted maximum], which was properly in their possession" (emphasis added) would be credited to their personal accounts.\footnote{2A Final Record 475. Of course, once again conversions of currency other than that of the Detaining Power taken from a prisoner of war when properly in his possession will be made only upon his request.} Obviously, excess amounts which are not properly in their possession will be forfeited.
and will not be credited to their accounts. This is the type of provision which this author has found to be lacking in the fourth paragraph of Article 18.422

(2). Advances of Pay

It has long been the custom for the Detaining Power to make advances to officer prisoners of war on account of their pay so that they would have funds with which to purchase tobacco, toilet articles, etc., beyond that which might be issued to them or which might reach them in relief parcels.423 Article 17 of the 1907 Hague Regulations provided that officers would receive the same pay as officers of equivalent rank in the armed forces of the Detaining Power, the amount so advanced to be ultimately refunded by the Power of Origin.424 Article 23 of the 1929 Convention had a somewhat similar provision but with the proviso that in no case would the pay received exceed the pay to which they were entitled from the Power of Origin.425 Once again, specific provision was made for reimbursement by the Power of Origin at the end of hostilities.426

Apparently, these provisions of the 1929 Convention worked no more effectively during World War II than their predecessors had

422 See pp. 115–116 supra. It is somewhat difficult to conceive of circumstances under which the possession of an excess amount of money by a prisoner of war in a prisoner-of-war camp would ever be “proper”—unless he can show that he had it at the time of capture and no one from the Detaining Power had ever searched him or even asked for the surrender of cash (or unless the Detaining Power is willing to accept the frequently advanced claim that it was won by gambling with other prisoners of war).

423 This was probably a holdover from the days when officers, while awaiting exchange, were paroled locally and had the obligation to arrange for their own board and lodging and to pay for it. Concerning exchange and parole, see pp. 397–402 infra.

424 During World War I Germany did not pay British officers who were prisoners of war despite this provision, so the British reciprocated by putting German officer-prisoners of war on special rates. United Kingdom, Foreign Office, The Treatment of Prisoners of War in England and Germany during the First Eight Months of the War 12–13. At a later date, when the Germans proposed that both sides should comply with the provision, the British military authorities would not agree—not only because they had learned that there was practically nothing that a British prisoner of war could buy in Germany, but also because whatever he was paid by the Detaining Power was deducted from the amount paid to his family and this could have had serious consequences. Belfield, Treatment 146.

425 After the British experiences of World War I (note 424 supra), it is surprising that this was the only relevant change in the provision.

426 One very important, and needed, addition was a provision for the fixing of the rate of exchange by agreement between the belligerents with a proviso that, absent such an agreement, the rate in effect at the opening of hostilities would be used. A number of agreements were reached on this subject. 1 ICRC Report 283–84. Nevertheless, problems on rates of exchange did arise. Ibid., 284.
worked during World War I. As a result, the preliminary conferences recommended, and the 1949 Diplomatic Conference adopted, what is now Article 60, containing a number of major changes in the basic approach to the problem. These include (1) a provision for advances of pay to enlisted men (other ranks) as well as to officers; (2) elimination of the practice of tying the amount of the advance of pay to the pay scale of the armed forces of either the Detaining Power or the Power of Origin; (3) specifying exactly what the advance in pay will be for each rank from private to general; (4) using the value of the Swiss franc as the common denominator with each Detaining Power converting the amount of the advance in pay specified in Swiss francs into an equivalent amount in its own currency based on the rate of exchange; and (5) providing a method by which the Detaining Power may institute a specific temporary system of advances in pay pending the conclusion of a special agreement with the Power of Origin.

The first paragraph of Article 60 divides all military ranks into five categories and specifies the monthly advance in pay each category is to receive, the range being from 8 Swiss francs for Category I ("Prisoners ranking below sergeants") to 75 Swiss francs for Category V.

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427 A survey made by the United States in November 1945 disclosed that there had apparently been no national policy in Germany and that advances of pay were different in amount in almost every prisoner-of-war camp. American Prisoners of War 19, 28, 60, 71, 79, 90, & 105. The United States, on its part, gave all enlisted prisoners of war canteen coupon books worth $3 every month as a gratuity in order to enable them to make purchases at the camp canteen. Rich, Brief History 437; Hoole, And Still We Conquer 36.

428 This is the Swiss paper franc. As originally drafted, Article 51 (now Article 60) provided for the use of the Swiss gold franc at 203 milligrams of fine gold. As a result of the singlehanded campaign of the delegate from the United Kingdom (Gardner) in the Financial Sub-Committee, in Committee II, and at the Plenary Meeting, the latter finally voted to remove all references to gold from the text of the Convention. 2B Final Record 301-02. See note 431a infra.

429 There is no specification as to how the rate of exchange to be used will be determined. It could be the rate of exchange on the date of the commencement of hostilities. A more logical, but also more complicated, system would be to use the rate available on the Swiss money market at the time each advance of pay is made.

430 Article 60, fourth paragraph, requires the Detaining Power to advise the Protecting Power without delay of the reasons for such action. However, the Protecting Power is neither required nor authorized to evaluate or to approve the reasons given.
("General officers or prisoners of equivalent rank"). Although for the members of the armed forces of many countries the amounts so provided will appear minuscule, for the governments of other countries the amounts will appear completely disproportionate to the pay scale of their own armed forces, with the advances in pay specified in the Convention perhaps sometimes exceeding the full pay for the various ranks. This was foreseen, and provision was made in the second paragraph of Article 60 for special agreements between the belligerents which would modify the "statutory" scale. Moreover, pending the reaching of such a special agreement, the third paragraph of Article 60 permits the Detaining Power to put into force unilater-
ally certain specified emergency measures where it would be seriously embarrassed because the advances in pay which it would otherwise be required to make "would be unduly high compared with the pay for the Detaining Power's armed forces," or for any other reason. These emergency measures require the Detaining Power to continue to credit the individual prisoner-of-war accounts with the amounts specified in the first paragraph of Article 60, but permit it to limit temporarily the use of these credits by the prisoners of war to amounts considered to be "reasonable."\textsuperscript{434} However, under the fourth paragraph of Article 60, the Protecting Power must be advised of the reasons for the limitations so imposed by the Detaining Power. One further limitation is still placed on the Detaining Power's actions in this regard: it may not reduce the advance of pay for Category I ("Prisoners ranking below sergeants") below that which the members of its own armed forces receive.\textsuperscript{435}

It has been mentioned above that under both the 1907 Hague Regulations and the 1929 Convention, the Detaining Power was to be reimbursed by the Power of Origin at the termination of hostilities for the pay advanced to prisoners of war. Article 67 of the 1949 Convention adopts a somewhat different approach to the problem. While stating affirmatively that advances of pay made by the Detaining Power pursuant to Article 60 are made on behalf of the Power of Origin, it provides for the negotiation of arrangements between the belligerents at the close of hostilities. Moreover, the third paragraph of Article 66 specifically makes the Power of Origin responsible for settling the credit balances due to prisoners of war on their personal accounts upon the termination of captivity. As advances of pay are one of the numerous different types of items included in those accounts, it is unlikely that any of the "arrangements" contemplated by Article 67 will actually eventuate.

There is one other aspect of the "pay" of prisoners of war which must be mentioned, one which had no precedent in prior conventions—"supplementary pay." During World War II it had been necessary to take some action to provide financial assistance to enlisted men (other ranks) who, as we have seen, did not receive "advances of pay" under the 1929 Convention.\textsuperscript{436} The 1949 Conference of Government Experts proposed that a provision be included in the new convention then under consideration which would require the Detaining Power

\textsuperscript{434} Unfortunately, no indications are contained in the Article as to the standards to be followed in determining what is "reasonable"—a determination which will be made unilaterally by the Detaining Power. See p. 288 infra.

\textsuperscript{435} Although the wording here is somewhat murky, it was obviously intended to prohibit the Detaining Power from reducing advances of pay to prisoners of war in Category I below the pay of persons of equivalent status in its own armed forces.

\textsuperscript{436} Franklin, Protection, Appendix XI, Circular Instruction, para. 15.
to accept from the Power of Origin lump sums to be credited to the accounts of the prisoners of war depending on that country, the same amount to be allocated therefrom to all prisoners of the same class.\textsuperscript{437} This proposal was incorporated into the draft convention and, with considerable editing, was eventually approved by the 1949 Diplomatic Conference as Article 61 of the Convention (despite the fact that the new Article 60 now provided for advances of pay for all prisoners of war, enlisted as well as commissioned). That Article provides that the Detaining Power shall accept sums forwarded by the Power of Origin for distribution to prisoners of war as “supplementary pay” on the condition that all prisoners of war of the same category shall receive the same amount, and on the further condition that all prisoners of that category shall share in the distribution. The supplementary pay is to be credited to the individual prisoner-of-war accounts as quickly as possible and is not to relieve the Detaining Power from any obligation to make advances of pay. While the necessity for such a provision has been greatly reduced by the fact that under the first paragraph of Article 60 all prisoners of war are now entitled to advances of pay, the provision may prove of value when a Detaining Power avails itself of the privilege contained in the third paragraph of Article 60, discussed immediately above, and limits the amount of advances of pay made available for prisoner-of-war use.

\textit{(3). Working Pay}

In the section of the 1949 Convention which is concerned with the labor of prisoners of war, the first paragraph of Article 54 states merely that the working pay shall be fixed in accordance with the provisions of Article 62.\textsuperscript{438} This latter Article makes several major changes in the prior practice with respect to the matter of “working pay,”\textsuperscript{439} that is, the amount which the prisoner of war is entitled to have credited to his personal account by reason of services actually rendered by him.

The labor of prisoners of war may be utilized by the Detaining Power in four different ways: (1) for the administration and operation of the prisoner-of-war camp itself; (2) working for the armed forces of the Detaining Power; (3) working for other branches of the government of the Detaining Power; and (4) working for private persons who contract with the Detaining Power for prisoner-of-war use.

\textsuperscript{437} 1947 GE Report 158.

\textsuperscript{438} This is unlike the manner in which the matter of currency in the possession of a prisoner of war at the time of capture was dealt with. \textit{See note 416 supra.}

\textsuperscript{439} Actually, Article 62 refers to “working rate of pay” twice and to “working pay” four times, while Articles 54 and 64 refer only to “working pay.” The term “\textit{indemnite de travail}” is used in the French version of all three of these articles and the difference in English appears to be loose draftsmanship, rather than any intent to convey two different meanings.
labor. Under Article 34 of the 1929 Convention it was possible that the first category mentioned would receive nothing in the way of compensation for services performed and that the other three categories would receive varying rates of compensation. The first paragraph of Article 62 of the 1949 Convention clearly contemplates a single basic rate of working pay for all prisoners of war; and the second paragraph of Article 62 specifically provides that working pay shall be paid to those prisoners of war engaged in the administration and operation of the camp.

Article 34 of the 1929 Convention provided that prisoners of war would be “entitled to wages to be fixed by agreements between the belligerents.” During World War II no such agreements were concluded. The first paragraph of Article 62, the cognate provision of the 1949 Convention, provides for “working pay” in an amount to be fixed by the Detaining Power, but which may not be less than one-fourth of one Swiss franc for a full working day. The amount so fixed must be “fair” and the prisoners of war must be informed of it, as must the Power of Origin, through the Protecting Power.

With respect to the establishment by the Detaining Power of a “fair working rate of pay,” several matters should be noted. First,

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440 For a complete discussion of the various problems involved with respect to prisoner-of-war labor, see Chapter III infra.

441 The first paragraph of Article 34 of the 1929 Convention specifically so provided and few Detaining Powers elected to be more generous than legally required. McKnight, POW Employment 61-62; Lewis & Mewha 159. The United States did eventually establish certain prisoner-of-war camp jobs as compensable. McKnight, POW Employment 62; Lewis & Wewha 78; POW Circular No. 1, para. 88.

442 1 ICRC Report 286. Although a number of statements such as that contained in the text may be found, and the conclusions of a number of students of the practices of the United States during World War II are to the same effect (e.g., Lewis & Mewha 77), at least a limited agreement in this respect was reached by Italy and the United States in 1942. [1942] 3 For. Rel. U.S., Europe, at 25 & 30.

443 The word “wages” of the 1929 Convention was intentionally discarded and the words “working pay” substituted in order to avoid invidious comparisons between civilian wages and the compensation paid to prisoners of war. 2A Final Record 280, 539, & 557.

444 This is, of course, once again, the Swiss paper franc, not the gold franc. 2B Final Record 302. The inadequacy of the minimum thus set by the first paragraph of Article 62 which amounted to approximately 6 cents a day in money of the United States in 1949, is illustrated by the fact that over a century ago, in 1864, during the American Civil War, the Federal Government had set the rate of prisoner-of-war pay at 10 cents a day for skilled workers and 5 cents a day for the unskilled! Lewis & Mewha 39. During World War II the United States paid prisoners of war 80 cents a day as compensation for their labor. Ibid., 77. Under the incentive of the piecework system it was possible to increase this to $1.20 a day. Ibid., 120. In 1942 the United States proposed, unsuccessfully, that the enemy belligerents agree to three Swiss francs a day (then approximately 80 cents in American money) as the wage to be paid prisoners of war. Rich, Brief History 419.
no basis can be found in the history of the evolution of this provision for attempting to determine what is "fair" by comparing the "working pay" of prisoners of war with the wages earned by civilian workers. There are too many diverse and unequal factors involved; and the extremely nominal minimum set by the first paragraph of Article 62 would seem to indicate clearly that there was no intention on the part of the 1949 Diplomatic Conference to establish any such relationship. Second, while there appears to be nothing to preclude a Detaining Power from establishing a fair basic "working rate of pay," and then providing for amounts in addition thereto for work requiring greater skill, or heavier exertion, or greater exposure to danger, or as a production incentive, no authority exists for establishing different working rates of pay for prisoners of war of different nationalities who have the same competence and are engaged in the same types of work. And finally, the rate established as "fair" may not thereafter be administratively reduced by having a part of it "retained" by the camp administration. The authority for this procedure, which was contained in Article 34 of the 1929 Convention, has been intentionally deleted from the 1949 Convention.

It should be noted that the 1949 Convention, unlike the second paragraph of Article 34 of the 1929 Convention, does not contain any provision for agreements between the belligerents with respect to working pay. As drafted at Stockholm, there was a fourth paragraph to Article 62 which provided that belligerents could, by special agreement, "change the scale." This was objected to at the 1949 Diplomatic Conference because it was subject to being construed as permitting agreements lowering the working pay below the specifically prescribed minimum; and if it only meant agreeing to *increase* the working pay, it was unnecessary because this could already be accomplished under the first paragraph of Article 6—or even unilaterally. As a result of these objections, the proposed fourth paragraph was deleted. There is definitely no legal basis by which belligerents may agree to reduce the working pay below the Convention minimum of one-quarter of a Swiss franc for one full working day.

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445 For some of these differences, see 2A Final Record at 557; Mojonny, The Labor of Prisoners of War under the Geneva Conventions 24. For a contrary view, see Pictet, Commentary 315.

446 During World War II the Germans habitually paid Soviet prisoners of war as little as one-half of the amount paid to prisoners of war of other nationalities. Dallin, German Rule 425. Article 16 of the 1949 Convention now specifically prohibits "adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria."


448 Revised Draft Conventions 73.

449 2A Final Record 280 & 541. The ICRC had previously taken the same position.

450 2A Final Record 557.
Several changes have been embodied in the second paragraph of Article 62 of the 1949 Convention with respect to the types of work which entitle a prisoner of war to working pay. Of major importance is the fact that, while Article 34 of the 1929 Convention specifically provided that “prisoners of war shall not receive wages for work connected with the administration, management and maintenance of [prisoner-of-war] camps,” the second paragraph of Article 62 of the 1949 Convention is equally specific that prisoners of war “permanently detailed to duties or to a skilled or semiskilled occupation in connection with the administration, installation or maintenance of [prisoner-of-war] camps” shall be entitled to working pay. This new Article also contains a specific provision under which “prisoners who are required to carry out spiritual or medical duties on behalf of their comrades” are likewise entitled to working pay. There is nothing in the provision to indicate whether the term “prisoners” refers to the nonmedical service, but medically trained, personnel of Article 32, or to the retained medical personnel of Article 33, or to both. Retained personnel are not, of course, prisoners of war—and it would undoubtedly be attributing to the 1948 Stockholm Conference which drafted this clause an unwarranted refinement in the choice of words if we assumed that it used the term “prisoners” instead of “prisoners of war” because it was referring to retained personnel who technically are not prisoners of war. On the other hand, Article 32 refers exclusively to medical personnel, while the first paragraph of Article 33 refers to both medical personnel and to chaplains. As the relevant portion of the second paragraph of Article 62, quoted immediately above, refers to “spiritual or medical duties,” there is certainly justification for assuming that the “prisoners” of that Article are the retained personnel of the first paragraph of Article 33. And, while the prisoners’ representative and his advisers and assistants are primarily paid out of canteen funds, if there are no such funds, these individuals, too, are entitled to “a fair working rate of pay” from the Detaining Power. Finally, although not specifically mentioned in Article 62, because enlisted men who are assigned as orderlies in officers’ camps are, by the second paragraph of Article 44, specifically exempted from any other work, and because this is, therefore, a full-

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451 See pp. 70-74 supra.  
452 Revised Draft Conventions 73.  
453 This is apparently the conclusion reached by the United States as para. 147a of U.S. Army Regs. 633-50 provides for the payment of working retained personnel of the same daily rate of pay as is received by prisoners of war.  
454 If canteen funds are available, the third paragraph of Article 62 provides that the prisoners' representative fixes the "scale" of working pay for himself and his assistants, subject to approval by the camp commander.
time job, it appears that they should be entitled to working pay from the Detaining Power.\textsuperscript{455} There is one provision of the 1949 Convention which could render this entire subject relatively moot. Under the last paragraph of Article 34 of the 1929 Convention the pay remaining to the credit of a prisoner of war in his personal account was to be paid to him upon the termination of his captivity.\textsuperscript{456} Under the first paragraph of Article 66 of the 1949 Convention, upon the termination of captivity the Detaining Power gives the individual prisoner of war a statement showing the entire credit balance due to him.\textsuperscript{457} Thereafter, under the third paragraph of Article 66, it will be the responsibility of the Power of Origin, and not of the Detaining Power, to settle any balance of his account which has been certified by the Detaining Power as being due to him. Under these circumstances there appears to be little reason why a Detaining Power should not be extremely generous in establishing its “fair working rate of pay.” It can limit the amount that a prisoner of war can use in the canteen and it will merely be creating a future liability on the part of its enemy! This fact may result in the negotiation of agreements between belligerents fixing mutually acceptable maximum “working rates of pay,” despite the lack of a specific provision for such agreements in the 1949 Convention—agreements which, as has been noted, were not reached under the 1929 Convention where there was a specific provision for them.

(4). Amounts Derived from Other Sources

“Supplementary pay” is, of course, one of the “other sources” from which a prisoner of war may secure credits to his personal account.\textsuperscript{458} However, whether governments will make such payments for the benefit of prisoners of war in future international armed conflicts is doubtful in view of the fact that all prisoners of war will be entitled to advances of pay and those who work will, in addition, receive working pay. Under the circumstances, it is probable that a major source of other credits will be pursuant to the first paragraph of Article 63, which directs that prisoners of war be permitted to receive remittances of money sent to them “individually or collectively.” In other words, families may send remittances to be credited to the account of the individual prisoners of war; or organizations may send lump sums

\textsuperscript{455} This was the policy followed by the United States during World War II. \textit{POW Circular No. 1}, para. 85. It is also the present approved policy. U.S. Army \textit{Regs.} 633-50, para. 227b.

\textsuperscript{456} In the event of his death it was to be forwarded to his heirs through diplomatic channels.

\textsuperscript{457} This will, of course, include not only his working pay, but all other credits, less all debits.

\textsuperscript{458} See pp. 200-201 \textit{supra}. 
to be credited, for example, to the accounts of all of the prisoners of war from one country at a particular prisoner-of-war camp.\(^{459}\)

One other substantial source of credits to the personal accounts of prisoners of war will be that derived from the repair or manufacture of items by them during their off-time. Prisoners of war with unusual skills will frequently do repairs during off-hours; and prisoner-of-war artists and artisans will use their unique talents to create salable products.\(^{460}\) Although the commercial aspects of the transactions could conceivably be entered into directly between prisoner of war and buyer, the merchandising procedure usually followed is that the canteen acts as a middleman between the prisoner of war and the buyer, who may be another prisoner of war, or a member of the armed forces of the Detaining Power, or even a member of the civilian population.\(^{461}\) The canteen then turns the funds received for the purchase, less a commission, over to the camp administration which makes the appropriate credit on the personal accounts of the prisoners of war concerned.

\(b.\ DEBITS\)

\((1).\ Payments Made to the Prisoner of War\)

The second paragraph of Article 64 refers to “payments made to the prisoner [of war] in cash.” While, as has been noted, the Detaining Power will rarely permit such payments to be made, the possibility does exist. Of course, when cash, or scrip money, or a canteen coupon book is issued to the prisoner of war, a debit in the appropriate amount will be made on his account.

There is one particular use of cash which was envisaged by the draftsmen of the Convention—for the purchase of “services or commodities” outside of the camp. The second paragraph of Article 58 provides that where such purchases are permitted, the prisoner of war will either make the payment himself or it will be made for him

\(^{459}\) The possibility of such remittances will, of course, depend largely upon the financial condition and exchange regulations of the country of the would-be remitter.

\(^{460}\) See pp. 236–237 infra. The ingenuity of the prisoner of war in this regard is well illustrated by an episode related by a former labor officer for a prisoner-of-war camp in England, which included the theft by the prisoners of war of baling string, cotton, etc., from the farms on which they worked during the day, the manufacture of these items into rope-soled shoes during the evening, and their subsequent sale on the same farms. Barker, \textit{Behind Barbed Wire} 103.

\(^{461}\) The policy of the United States is to permit sales only through the canteen. U.S. Army \textit{Regs.} 633–50, para. 233. A provision limiting the prisoner of war to an hourly rate of compensation which may not exceed the daily rate for paid work contained in para. 233f of that Regulation is, perhaps, acceptable for the prisoner-of-war tailor or shoemaker, but will be grossly unfair to the artist or artisan.
by the camp administration and charged to his account. The Detaining Power is directed to promulgate rules establishing the procedure for such transactions. It can be anticipated that the procedure preferred by most Detaining Powers, and which will be established by their rules, will be one pursuant to which payments are made directly to the person from outside the camp by the camp administration and the amount so advanced is charged to the prisoner of war’s account.

(2). Payments Made on Behalf of the Prisoner of War

The second paragraph of Article 63 provides that the credit balance of the account of each prisoner of war is at his disposal and that the Detaining Power “shall make such payments as are requested.” However, this seemingly unlimited provision is in fact limited by a clause which keeps the use of the credit balance “within the limits fixed by the Detaining Power.”

As we have just seen, the Detaining Power may make payments on behalf of a prisoner of war pursuant to the second paragraph of Article 58 for the purchase of services or commodities outside of the camp, debiting his account by the amount so paid out. Also, if a prisoner of war is without news from home for a lengthy period of time, or has an emergency, the second paragraph of Article 71 permits him to send a telegram, the charge for which will be debited on his account.

(3). Sums Transferred at the Request of the Prisoner of War

The third paragraph of Article 24 of the 1929 Convention required the Detaining Power to grant facilities for the transfer of any cash (“ready money”) taken from a prisoner of war at the time of capture and credited to his account or deposited by him in his account “to banks or private persons in [his] country of origin.” Article 38 of that same Convention referred to “consignments of money or valu-

462 During World War II the British gave prisoners of war sterling cash for this purpose, but the general practice was otherwise. 2A Final Record 278.

463 The provision concerning payments being made by the prisoners of war themselves was really added to the text in order to permit the United Kingdom to follow its World War II practice if it so desired. Ibid., 278, 531.

464 This is why the provisions of the third paragraph of Article 66 could make many of the rules relating to financial resources meaningless. See p. 205 supra. The Detaining Power is not concerned with respect to the ultimate size of the credit balance as long as its use within the territory of the Detaining Power can be restricted; and it need not concern itself that the Power of Origin may do the same thing with respect to the accounts of the members of its own armed forces who are prisoners of war, inasmuch as the action to be taken by it with respect to the credit balances upon their repatriation is a purely domestic matter.

465 See pp. 151–152 supra.
ables” which the prisoner of war might send in the mail. However, because of the exchange regulations of the various belligerents, very few transmittals of money from the territory of a Detaining Power to the territory of a Power of Origin actually occurred.

The current provisions relating to this subject are to be found in the second and third paragraphs of Article 63 and in Annex V. The second paragraph of Article 63 provides that, subject to the Detaining Power’s financial and monetary restrictions, prisoners of war may have payments made abroad, with remittances to dependents given priority. Of course, the prisoner of war in any future major international armed conflict will once again find his privileges in this regard severely limited, if not completely nullified, by the Detaining Power’s exchange regulations—which now have the added legitimacy of specific mention in the Convention.

The third paragraph of Article 63 and Annex V (which is incorporated by reference in the fourth paragraph of Article 63) set forth the procedure by which the prisoner of war, with the consent of the Power of Origin, may send remittance to his home country: (1) the authorities in the Detaining Power prepare a notification containing (a) the identification of each prisoner-of-war payer, (b) the name and address of each payee, and (c) the amount to be transmitted, stated in the currency of the Detaining Power; (2) the notification is signed by each prisoner-of-war payer and countersigned by the prisoners’ representative; (3) the camp commander certifies that each prisoner-of-war payer has a credit balance adequate to cover the remittance; (4) each sum to be remitted is deducted from the account of the appropriate prisoner of war, the sums so deducted being placed by the Detaining Power to the credit of the Power of Origin; and (5) the notification is sent by the Detaining Power through the Protecting Power to the Power of Origin. The Power of Origin then has the internal responsibility of actually making payment to the payee.

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466 The Germans did not permit British prisoners of war to mail the currency of their country back home during World War II. German Regulations No. 36, para. 672. However, American currency taken from American prisoners of war at the time of capture could be sent to the United States through the Deutsche Bank in Berlin. Ibid., No. 37, para. 697.

467 1 ICRC Report 290. In May 1944 the United States authorized Italian prisoners of war to transmit up to $100 in any quarter to their families in Italy. German prisoners of war never received this authorization. Rich, Brief History 440.

468 If the number of prisoners of war held by both sides is substantially equal, the transmittal of funds by prisoners of war could be entirely a paper transaction, the debits and credits of the Detaining Power and of the Power of Origin balancing each other out. Of course, this type of situation rarely occurs.
c. ADMINISTRATIVE PROCEDURES

In addition to the third paragraph of Article 63 and Annex V setting forth the detailed procedure for the transmittal of prisoner-of-war funds, the Convention contains a number of other administrative instructions with respect to the maintenance of the prisoner-of-war accounts.

The basic provision is, of course, Article 64, which establishes the accounts themselves and enumerates the several general categories of credits and debits. Article 65 provides some of the routine accounting procedures to be followed, all of which are obviously intended to protect the prisoner of war by ensuring that he receives all of the credits to which he is entitled and that no debit is made without his consent. Thus, the first paragraph of Article 65 requires that every entry in a prisoner-of-war account must be certified by the signature or the initials of the prisoner of war or of the prisoners' representative acting on his behalf. The second paragraph of Article 65 requires that the Detaining Power afford the prisoner of war the opportunity to check his account and to obtain a copy of it. When a prisoner of war is transferred from one camp to another, the third paragraph of Article 65 provides that his account will likewise be transferred. When he is transferred from one Detaining Power to another, he is to be given a certificate showing his credit balance; and unconverted currency (money taken from him at the time of capture which was not in the currency of the first Detaining Power and which he had elected not to have converted) is likewise to be transferred. The last paragraph of Article 65 contains the rather strange provision that the belligerents "may agree to notify each other at specific intervals through the Protecting Power, the amount of the accounts of the pris-

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469 See pp. 194-195 supra.

470 The second paragraph of Article 65 also authorizes the representatives of the Protecting Power to inspect the accounts when they visit a prisoner-of-war camp. Except that they might find generalities (i.e., no credits for advances of pay or working pay, no signatures or initials to certify debits, etc.) the inspection by the representatives of the Protecting Power will be of value only when it is concerned with the complaint of a specific prisoner of war with reference to his personal account.

471 The Detaining Power to which he is transferred will probably allow the prisoner of war to retain the certificate for use under the third paragraph of Article 66, not allowing him to use the credit balance while in its custody. If the unconverted money includes any currency of the new Detaining Power, this will now be credited to his account in accordance with the provisions of the fourth paragraph of Article 18, and the first paragraphs of Articles 58 and 59. This was the procedure followed during World War II. Rich, Brief History 439.
oners of war."\textsuperscript{472} As far as appears, such a notification would merely inform the Power of Origin of the amount that its indebtedness (under the third paragraph of Article 66) to the members of its armed forces who are prisoners of war would have been if the armed conflict had ended on the date to which the amounts of the prisoner-of-war accounts were computed.\textsuperscript{473}

Finally, the rules for the ultimate closing of the prisoner-of-war accounts upon the termination of captivity by release or repatriation are set forth in Article 66. The first paragraph of Article 66 requires that at such time the Detaining Power give to the prisoner of war a certified statement of his account showing the credit balance due him;\textsuperscript{474} while the third paragraph of Article 66 places upon the Power of Origin the responsibility for actually settling the account.\textsuperscript{475}

\textsuperscript{472} It is obvious that this provision is ambiguous. Does it mean the total amount due on all prisoner-of-war accounts—or does it mean the amounts due on each separate prisoner-of-war account? The original proposal, made by the Canadian delegate at the 1949 Diplomatic Conference, used the word "amount." 2A \textit{Final Record} 282. The Sub-Committee of Financial Experts approved this proposal, the meaning of which was not explained. \textit{Ibid.}, 546-47. On 29 June 1949 the Sub-Committee decided to coordinate the French and English texts to read: "\textit{les montants figurant aux comptes des prisonniers de guerre [the amounts of accounts of prisoners of war.]}" \textit{Ibid.}, 552. Nevertheless, its Report, submitted two days later, on 1 July 1949 used the words, "the amount of accounts of the prisoners of war" (\textit{Ibid.}, 555), and this remained the form in which it was finally adopted. The French version continued in the plural, although the word "\textit{les montants}" did somehow become "\textit{les relevés}" in the final version. Presumably, it is the amount of each individual account which was intended, but the final English version does not specifically so indicate. Of course, inasmuch as this provision requires an agreement between the belligerents in order to become effective, the ambiguity can be resolved in such an agreement.

\textsuperscript{473} The ICRC says that the value of the provision is that it allows the Power of Origin to see how the Detaining Power is fulfilling its obligations. Pictet, \textit{Commentary} 325-26. As only totals will be given, this appears doubtful.

\textsuperscript{474} The second paragraph of Article 119 provides that "on repatriation" impounded articles of value and unconverted currency will be restored to each prisoner of war and that if this is not done these items will be sent to the Detaining Power's Information Bureau. That Bureau, under the last paragraph of Article 122, has the obligation to send to the Power of Origin "all personal valuables, including sums in currencies other than that of the Detaining Power." Although Article 119 refers only to "on repatriation," the last paragraph of Article 122 refers to prisoners of war who have been "repatriated or released, or who have escaped or died."

\textsuperscript{475} The 1949 Diplomatic Conference intentionally departed from the prior system under which each prisoner of war was to be given his credit balance in cash prior to repatriation. 2A \textit{Final Record} 568. What the Power of Origin actually does in this regard will, of course, be solely a matter of domestic concern. See note 464 \textit{supra}. (At the time of signing the Convention on 12 August 1949, Italy made a general reservation to this provision. \textit{1 Final Record}, 348. This reservation was not maintained on ratification. 120 \textit{U.N.T.S.} 299.) Soviet International Law 432 erroneously states that the balance due each prisoner of war "is handed to him when captivity is terminated."
the second paragraph of Article 66 states that the provisions of the article may be varied by agreement "between any two of the Parties to the conflict."476

In the cases referred to above, of release and repatriation, as well as in cases of the termination of the captivity by "escape, death or any other means," the Detaining Power is required by the first paragraph of Article 66 to send to the Power of Origin, through the Protecting Power, lists identifying the prisoners of war concerned and certifying the amount of the credit balance of each one.477

There remains to be mentioned only one last facet of the financial aspects of the life of the prisoner of war—claims. This subject is dealt with in Article 68.478 The second paragraph of Article 68 provides that claims for compensation for personal effects, money, or valuables taken from the prisoner of war upon capture and "not forthcoming on his repatriation"479 shall be referred to the Power of Origin.480 This same rule applies to items alleged to have been lost due to the negligence of the Detaining Power, with the proviso that if it is the type of item required for use by the prisoner of war while in custody, the Detaining Power must, at its own expense, replace it. Finally, once again the Detaining Power must provide the prisoner of war with a certified statement containing full information as to why the missing items have not been restored to the prisoner of war,
with a copy being forwarded to the Power of Origin through the Central Prisoners of War Agency.481

481 There is no logic whatsoever to the sudden naming of the Central Prisoners of War Agency as the intermediary in this matter, and it is incomprehensible that the ICRC representative in Committee II did not point this out. The copy of the certificate showing the credit balance, given to the prisoner of war at the same time that he receives this certificate, is, pursuant to the first paragraph of Article 66, sent by the Detaining Power to the Protecting Power for transmission to the Power of Origin, as are others (e.g., the first paragraph of Article 62 and the third paragraph of Article 63). This entire Article derived from a United Kingdom proposal (3 Final Record Annex 128, at 75) which contained the reference to the Central Agency and, although a number of other changes were made, apparently no one noted the incongruity of naming the Central Agency to perform the function here allocated to it.