

## FOREWORD

Since the founding of the Naval War College in 1884, the study of International Law has been an important part of its curriculum. From 1894 to 1900 the College compiled and printed, for a limited distribution, a number of lectures on International Law together with the situations studied. In 1901, the first formal volume of the "Blue Book" series was published. Thereafter, the series continued on an annual basis until the mid-1960s.

With the establishment of a revised resident curriculum at the Naval War College, Richard L. Lillich, Professor of Law at the University of Virginia Law School and former (1968-1969) holder of the Naval War College Stockton Chair of International Law, conducted a comprehensive reappraisal of the need for and value of the "Blue Book" series. As a result of this study, the College has decided to reinstitute its series in order to publish timely treatises and articles concerning important areas of International Law.

With this background, it is my pleasure to write the foreword to this volume, the fifty-ninth of the series, by Professor Howard S. Levie, recently of the Saint Louis University School of Law, who occupied the Charles H. Stockton Chair of International Law at the Naval War College during the 1971-1972 academic year. In light of the recent experiences of the American prisoners of war in Vietnam, Professor Levie's excellent study of the Geneva Convention Relative to the Treatment of Prisoners of War could not be more appropriate. The development of a total understanding of the rules of law which govern the treatment of prisoners of war is essential in order to promote those principles of humanitarianism necessary to regulate an all too often imperfect world.

The opinions expressed in this volume are those of the author and are not necessarily those of the United States Navy or the Naval War College.

JAMES B. STOCKDALE  
Vice Admiral, U.S. Navy  
President

The opinions shared in this paper are those of the author and do not necessarily reflect the views and opinions of the U.S. Naval War College, the Dept. of the Navy, or Dept. of Defense.



## PREFACE

Pope Pius XII once said:

The treatment of prisoners of war and of the civilian population of occupied areas is the most certain measure and index of the civilization of a people and of a nation.

Perhaps in recognition of this "index of civilization," the representatives of most of the members of the then world community of nations met in Geneva in 1949 and drafted four conventions for the protection of war victims, conventions which, as of 1 June, 1977, had been ratified or adhered to by 143 nations. (See Appendix B.) The third one of those conventions, the 1949 *Geneva Convention Relative to the Treatment of Prisoners of War* is the subject of this monograph. It will be noted that the title of this volume specifically limits the discussion to the status of prisoners of war in international armed conflict. Cognate problems arising in cases of internal conflict have so proliferated in recent years as to make that a subject requiring and warranting a study limited exclusively to that field. This task I leave to others who have already produced a number of articles on various aspects of the problem.

It will undoubtedly be said by some that the international law of the subject discussed herein, and hence this volume, is concerned with a situation which will never recur, that the era of large-scale long drawn-out wars has ended, that the arrival of the atomic age has made obsolete the rules of international law contained in such documents as the four 1949 Geneva Conventions for the Protection of War Victims. Unfortunately, there is just no reason to believe that, however many "pacts," "charters," "codes," or "conventions" are entered into by the nations of the world, this will have the effect of eliminating armed conflict as a method of settling disputes between nations. And the 1949 Geneva Conventions are properly geared to govern "little" wars, such as Korea, the Middle East, India-Pakistan, China-India, Vietnam, etc., etc., as well as "big" wars, such as World War I and World War II. While the total elimination of international armed conflict as a method of settling disputes between nations is certainly an end devoutly to be sought, I am afraid that I am too much of a pragmatist to believe that such an end is just around the next corner. However, should the millennium actually arrive in the near future, it is hoped that this volume will still have some historical value as an indication of the status of an important segment of inter-

national law at the very moment when a major change in human nature rendered it archaic.

The International Committee of the Red Cross (ICRC), which may well be considered to be both the midwife and the guardian of the 1949 Conventions, has frequently pointed out that it cannot interpret those Conventions, that this is a power residing exclusively in the Contracting Parties. Nevertheless, there are few publications of the ICRC which do not discuss and interpret some facet of the Conventions. Similarly, I do not purport to speak with an authoritative voice when I present my views on various aspects of the 1949 Prisoner-of-War Convention; but it would be naive, indeed, to assume that I do not believe that the views expressed herein with respect to the meaning and intent of the provisions discussed represent the proper interpretations thereof. In this regard, it should be noted that occasions will be found in which my views are not in accord with the consensus of writings by representatives of the ICRC. When this occurs it may undoubtedly be ascribed to the fact that the latter are uniformly motivated by idealistic concepts, as representatives of that great humanitarian organization should and must be, while I have, in some instances, felt it more appropriate to present what I consider to be a practical, workable interpretation which would be acceptable to nations at war.

Unquestionably, the comments and point of view of any writer will, to some extent and despite all efforts to the contrary, be colored by his personal experiences and by his nationality with the resultant more extensive availability of materials originating in his own country and in his own language for empirical research. A conscious effort has been made to avoid such a chameleonlike result. I have attempted to present the subject from as international and multinational a point of view as possible. Thus, examples have been cited from the practice of as many and as varied a group of countries as could be found. If it appears that a good deal of reliance is placed upon practices followed by the United States and the United Kingdom, and contemplated by those two countries in the event of any future international armed conflict in which they are involved, this is not because of any chauvinism, any feeling that such practices are superior to those of other countries, but only because those two countries appear to have made information concerning their practices, past and future, more readily available to the researcher. For example, in the Foreword to Volume XV of the *Law Reports of Trials of War Criminals*, prepared and published by the United Nations War Crimes Commission, Lord Wright, the Chairman of the Commission, lists the number of cases received from each country (1,333 out of 1,911 were from the United States or United Kingdom; none was received from any country now Communist except Poland) and points out that all nations which were

members of the Commission were invited to forward records of the trials conducted by them, but that many did not do so; and both the United States and the United Kingdom have, since the end of World War II, issued well-documented military manuals, something that appears to be the exception rather than the rule. Moreover, this book was written in the United States, most of the research was done there (although considerable use was made of the facilities of the Library of the Peace Palace in The Hague), United States materials were the most readily available, and my personal experiences in this field have been largely, though not exclusively, U.S.-oriented. Despite these shortcomings, it is believed that the reader will find a fairly well balanced presentation with justifications advanced, in appropriate instances, for German practices during World War II and, more rarely, even for some Japanese practices during that holocaust. If, at times, exceptions appear to be taken to policies adopted and practices followed in this area by a number of countries of Communist persuasion, that is because, unfortunately, these countries have almost uniformly demonstrated again and again, both during World War II and since, that where it suits their purposes, they will arbitrarily interpret a Convention in their own interests and against the interests of the prisoners of war whom they hold, or even disregard the Convention in its entirety.

This volume is not intended to be a mere update or supplement to the work so ably done by Dr. Jean S. Pictet, Dr. Jean de Preux, and their collaborators, in the production of the ICRC's *Commentary* on the Prisoner-of-War Convention. It is believed that it will be found that both the format and the critical content differ substantially from those of the *Commentary*. As regards the format, it must be noted that in drafting the 1949 Convention the members of the various preliminary conferences called by the ICRC which did the spadework, and the 1949 Geneva Diplomatic Conference, which brought the 1949 Geneva Prisoner-of-War Convention to its final accepted form, attempted — with only partial success — to adopt a functional approach and to proceed, section by section, and chapter by chapter, from one area of interest to another. I say that they were only partially successful because so many subjects are actually dealt with in numerous, scattered articles. (For example, rules relating to the food of prisoners of war may be found in Articles 15, 20, 26, 44, 45, and 51.) It appeared to me that in order to be most useful to the people actually concerned with prisoner-of-war problems in the field in time of international armed conflict, as well as the representatives of the Protecting Powers, the legal advisers of the Foreign Offices and War Ministries of the belligerent Powers, and the academic researchers, the best method of presentation would be one which would follow the prisoner of war from the moment of his capture to his ultimate release

and repatriation, with elaboration on certain major problems. Accordingly, the format adopted is on a completely functional basis, avoiding to the maximum extent possible the article-by-article approach found in the *Commentary*, bringing together and correlating all of the numerous and scattered provisions of the 1949 Convention which are concerned with any particular facet of the problem. (An exception to this format will be found in Chapter I, which deals with most of the so-called Common Articles — articles which appear in all four of the 1949 Geneva Conventions. The discussion of these articles necessarily falls outside of the general pattern, as these provisions are usually unrelated to any other provisions and must, therefore, be discussed individually.)

As regards the critical content, the users of this volume will, I fear, find only faint traces of the optimistic idealism which characterizes the *Commentary*. There the authors were, and properly so, motivated by the pure humanitarianism which constitutes the *raison d'être* of the ICRC. In numerous instances they indubitably interpret the provisions of the Convention as they would like to see them interpreted and applied by the adverse belligerent Parties. Here, I have endeavored to provide both hard data and a personal estimate as to what the 1949 Diplomatic Conference meant when it drafted the various provisions of the Prisoner-of-War Convention, what States meant when they ratified or adhered to it, what States have done when it has become necessary for them to apply the Convention, and what they may be expected to do if it becomes necessary for them to apply it in the future. In other words, this book endeavors to present the Convention pragmatically, rather than idealistically. Of course, where the State practice which is available indicates blatant disregard and violation of the Convention, rather than disputed interpretation, this is clearly stated and is not considered as a precedent-making interpretation.

I have been fortunate in that I have had a number of opportunities to observe at first hand many facets of operations relating to prisoners of war during the course of World War II, Korea, and the last India-Pakistan conflict. (I spent a full day in the prisoner-of-war camp at Koje-do, in Korea, just a few weeks before that name became famous throughout the world!) Unfortunately, I cannot say the same with respect to the much more recent prisoner-of-war operations which occurred during the hostilities in Vietnam. The reluctance of the North Vietnamese (like that earlier of the North Koreans and Chinese Communists) to provide any hard information with respect to their treatment of prisoners of war is well known.

In 1973, after a number of preliminary conferences of various groups of experts, the ICRC produced two Draft Additional Protocols to the 1949 Geneva Conventions to serve as the working documents

for a Diplomatic Conference called by the Swiss Federal Council to meet in Geneva in February 1974. That Diplomatic Conference was considerably less successful than had been hoped, with the result that it has since met in 1975 and 1976, and will meet again in 1977. Only the First Draft Additional Protocol, relating to international armed conflict, is relevant to the subject matter of this volume and only a very few articles thereof will have any impact on the law applicable to the treatment of prisoners of war. Where the committee decisions reached on those articles through the 1976 session were reached either by consensus or, where votes were taken, by close to unanimity, it has been assumed that they will be included in the Protocol that will presumably be adopted by the 1977 session of the Diplomatic Conference. Appropriate references to the relevant actions of the 1974, 1975, and 1976 sessions of the Diplomatic Conference will be found in the text and footnotes.

For the convenience of the reader, the entire 1949 Geneva Convention relative to the Protection of Prisoners of War is reproduced as Appendix A, beginning at p. 431. It was felt that in most cases it would only be confusing to the reader to specify the numbering of the articles used in the Stockholm and Working Drafts of the Convention when discussing the evolution of a provision. For those who desire to trace such evolution in detail, the changes in such numbering from the 1929 Convention, to the draft presented by the ICRC to the 1948 Stockholm Conference, to the Working Draft (the text approved at Stockholm), to the Convention adopted by the 1949 Diplomatic Conference are easily found by reference to the "Index to Articles" located in Volume III of the *Final Record of the Diplomatic Conference of Geneva of 1949* (at 217).

I have already presented my views on various aspects of prisoner-of-war problems in a number of articles. I am indebted to the editors of the *American Journal of International Law* for permission to use "Prisoners of War and the Protecting Power," 55 *A.J.I.L.* 374 (1961); "Penal Sanctions for Maltreatment of Prisoners of War," 56 *A.J.I.L.* 433 (1962); "The Employment of Prisoners of War," 57 *A.J.I.L.* 318 (1963); and "International Law Aspects of Repatriation of Prisoners of War during Hostilities: a Reply," 67 *A.J.I.L.* 693 (1973); and to the editors of the *Boston University Law Review* for permission to use "Maltreatment of Prisoners of War in Vietnam," 48 *B.L.U. Rev.* 323 (1968). Acknowledgment is also due to the Association of the Bar of the City of New York for permission to use relevant portions of "Some Major Inadequacies in the Existing Law Relating to the Protection of Individuals during Armed Conflict," which was the Working Paper for the XIVth Hammarskjöld Forum, *When Battle Rages, How Can Law Protect?* (John Carey, ed.)

I must express my appreciation for the assistance rendered to me by George J. Skupnik and John J. James, each of whom served as a research assistant during his senior year at the Saint Louis University Law School, performing many arduous, and often uninteresting tasks; Commander Leo J. Coughlin, Jr., JAGC, USN, Commander J. Ashley Roach, JAGC, USN, and Commander Dennis McCoy, JAGC, USN, successively, Head, International Law Division, Center for Continuing Education, Naval War College, each of whom, as editors of the Blue Books, offered continuous encouragement, meanwhile extracting the manuscript from me chapter by chapter; Ms. Pamela Scholl and other secretaries in the Saint Louis University Law School who typed the first clean draft of each chapter from the dirty one produced by my own typewriter and pencil; Mrs. Mildred Imondi, of the Naval War College, who produced the final, correlated draft of the text and footnotes; Mrs. Vivian M. Hutchins who gave the manuscript its last thorough review; Waldemar A. Solf and Harry H. Almond, who read the manuscript in final form and gave valuable critical appraisals; and last, but certainly not least, my wife, who each night read quietly despite the clatter of my portable. I am also indebted to the Government of Pakistan, and particularly to then Ambassador Sultan Mohammad Khan and Minister S. I. Riza of the Pakistani Embassy in Washington, for the opportunity to view at first hand the 1973-1974 repatriation of Pakistani prisoners of war from India and to interview a representative group of repatriated prisoners of war, selected at random, concerning their treatment while in prisoner-of-war camps in India after the December 1971 armed conflict between those two countries.

While this volume is published under the auspices of the United States Naval War College as part of its "Blue Book" series, it does not purport to state United States Government policy and it definitely does not have the imprimatur of the Department of Defense or of any of its component services. It is exclusively the opinion of the author as to what the law relating to prisoners of war is, what the practice of States has been and may be expected to be with respect to this problem, and, in some instances, what it is believed that the law ought to be in the light of humanitarian considerations.

HOWARD S. LEVIE

St. Louis  
September 1976



## ADDENDUM TO THE PREFACE

The fourth session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts adopted a Final Act at Geneva on 10 June 1977. While the final preparation and the signing of the text of the Protocol Relating to the Protection of the Victims of International Armed Conflicts (Protocol I) as actually adopted at Geneva is not scheduled to take place until 12 December 1977, in the belief that the work of the Diplomatic Conference represents an important milestone in the law of international armed conflict and that many of the provisions adopted by it will under any circumstances one day be a part of the general international law of war, I have updated all references to the work of the Diplomatic Conference to include its final 1977 decisions. A caveat—as there is as yet no official text, I have been compelled to use an unofficial draft which may vary to some extent from the text actually signed.

HOWARD S. LEVIE

Newport  
July 1977