The Employment of Prisoners of War

57 American Journal of International Law 318 (1963)*

From the days when the Romans first came to appreciate the economic value of prisoners of war as a source of labor, and began to use them as slaves instead of killing them on the field of battle,¹ until the drafting and adoption by a comparatively large number of members of the then family of sovereign states of the Second Hague Convention of 1899,² no attempt to regulate internationally the use made of prisoner-of-war labor by the Detaining Power³ had been successful.⁴ The Regulations attached to that Convention dealt with the subject in a single article,⁵ as did those attached to the Fourth Hague Convention of 1907⁶ which, with relatively minor changes, merely repeated the provisions of its illustrious predecessor. A somewhat more extensive elaboration of the subject was included in the 1929 Geneva Convention relative to the Treatment of Prisoners of War⁷ (hereinafter referred to as the 1929 Convention). And, although still far from perfect, the provisions concerning prisoner-of-war labor contained in the 1949 Geneva Convention relative to the Treatment of Prisoners of War⁸ (hereinafter referred to as the 1949 Convention) constitute an enlightened attempt to legislate a fairly comprehensive code governing the major problems involved in the employment of prisoners of war by the Detaining Power.⁹ The purpose of this study is to analyze the provisions of that code and to suggest not only how the draftsmen intended them to be interpreted, but also how it can be expected that they will actually be implemented by Detaining Powers in any future war.¹⁰

While there are very obvious differences between the employment of workers available through a free labor market and the employment of prisoners of war, even a casual and cursory study will quickly disclose a remarkable number of similarities. The labor union which is engaged in negotiating a contract for its members is vitally interested in: (1) the conditions under which they will work, including safety provisions; (2) their working hours and the holidays and vacations to which they will be entitled; (3) the compensation and other monetary benefits which they will receive; and (4) the grievance procedures which will be available to them. (Of course, in each industry there will also be numerous items peculiar to that industry.) Because of the uniqueness of

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prisoner-of-war status, the 1949 Diplomatic Conference which drafted the latest prisoner-of-war convention felt it necessary, in negotiating for the benefit of future prisoners of war, to continue to cover certain items in addition to those listed above, such as the categories of prisoners of war who may be compelled to work (a problem which does not normally exist for labor unions in a free civilian society, although it may come into existence in a total war economy); and, collateral to that, the specific industries in which they may or may not be employed. Inasmuch as these latter problems lie at the threshold of the utilization of prisoner-of-war labor, they will be considered before those enumerated above.

Before proceeding to a detailed analysis of the labor provisions of the 1949 Convention, and how one may anticipate that they will operate in time of war, it seems both pertinent and appropriate to survey briefly the history of, and the problems encountered in, the utilization of prisoner-of-war labor during the past century. That period is selected because its earliest date represents the point at which cartels for the exchange of prisoners of war had ceased to have any considerable importance and yet belligerents were apparently still unaware of the tremendous potentiality of the economic asset which was in their hands at a time of urgent need.

The American Civil War (1861-1865) was the first major conflict involving large masses of troops and large numbers of prisoners of war in which exchanges were the exception rather than the rule. As a result, both sides found themselves encumbered with great masses of prisoners of war; but neither side made any substantial use of this potential pool of manpower, although both suffered from labor shortages. This was so, despite the statement in Lieber’s Code that prisoners of war “may be required to work for the benefit of the captor’s government, according to their rank and condition,” and despite the valiant efforts of the Quartermaster General of the Union Army, who sought unsuccessfully, although fully supported by Professor Lieber, to overcome the official reluctance to use prisoner-of-war labor. The policy of the Federal Government was that prisoners of war would be compelled to work “only as an instrument of reprisal against some act of the enemy.”

In 1874 an international conference, which included eminent representatives from most of the leading European nations, met in Brussels at the invitation of the Tsar of Russia “in order to deliberate on the draft of an international agreement respecting the laws and customs of war.” This conference prepared a text which, while never ratified, constituted a major step forward in the effort to set down in definitive manner those rules of land warfare which could be considered to be a part of the law of nations. It included, in its Article 25, a provision concerning prisoner-of-war labor which adopted, but considerably amplified, Lieber’s single sentence on the subject quoted above. This article was
subsequently adopted almost verbatim by the Institute of International Law when it drafted Articles 71 and 72 of its “Oxford Manual” in 1880; and it furnished much of the material for Article 6 of the Regulations attached to the Second Hague Convention of 1899 and the same article of the Regulations attached to the Fourth Hague Convention of 1907.

Despite all of these efforts, the actual utilization of prisoner-of-war labor remained negligible during the numerous major conflicts which preceded World War I. This last was the first modern war in which there was total economic mobilization by the belligerents; and there were more men held as prisoners of war and for longer periods of time than during any previous conflict. Nevertheless, it was not until 1916 that the British War Office could overcome opposition in the United Kingdom to the use of prisoner-of-war labor; and after the entry of the United States into the war, prisoners of war held in this country were not usefully employed until the investigation of an attempted mass escape resulted in a recommendation for a program of compulsory prisoner-of-war labor, primarily as a means of reducing disciplinary problems.

When the belligerents eventually did find it essential to make use of the tremendous prisoner-of-war manpower pools which were available to them, the provisions of the Regulations attached to the Fourth Hague Convention of 1907 proved inadequate to solve the numerous problems which arose, thereby necessitating the negotiation of a series of bilateral and multilateral agreements between the various belligerents during the course of the hostilities. Even so, the Report of the “Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties,” created by the Preliminary Peace Conference in January, 1919, listed the “employment of prisoners of war on unauthorized works” as one of the offenses which had been committed by the Central Powers during the war.

The inadequacies in this and other areas of the Fourth Hague Convention of 1907, revealed by the events which had occurred during the course of World War I, led to the drafting and ratification of the 1929 Convention. It was this Convention which governed many of the belligerents during the course of World War II; but once again international legislation based on the experience gained during a previous conflict proved inadequate to control the more serious and complicated situations which occurred during a subsequent period of hostilities. Moreover, the proper implementation of the provisions of any agreement must obviously depend in large part upon the good faith of the parties thereto—and belligerents in war are, perhaps understandably, not motivated to be unduly generous to their adversaries, with the result that frequently decisions are made and policies are adopted which either skirt the bounds of legal propriety or actually exceed such bounds. The utilization of prisoner-of-war labor by the Detaining Powers proved no exception to the foregoing. Practically all prisoners
of war were compelled to work. To this there can be basically no objection. But during the course of their employment many of the protective provisions of the 1929 Convention (and of the Fourth Hague Convention of 1907 which it complemented) were either distorted or simply disregarded.

The leaders of Hitler's Nazi Germany were aware of its shortage of labor and appreciated the importance of the additional pool of manpower afforded by prisoners of war as a source of that precious wartime commodity. Nevertheless, for a considerable period of time they permitted their ideological differences with the Communists to overcome their common sense and urgent needs. And in Japan, which, although not a party to the 1929 Convention, had committed itself to apply its provisions, those relating to prisoner-of-war labor were among the many which were assiduously violated.

Like the other belligerents, the United States found an urgent need for prisoner-of-war labor, both within its home territory and in the rear areas of the embattled continents. One study even goes so far as to assert that the use of Italian prisoners of war in the Mediterranean theater was the only thing which made it possible for the United States to sustain simultaneously both the Italian campaign and the invasion of Southern France, thereby hastening the downfall of Germany. Similarly, it was found that in the United States the use of prisoners of war for work at military installations, and in agriculture and other authorized industries, served to release both Army service troops and civilians for other types of work which were more directly related to the war effort.

While the benefits of prisoner-of-war labor to the Detaining Power are patent, benefits flowing to the prisoners of war themselves as a result of their use in this manner are no less apparent. The reciprocal benefits resulting from the proper use of prisoner-of-war labor is well summarized in the following statement:

The work done by the PW has a high value for the Detaining Power, since it makes a substantial contribution to its economic resources. The PW's home country has to reckon that the work so done increases the war potential of its enemy, maybe indirectly; and yet at the same time it is to its own profit that its nationals should return home at the end of hostilities in the best possible state of health. Work under normal conditions is a valuable antidote to the trials of captivity, and helps PW to preserve their bodily health and morale.

During the close reappraisal of the 1929 Convention which followed World War II, the provisions thereof dealing with the labor of prisoners of war were not overlooked; and the Diplomatic Conference which met in Geneva in 1949 redrafted many of those provisions of the 1929 Convention in an effort to plug the loopholes which the events of World War II had revealed. It is the 1949 Convention resulting from this work which will be used in the review and
analysis of the rights and obligations of belligerents and prisoners of war in any future conflict insofar as prisoner-of-war labor is concerned.

Categories of Prisoners of War Who May be Compelled to Work

In general, Article 49 of the 1949 Convention provides that all prisoners of war, except commissioned officers, may be compelled to work. However, this statement requires considerable elaboration and is subject to a number of limitations.

a. The Detaining Power is specifically limited in that it may compel only those prisoners of war to work who are physically fit, and the work must be of a nature to maintain them “in a good state of physically and mental health.” In determining physical fitness, it is prescribed that the Detaining Power must take into account the age, sex, and physical aptitude of each individual prisoner of war. It may be assumed that these qualities are to be considered not only in determining whether a prisoner of war should be compelled to work but also in determining the type of work to which the particular prisoner of war should be assigned. For example, women (and it must be accepted that in any future major war there will be many female prisoners of war) should not be given tasks requiring the lifting and moving of heavy loads; and, frequently, men who are physically fit to work may not have the physical aptitude for certain jobs by reason of their size, weight, strength, age, lack of experience, et cetera. It would appear that the provisions of Article 49 of the 1949 Convention require the Detaining Power, within reasonable limits, to assure the assignment of the proper man to the job.

Moreover, under the provisions of Articles 31 and 55 of the 1949 Convention, the determination of physical fitness must not only be made by medically qualified personnel and at regular monthly intervals, but also whenever the prisoner of war considers himself physically incapable of working. It should be noted that the first of the cited articles is a general one which requires the Detaining Power to conduct thorough medical inspections, monthly at a minimum, primarily in order to supervise the general state of health of the prisoners of war and to detect contagious diseases; while the second, which calls for a medical examination at least monthly, is intended to verify the physical fitness of the prisoner of war for work, and particularly for the work to which he is assigned. It is evident that one medical examination directed simultaneously towards both objectives would meet the obligations thus imposed upon the Detaining Power.

The provision of Article 55 which authorizes a prisoner of war to appear before a medical board whenever he considers himself incapable of working has grave potentialities. It can be expected that well-organized prisoners of war, intent upon creating as many difficulties as possible for the Detaining Power,
will be directed by their anonymous leaders to report themselves *en masse* and at frequent intervals as being incapable of working and to request that they be permitted to appear before the medical authorities of the camp. Is the Detaining Power to be helpless, if thousands of prisoners of war, many more than can be examined by available medical personnel, all elect at the same time to claim sudden physical unfitness and to demand physical examinations? Where the Detaining Power has good grounds for believing that such is the situation, and this will normally be quite apparent, it would undoubtedly be justified in compelling every prisoner of war to work until his turn for examination is reached in regular order with the complement of medical personnel which had previously been adequate for the particular prisoner-of-war camp. Thus the act of the prisoners of war themselves in attempting to turn a provision intended for their protection into an offensive weapon, illegal in its inception, would actually result in their causing harm to the very people it was intended to protect—the truly physically unfit prisoners of war.

The suggestion has been made that the medical examinations to determine physical fitness for work should preferably be made by the retained medical personnel of the Power upon which the prisoners of war depend. This suggestion is based upon the fact that Article 30, in providing for the medical care and treatment of prisoners of war, states that they “shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.” However, there is considerable difference between permitting the medical personnel of the Power on which the prisoner of war depends to render medical assistance when he ill or injured, and permitting such personnel to say whether or not he is physically qualified to work. It is not believed that any Detaining Power would, or that the Convention intended that it should, permit retained medical personnel to make final decisions in this regard.

In his Instructions, Lieber gave no indication that the labor of all prisoners of war, regardless of rank, was not available to the Detaining Power in some capacity. However, Article 25 of the Declaration of Brussels and Article 71 of the “Oxford Manual” both provided that prisoners of war could only be employed on work which would not be “humiliating to their military rank.” The Second Hague Convention of 1899 reverted to Lieber’s rather vague phrase, “according to their rank;” and the Fourth Hague Convention of 1907 went a step further, adding to the foregoing phrase the words “officers excepted,” thereby giving a legislative basis to a practice which had, in fact, already been followed.

Both the 1929 Convention and the 1949 Convention are much more specific in this regard, the latter amplifying and clarifying the already more detailed provisions of its predecessor. While the first paragraph of Article 49 of the 1949
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Convention authorizes the Detaining Power to utilize the labor of “prisoners of war,” the second paragraph of that article specifies that non-commissioned officers (NCOs) may only be required to do supervisory work, and the third paragraph states that officers may not be compelled to work. It thus becomes clear that, as used in the first paragraph of this article, the term “prisoners of war” is intended to refer only to enlisted men below the non-commissioned officer grade.

During World War II several problems arose with respect to the identification of non-commissioned officers for labor purposes. In the first place, many NCOs had had their identification documents taken from them upon capture (probably for intelligence purposes) and were thereafter unable to establish their entitlement to recognition of their grade. On the other hand, a number of individuals apparently claimed NCO grades to which they were not actually entitled, probably in order to avoid hard labor as well as to be entitled to the higher advances in pay. In a number of respects the 1949 Convention attempts to obviate these problems. Thus, Article 21 of the 1929 Convention provided only that, upon the outbreak of hostilities, the belligerents would communicate to one another the titles and ranks in use in their armies in order to assure “equality of treatment between corresponding ranks of officers and persons of equivalent status.” This was construed as limiting the requirements of this exchange of information to the ranks and titles of commissioned officers. Article 43 of the new Convention makes it clear that information is to be exchanged concerning the ranks and titles of all persons who fall within the various categories of potential prisoners of war enumerated in the Convention. Further, during World War II the military personnel of each belligerent carried such identification documents, if any, as that belligerent elected to provide to its personnel. In addition, as just noted, it was not unusual for capturing personnel to seize these documents for whatever intelligence value they might have, leaving the prisoner of war with no official identification material. The 1949 Convention attempts to rectify both of these defects. In Article 17 it provides for an identification card containing, as a minimum, certain specified material concerning identity; prescribes the desirable type of card; provides that it be issued in duplicate; and states that while the prisoner of war must exhibit it upon the demand of his captors, under no circumstances may it be taken from him. This article, if complied with by the belligerents, should do much to eliminate the problem of identifying non-commissioned officers, which existed during World War II and which undoubtedly resulted in many incorrect decisions.

Two other problems connected with the labor of non-commissioned officers are worthy of comment. On occasions disputes may arise as to the types of work which can be construed as falling within the term “supervisory.” The drafters
of the 1949 Convention made no attempt to solve this problem. There is much merit in the solution offered by one authority, who says:

The term "supervisory work" is generally recognized as denoting administrative tasks which usually consist of directing the other ranks; it obviously excludes all manual labor.39

The other problem relates to the right of a non-commissioned officer, who has exercised the privilege given him under both conventions to request work other than supervisory, thereafter to withdraw his request. During World War II different practices were followed by the belligerents. Thus Germany gave British non-commissioned officers the right to withdraw their requests;40 while the policy of the United States was not to grant such requests for non-supervisory work in the first place, unless they were for the duration of captivity in the United States.41 It has been urged that, inasmuch as a non-commissioned officer is free to undertake non-supervisory work, he should be equally free to discontinue such work, subject to the right of the Detaining Power to provide him with such employment only if he agrees to work for a fixed term, which may be extended upon his request.42 This appears to be a logical and practical solution to the problem, although it is probably one to which not every belligerent will subscribe.

Officers cannot be required to do even supervisory work unless they request it. Once they have done so, the problems relating to their labor are very similar to those relating to the voluntary labor of non-commissioned officers, except that they were apparently rather generally permitted to discontinue working whenever they decided to do so. In general, the labor of officers has not caused any material dissension between belligerents.43

c. Scattered throughout the 1949 Convention are a number of other provisions specifically limiting the work which may be required of certain categories of enemy personnel, prisoners of war or others, held by a Detaining Power. Thus, medically trained personnel who, when captured, were not assigned to the medical services in the enemy armed forces and who are, therefore, ordinary prisoners of war, may be required to perform medical functions for the benefit of their fellow prisoners of war; but if they are so required, they are entitled to the treatment accorded retained medical personnel44 and are exempted from any other work (Article 32). The same rule applies to ministers of religion who were not serving as such when captured (Article 36). Prisoners of war assigned to provide essential services in the camps of officer prisoners of war may not be required to perform any other work (Article 44). And prisoners’ representatives may likewise not be required to perform any other work, but this restriction applies only “if the accomplishment
of their duties is thereby made more difficult" (Article 81). While these various provisions are not of very great magnitude in the over-all prisoner-of-war picture, they can, of course, be of major importance to the particular individuals involved.

Types of Work Which Prisoners of War May Be Compelled to Perform

The types of work which prisoners of war may be compelled to perform and the industries to which they may be assigned have generated much controversy. Long before final agreement was reached thereon at the 1949 Geneva Diplomatic Conference, the article of the Convention concerned with the subject of authorized labor was termed "the most disputed article in the whole Convention, and the most difficult of interpretation." Unfortunately, it appears fairly certain that the agreements ultimately reached in this area are destined to magnify, rather than to minimize or eliminate, this problem.

The early attempts to draft rules concerning the categories of labor in which prisoners of war could be employed merely authorized their employment on "public works which have no direct connection with the operations in the theater of war," or stated that the tasks of prisoners of war "shall have nothing to do with the military operations." The insufficiency of these provisions having been demonstrated by the events of World War I, an attempt at elaboration was made in drafting the comparable provisions (Article 31) of the 1929 Convention, in which were included not only prohibitions against the employment of prisoners of war on labor having a "direct relation with war operations," but also against their employment on several specified types of work ("manufacturing and transporting arms or munitions of any kind, or . . . transporting material intended for combatant units").

During World War II these latter provisions proved no more successful than their predecessors in regulating prisoner-of-war labor. The term "direct relation with war operations" once again demonstrated itself to be exceedingly difficult to interpret in a total war in which practically every economic resource of the belligerents is mobilized for military purposes. So each belligerent attempting to comply with the labor provisions of the 1929 Convention found itself required to make a specific determination in all but the very few obvious cases as to whether a particular occupation fell within the ambit of the prohibitions. As could be expected, there were many disputed decisions.

In drafting a proposed new convention aimed at obviating the many difficulties which had arisen during the two world wars, the International Committee of the Red Cross attempted a new approach to the prisoner-of-war labor problem. Instead of specifying prohibited areas in broad and general terms, as had been the previous practice, leaving to the belligerents, the Protecting Powers, and the humanitarian organizations the decision as to whether a specific
task was or was not prohibited, it decided to list affirmatively and with particularity the categories of labor in which Detaining Powers would be permitted to employ prisoners of war, at least impliedly prohibiting their use in any type of work not specifically listed.\textsuperscript{52} The International Red Cross Conference held at Stockholm in 1948, to which this new approach was proposed, accepted the idea of affirmatively specifying the areas in which prisoners of war could be required to work; but, instead of the enumeration of specifics which the Committee had prepared, the Conference substituted general terms.\textsuperscript{53} The Committee was highly critical of this action.\textsuperscript{54} At the 1949 Diplomatic Conference the United Kingdom proposed the substitution of the original proposal in place of that contained in the draft adopted at Stockholm, and it was this original text, with certain amendments which will be discussed later, which ultimately became Article 50 of the 1949 Convention.\textsuperscript{55} While there is considerable merit to the new approach, the actual phraseology of the article leaves much to be desired.\textsuperscript{56}

An analysis of the various provisions contained in Article 50 of the 1949 Convention and, to the extent possible, a delimitation of the areas covered, or probably intended to be covered, by each category of work which a prisoner of war may be “compelled” to do,\textsuperscript{57} and the problems inherent in each, is in order.

(1) \textit{Camp Administration, Installation or Maintenance}. This refers to the management and operation of the camps established for the prisoners of war themselves; in other words, broadly speaking, it constitutes their own “housekeeping.” Early in World War II the United States divided all prisoner-of-war labor into two classes: class one, that related to their own camps; and class two, all other.\textsuperscript{58} This distinction still appears to be a valid one. It has been estimated that the use of prisoners of war in the United States for the maintenance and operation of their own camps and of other military installations\textsuperscript{59} constituted their major utilization.\textsuperscript{60} While this is believed to be somewhat of an overstatement, it can be assumed that a very considerable portion of them will always be so engaged. However, it can also be assumed that in any future major conflict demands for prisoner of-war labor will be so great that shortages will exist, requiring that the administration of prisoner-of-war camps be conducted on an extremely austere basis.

(2) \textit{Agriculture}. This field of prisoner-of-war utilization, with its collateral field of food processing, combines with camp administration to account for the labor of the great majority of employed prisoners of war.\textsuperscript{61} There are no restrictions imposed by the Convention on the employment of prisoners of war in agriculture,\textsuperscript{62} the fact that the product of their labor may eventually be used in the manufacture of a military item or be supplied to and consumed by combat troops being too remote to permit of, or warrant, restrictions.
(3) Production or Extraction of Raw Materials. This category of authorized compulsory employment includes activities in such industries as mining, logging, quarrying, et cetera. It is one of the areas in which problems are constantly arising and in which there are frequent disagreements between belligerents as well as between Detaining Powers and Protecting Powers or humanitarian organizations. Thus, after the conclusion of World War II the International Committee of the Red Cross reported that it was called upon to intervene more frequently with respect to prisoners of war who worked in mines than with respect to any other problem. 63

Inasmuch as the utilization of prisoners of war in this field has been, and continues to be, authorized, the problems which arise usually relate to the physical ability of the particular prisoner of war to participate in heavy and difficult labor of this nature, and to working conditions, including safety precautions and equipment, rather than to the fact of the utilization of prisoners of war in the specific industry. The first of these problems has already been reviewed and the latter will be discussed at length in the general analysis of that specific problem.

(4) Manufacturing Industries (except Metallurgical, Machinery, and Chemical). 64 In modern days of total warfare and the total mobilization of the economy of belligerent nations, it has become increasingly impossible to state with positiveness that any particular industry does not have some connection with the war effort. Where the degree of such connection is the criterion for determining the permissibility of the use of prisoners of war in a particular industry, as it was prior to the 1949 Convention, problems and disputes are inevitable. In this respect, by authorizing compulsory prisoner-of-war labor in most manufacturing industries and by specifically prohibiting it in the three categories of industries which will be engaged almost exclusively in war work, the new Convention represents a positive and progressive development in the law of war and has probably eliminated many potential disputes.

During World War II the nature of the item manufactured and, to some extent, its intended ultimate destination determined whether or not the use of prisoners of war in its manufacture was permissible. Thus, in the United States it was determined that prisoners of war could be used in the manufacture of truck parts, as these had a civilian, as well as a military, application; but that they could not be used in the manufacture of tank parts, as these had only a military application. 65 Under the 1949 Convention neither the nature nor the ultimate destination nor the intended use of the item being manufactured is material. All motor vehicles fall within the category of “machinery” and prisoners of war therefore may not be used in their manufacture. On the other hand, prisoners of war may be used in a food processing or clothing factory, even though some,
or perhaps all, of the food processed or clothing manufactured may be destined for the armed forces of the Detaining Power.

Two sound bases have been advanced for the decision of the Diplomatic Conference to prohibit in its entirety the compelling of prisoners of war to work in the metallurgical, machinery, and chemical industries: first, that in any general war these three categories of industries will unquestionably be totally mobilized and will be used exclusively for the armaments industry; and second, that factories engaged in these industries will be key objectives of enemy air (and now of enemy rocket and missile) operations and would, therefore, subject the prisoners of war to military action from which they are entitled to be isolated. The Diplomatic Conference apparently balanced this total, industry-wide prohibition of compulsory labor in the three specified industries against the general authorization to use prisoners of war in every other type of manufacturing without requiring the application of any test to determine its relationship to the war effort.

It should be borne in mind that the prohibition under discussion is directed only against compelling prisoners of war to work in the specified industries. (As we shall see, by inverted phraseology, subparagraphs b, c, and f of Article 50 also prohibit the Detaining Power from compelling them to do certain other types of work where such work has “military character or purpose.”) The question then arises as to whether they may volunteer for employment in those industries. Based upon the discussions at the Diplomatic Conference, it clearly appears that the prohibitions contained in Article 50 are not absolute in character and that a prisoner of war may volunteer to engage in the prohibited employments, just as he is affirmatively authorized by Article 52 to volunteer for labor which is “of an unhealthy or dangerous nature.” The problem will, of course, arise of assuring that the prisoner of war is a true volunteer and that neither mental coercion nor physical force has been used to “persuade” him to volunteer to work in the otherwise prohibited field of labor. However, the fact that this particular problem is difficult of solution (and that the possibility undoubtedly exists that some prisoners of war will be coerced into “volunteering”) cannot be permitted to justify an incorrect interpretation of these provisions of the Convention, as to which the indisputable intent of the Diplomatic Conference is clearly evidenced by the travaux préparatoires.

(5) **Public Works and Building Operations Which Have No Military Character or Purpose.** With respect to this portion of the subparagraph, it is first necessary to determine the meaning to be ascribed to the phrase “military character or purpose.” This is no easy task. Because the term defies definition in the ordinary sense, it will be necessary to define by example. Moreover, the discussions at the Diplomatic Conference, unfortunately, provide little that is helpful on this problem.
A structure such as a fortification clearly has, solely and exclusively, a “military character.” Conversely, a structure such as a bowling alley clearly has, solely and exclusively, a civilian character. The fortification is intended for use in military operations; hence it has not only a “military character” but also a “military purpose.” The bowling alley is intended for exercise and entertainment; hence it does not have a “military purpose,” even if some or all of the individuals using it will be members of the armed forces.

These examples have been comparatively black and white. Unfortunately, as is not unusual, there is also a large gray area. This is especially true of the term “military purpose.” A structure will usually be clearly military or clearly civilian in character; but whether its purpose is military or civilian will not always be so easy of determination. A sewer is obviously civilian in character, and the fact that it is to be constructed between a military installation and the sewage disposal plant does not give it a military purpose. On the other hand, a road is likewise civilian in character, but a road leading only from a military airfield to a bomb dump would certainly have a military purpose. And a theater is civilian in character, but if it is a part of a military school installation and is to be used exclusively or primarily for the showing of military training films, then it, too, would have a military purpose. However, a theater which is intended solely for entertainment purposes, like the bowling alley, retains its civilian purpose, even though the audience will be largely military.

To summarize, if the public works or building operations clearly have a military character, prisoners of war may not be compelled to work thereon; if they do not have a military character, but are being undertaken exclusively or primarily for a military use, then they will usually have a military purpose and again prisoners of war may not be compelled to work thereon; while if they do not have a military character and are not being built exclusively or primarily for a military use, then they have neither military character nor purpose, and prisoners of war may be compelled to work thereon, even though there may be incidental military use.

Having determined, insofar as is possible, the meaning of the phrase “military character or purpose,” let us apply it to some of the problems which have heretofore arisen. Although the use of compulsory prisoner-of-war labor in the construction of fortifications has long been considered improper, after World War II a United States Military Tribunal at Nürnberg found “uncertainty” in the law, and held such labor not obviously illegal where it was ordered by superior authority and was not required to be performed in dangerous areas. Under the 1949 Convention such a decision would clearly be untenable. A fortification is military in character and the use of compulsory prisoner-of-war labor in its construction is prohibited, no matter what the circumstances or location may be. The same is, of course, true of other construction of a uniquely
military character such as ammunition dumps, firing ranges, tank obstacles, etc. On the other hand, bush clearance and the construction of firebreaks in wooded areas far from the battle fronts, the digging of drainage ditches, the building of local air-raid shelters, and the clearing of bomb rubble from city streets are typical of the categories of public works and building operations which have neither military character nor purpose.

If the foregoing discussion has added but little light to the problem, it is hoped that it has, at least, focused attention on an area which can be expected to produce considerable controversy; and here, too, the problem will be further complicated by the question of volunteering.

(6) Transportation and Handling of Stores Which Are Not Military in Character or Purpose. Article 31 of the 1929 Convention prohibited the use of prisoners of war for “transporting arms or munitions of any kind, or for transporting material intended for combatant units.” The comparable provisions of the 1949 Convention clarify this in some respects and obscure it in others. The former provision created problems in the determination of the point of time at which material became “intended” for a combatant unit and of the nature of a “combatant unit.” These problems have now been eliminated, the ultimate destination of the material transported or handled no longer being decisive.

Creating new difficulties is the fact that the problem of the application of the amorphous term “military in character or purpose” is presented once again. Apparently a prisoner of war may now be compelled to work in a factory manufacturing military uniforms or gas masks or camouflage netting, as these items are neither made by the three prohibited manufacturing industries nor is their military character or purpose material; but once manufactured, a prisoner of war may not be compelled to load them on a truck or freight car, as they probably have a military character and they certainly have a military purpose. Conversely, prisoners of war may not be compelled to work in a factory making barbed wire, inasmuch as such a factory is in the metallurgical industry; but they may be compelled to handle and transport it where it is destined for use on farms or ranches, as it would have no military character or purpose. Surely, the Diplomatic Conference intended no such inconsistent results, but it is difficult to justify any other conclusions.

Just as was determined with respect to public works and building operations, it is extremely doubtful that the ultimate destination or intended use of the stores is, alone, sufficient to give them a military character or purpose. Thus, agriculture and food processing are, as has been seen, authorized categories of compulsory labor for prisoners of war. The food grown and processed obviously has no military character; and the fact that it will ultimately be consumed by members of the armed forces, even in a battle area, does not give it a military purpose. Accordingly, prisoners of war may be compelled to handle and transport such
stores. The same reasoning would apply to blankets and sleeping bags, to tents and tarpaulins, to socks and soap.

In this general category, again, the prohibition is only against compulsion, and the prisoner of war who volunteers may be assigned to the work of transporting and handling stores, even though they have a military character or purpose. And, once again, the problem will arise of assuring that the prisoner of war has actually volunteered for the work to which he is assigned.

(7) Commercial Business, and Arts and Crafts. It is doubtful whether very many prisoners of war will be given the opportunity to engage in commercial business. The prisoner-of-war barber, tailor, shoemaker, cabinetmaker, et cetera, will usually be assigned to ply his trade within the prisoner-of-war camp, for the benefit of his fellow prisoners of war as a part of the camp activities and administration. However, it is conceivable that in some locales they might be permitted to set up their own shops or to engage in their trades as employees of civilian shops owned by citizens of the Detaining Power.

That prisoners of war will be permitted to engage in the arts and crafts is much more likely. No prisoner-of-war camp has ever lacked artists, both professional and amateur, who produce paintings, wood carvings, metal objects, et cetera, which find a ready market, through the prisoner-of-war canteen, among the military and civilian population of the Detaining Power. However, normally this category of work will be done on spare time as a remunerative type of hobby, rather than as assigned labor.

(8) Domestic Service. The specific inclusion of this category of labor merely permits the continuation of a practice which was rather generally followed during World War II and which has rarely caused any difficulty, inasmuch as domestic services have, of course, never been construed as having a “direct relation with operations of war.” As long as the domestic services are not required to be performed in an area where the prisoner of war will be exposed to the fire of the combat zone, which is specifically prohibited by Article 23 of the 1949 Convention, the type of establishment in which he is compelled to perform the domestic service, and whether military or civilian, is not material.

(9) Public Utility Services Having No Military Character or Purpose. This is the third and final usage in Article 50 of the term “military character or purpose.” Its use here is particularly inept, inasmuch as it is difficult to see how public utility services such as gas, electricity, water, telephone, telegraph, et cetera, can, under any circumstances, be deemed to have a military character. With respect to military purpose, the conclusions previously reached are equally applicable here. If the utility services are intended exclusively or primarily for military use, they will have a military purpose and the Detaining Power is prohibited from compelling prisoners of war to work on them. Normally, however, the same
public utility services will be used to support both military and civilian activities and personnel and will not have a military purpose.

(10) Unhealthy, Dangerous, or Humiliating Labor. Article 52 of the 1949 Convention contains special provisions with respect to labor which is unhealthy, dangerous, or humiliating. These terms are not defined and it may be anticipated that their application will cause some difficulties and controversies. Nevertheless, the importance of the provision cannot be gainsaid.

Employing a prisoner of war on unhealthy or dangerous work is prohibited “unless he be a volunteer.” Assigning a prisoner of war to labor which would be considered humiliating for a member of the armed forces of the Detaining Power is prohibited. No differences can be perceived to have resulted from the use of the verb “employed on” in the first instance and “assigned to” in the second. Accordingly, it is believed that the omission of the clause “unless he be a volunteer” in the case of “humiliating” labor would preclude a prisoner of war from volunteering for labor which is considered to be of a humiliating nature and that such a clause would be mere surplusage. However, this is probably not so.

Article 32 of the 1929 Convention forbade “unhealthful or dangerous work.” In construing this provision the United States applied three separate criteria: first, the inherent nature of the job (mining, quarrying, logging, et cetera); second, the conditions under which it was to be performed (under a tropical sun, in a tropical rain, in a millpond in freezing weather, et cetera); and third, the individual capacity of the prisoner of war. These criteria would be equally relevant in applying the substantially similar provisions of Article 52 of the 1949 Convention.

It is quite apparent that there are criteria available for determining whether a particular job is unhealthy or dangerous and is, therefore, one upon which prisoners of war may not be employed. Nevertheless, there will undoubtedly be some borderline cases in which disputes may well arise as to the utilization of non-volunteer prisoners of war. However, there unquestionably will be more jobs in clearly permissible categories than there will be prisoners of war available to fill them. Accordingly, the Detaining Power, which is attempting to handle prisoners of war strictly in accordance with the provisions of the Convention, can easily avoid disputes by not using prisoners of war on labor of a controversial character.

The third paragraph of Article 52 specifies that “the removal of mines or similar devices shall be considered as dangerous labor.” By this simple statement the Diplomatic Conference, after one of its most heated and lengthy discussions, made it completely clear that the employment of prisoners of war on mine removal is prohibited unless they are volunteers. The compulsory use of prisoners of war on this type of work was one of the most troublesome
problems of prisoner-of-war utilization of World War II, particularly after the termination of hostilities.

The application of the prohibition against the assignment of prisoners of war to work considered humiliating for members of the armed forces of the Detaining Power should cause few difficulties. Certainly the existence or non-existence of a custom or rule in this regard in the armed forces of the Detaining Power should rarely be a matter of controversy. It is probable that, in the main, problems in this area will arise because the standard adopted is that applied in the armed forces of the Detaining Power rather than that applied in the armed forces of the Power upon which the prisoners of war depend. While this decision was indubitably the only one which the Diplomatic Conference could logically have reached, it is not unlikely that prisoners of war will find this difficult to understand and that there will be tasks which they consider to be humiliating, even though the members of the armed forces of the Detaining Power do not, particularly where the prisoners of war come from a nation having a high standard of living and are held by a Detaining Power which has a considerably lower standard.

Conditions of Employment

We have so far considered the two aspects of prisoner-of-war labor which are peculiar to that status: who may be compelled to work; and the fields of work in which they may be employed. Our discussion now enters the area in which most nations have laws governing the general conditions of employment of their own civilian citizens—laws which, as we shall see, are often applicable to the employment of prisoners of war.

General Working Conditions. Article 51 of the Convention constitutes a fairly broad code covering working conditions. Its first paragraph provides that:

Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

These provisions, several of which derive directly from adverse experiences of World War II, are, for the most part, so elementary as to require little exploratory discussion. However, one major change in basic philosophy is worthy of note. The 1929 Convention provided, in Articles 10 and 11, that the minimum standard for accommodations and food for prisoners of war should be that provided for “troops at base camps of the detaining Power.” This standard was equally applicable to working prisoners of war. Article 25 of the 1949 Convention contains an analogous provision with respect to accommodations.
for prisoners of war generally—but the quotation from Article 51 given above makes it abundantly clear that, as to the lodging, food, clothing, and equipment of working prisoners of war, the minimum standard is no longer that of base troops of the Detaining Power, but is that of "nationals of the Detaining Power employed in similar work." While this represents a continuation of adherence to a national standard, it is probable that the new national standard will be higher than the one previously used, inasmuch as workers are frequently a favored class under wartime conditions.

With regard to a somewhat similar provision contained in the second paragraph of the same article, less optimism appears to be warranted. This paragraph, making applicable to working prisoners of war "the national legislation concerning the protection of labor and, more particularly, the regulations for the safety of workers," was the result of a proposal made by the U.S.S.R. at the Diplomatic Conference, which received the immediate support of the United States and others. This support was undoubtedly premised on the assumption that, if adopted, the proposal would increase the protection afforded to working prisoners of war. Second thoughts indicate that this provision may constitute a basis for reducing the protection which it was intended to afford prisoners of war engaged in dangerous employments. The International Committee of the Red Cross has found it necessary to point out that national standards may not here be applied in such a way as to reduce the minimum standards established by the Convention. It now appears unfortunate that the Diplomatic Conference adopted the U.S.S.R. proposal rather than the suggestion of the representative of the International Labor Organization that it be guided by the internationally accepted standards of safety for workers contained in international labor conventions then already in being. Moreover, the safety laws and regulations are not the only safety measures which are tied to national standards. The third paragraph of Article 51 requires that prisoners of war receive training and protective equipment appropriate to the work in which they are to be employed "and similar to those accorded to the nationals of the Detaining Power." This same paragraph likewise provides that prisoners of war "may be submitted to the normal risks run by these civilian workers." Inasmuch as the test as to what are "normal risks" is based upon the national standards of the Detaining Power, this provision, too, would appear to be a potential breeding ground for disagreement and dispute, particularly as the "normal risks" which civilian nationals of the Detaining Power may be called upon to undergo under the pressures of a wartime economy will probably bear little relationship to the risks permitted under normal conditions.

The reference to the climatic conditions under which the labor is performed, contained in the portion of Article 51 quoted above, is one of the provisions deriving from the experiences of World War II. The 1929 Convention
provided, in Article 9, that prisoners of war captured “where the climate is injurious for persons coming from temperate climates, shall be transported, as soon as possible, to a more favorable climate.” It is well known that in a large number of cases this was not done. The 1949 Convention contains a somewhat similar general provision (in Article 22) concerning evacuation; but it was recognized that, despite the best of intentions, belligerents will not always be in a position to arrange the immediate evacuation of prisoners of war from the areas in which they are captured. Accordingly, the Diplomatic Conference wrote into the Convention the quoted additional admonition with respect to climatic conditions and prisoner-of-war labor. It follows that, where a Detaining Power cannot, at least for the time being, evacuate prisoners of war from an unhealthy climate, whether tropical or arctic, it must, if it desires to utilize the labor of the prisoners of war in that area even temporarily, make due allowances for the climate, giving them proper clothing, the necessary protection from the elements, appropriate working periods, et cetera.

Article 51 of the 1949 Convention concludes with a prohibition against rendering working conditions more arduous as a disciplinary measure. In other words, the standards for working conditions, be they international or national, established by the Convention may not be disregarded in the administration of disciplinary punishment to a prisoner of war, and it is immaterial whether the act for which he is being punished occurred in connection with, or completely apart from, his work. Thus, a Detaining Power may not lower safety standards, avoid requirements for protective equipment, lengthen working hours, withhold required extra rations, et cetera, as punishment for misbehavior. On the other hand, “fatigue details” of not more than two hours a day, or the withdrawal of extra privileges, both of which are authorized as disciplinary punishment, undoubtedly could be imposed, as they obviously do not fall within the terms of the prohibition; and the extra rations to which prisoners of war are entitled under Article 26, when they are engaged in heavy manual labor, could undoubtedly be withheld from a prisoner of war who refuses to work, inasmuch as he would no longer meet the requirement for entitlement to such extra rations.

In the usual arrangement contemplated by the Convention for the utilization of the labor of prisoners of war, the prisoners, each working day, go from their camp to their place of employment, returning to the camp upon the completion of their working period. However, another arrangement is authorized by the Convention. Thus, where the place at which the work to be accomplished is too far from any prisoner-of-war camp to permit the daily round trip, a so-called “labor detachment” may be established. These labor detachments, which were widely used during World War II, are merely miniature prisoner-of-war camps, established in order to meet more conveniently a specific labor requirement. Article 56 of the 1949 Convention requires that it be organized and administered.
in the same manner as, and as a part of, a prisoner-of-war camp. Prisoners of war making up a labor detachment are entitled to all the rights, privileges, and protections which are available under the Convention to prisoners of war assigned to, and living in, a regular prisoner-of-war camp. However, the fact that local conditions render it impossible to make a labor detachment an exact replica of a prisoner-of-war camp does not necessarily indicate a violation of the Convention. As long as the provisions of the Convention are observed with respect to the particular labor detachment, it must be considered to be properly constituted and operated.

One other point with respect to labor detachments is worthy of note. While Article 39 requires that prisoner-of-war camps be under the “immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power,” there is no such requirement as to labor detachments. Although each labor detachment is under the authority of the military commander of the prisoner-of-war camp on which it depends, who will, of course, be a commissioned officer, there appears to be no prohibition against the assignment of a non-commissioned officer as the immediate commander. In view of the large number of labor detachments which will probably be established by each belligerent, it is safe to assume that the great majority of them will be under the supervision of non-commissioned officers.

A situation under which the utilization of prisoner-of-war labor will usually, although not necessarily, require the establishment of labor detachments is where they are employed by private individuals or business organizations. This is the method by which most of the many prisoners of war engaged in agriculture will probably be administered. During World War II, prisoners of war performing labor under these circumstances were frequently denied the basic living standards guaranteed to them by the 1929 Convention. Article 57 of the 1949 Convention specifically provides, not only that the treatment of prisoners of war working for private employers “shall not be inferior to that which is provided for by the present Convention,” but also that the Detaining Power, its military authorities, and the commander of the prisoner-of-war camp to which the prisoners belong, all continue to be responsible for their maintenance, care, and treatment; and that these prisoners of war have the right to communicate with the prisoners’ representative in the prisoner-of-war camp. It remains to be seen whether the changes made in the provisions of the applicable international legislation will be successful in accomplishing their purpose.

One problem which may arise in the use of prisoner-of-war labor by private employers is that of guarding the prisoners of war. Frequently, the Detaining Power will provide military personnel to guard such prisoners of war. When it does so, the problems presented are no different from those which arise at the prisoner-of-war camp itself. If paroles have been given to and accepted by the
prisoners of war concerned, there are likewise no problems peculiar to the
situation. But suppose that civilian guards are used. What authority do they
have to compel a prisoner of war to work if he refuses to do so? Or to prevent
a prisoner of war from escaping? And to what extent may they use force on
prisoners of war?

If a prisoner of war assigned to work for a private employer refuses to do so,
the proper action to take would unquestionably be to notify the military
commander of the prisoner-of-war camp to which he belongs. The latter is in
a position to have an independent investigation made and to impose disciplinary
or judicial punishment, if and as appropriate.

If a prisoner of war assigned to work for a private employer who is not
provided with military guards attempts to escape, the authority of the civilian
guards is extremely limited. That they may use reasonable force, short of firearms,
seems fairly clear. That the guards may use firearms to prevent the escape is
highly questionable. Detaining Powers would be well advised not to assign
any prisoner of war to this type of labor, where he is to be completely unguarded
or guarded only by civilians, unless the prisoner of war has accepted parole, or
unless the Detaining Power has evaluated the likelihood of attempted escape by
the particular prisoner of war and has determined to take a calculated risk in his
case.

It would not be appropriate to leave the subject of conditions of employment
without at least passing reference to the possibility of special agreements in this
field between the opposing belligerents. Strangely enough, despite the fact that
prisoner-of-war labor has been the subject of special agreements (or of attempts
to negotiate special agreements) between opposing belligerents on a number of
occasions during both World War I and World War II, and despite numerous
references elsewhere in the 1949 Convention to the possibility of special
agreements, nowhere in the articles of the Convention concerned with
prisoner-of-war labor is there any reference made to this subject. Nevertheless,
such agreements, provided that they do not adversely affect the rights of prisoners
of war, may be negotiated under the provisions of Article 6 of the Convention,
as well as under the inherent sovereign rights of the belligerents.

Working Hours, Holidays, and Vacations. Article 53 of the 1949 Convention
covers all aspects of the time periods of prisoner-of-war labor. As to the duration
of daily work, it provides that (1) this must not be excessive; (2) it must not
exceed the work hours for civilians in the same district; (3) travel time to and
from the job must be included; and (4) a rest of at least one hour (longer, if
civilian nationals receive more) must be allowed in the middle of the day.

It thus appears that the new Convention contains the same prohibition as its
predecessor against daily labor which is of “excessive” duration. Here, again, we
have the application of the national standard, and in an area in which such
standard had proved to be disadvantageous to prisoners of war during World War II.  

The Greek Delegation to the Diplomatic Conference attempted to obtain the establishment of an international standard—a maximum of eight hours a day for all work except agriculture, where a maximum of ten hours would have been authorized. This proposal was overwhelmingly rejected. As has already been pointed out with regard to other problems, where a national rather than an international standard has been adopted, very few nations at war could afford to grant to prisoners of war more favorable working conditions than those accorded their own civilian citizens. With respect to hours of daily work, it must be noted, too, that the limitations contained in the article cannot be circumvented by the adoption of piece work, or some other task system, in lieu of a specific number of working hours. The Convention specifically prohibits rendering the length of the working day excessive by the use of this method.

The provision for a midday rest of a minimum of one hour is new and is only subject to the national standard if the latter is more favorable to the prisoner of war than the international standard established by the Convention. It may be necessary for the Detaining Power to increase the midday rest period given to prisoners of war, if its own civilian workers receive a rest period in excess of one hour, but it may not, under any circumstances, be shortened to less than one hour.

Article 53 further provides that prisoners of war shall be entitled to a 24-hour holiday every week, preferably on Sunday “or the day of rest in their country of origin.” Except for the quoted material, which was adopted at the request of Israel but which should be of equal importance to the pious Moslem, a similar provision was contained in the 1929 Convention. This provision is not subject to national standards, whether or not the national standard is more liberal. And finally, this same article grants to every prisoner of war who has worked for one year a vacation of eight consecutive days with pay. This provision is new and is of a nature to create minor problems, as, for example, whether normal days of rest are excluded from the computation of the eight days, what activity is permitted to the prisoner of war during his “vacation,” and what he may be required to do during this period. However, despite these administrative problems, the provision should prove a boon to every person who undergoes a lengthy period of detention as a prisoner of war.

Compensation and Other Monetary Benefits. The 1929 Convention provided, in Article 34, that prisoners of war would be “entitled to wages to be fixed by agreements between the belligerents.” No such agreements were, in fact, ever concluded. The comparable provision of the 1949 Convention (Article 62) provides for “working pay” in an amount to be fixed by the Detaining Power, which may not be less than one-fourth of one Swiss franc for a full working
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The amount so fixed must be "fair" and the prisoners of war must be informed of it, as must the Protecting Power.

With regard to the establishment by the Detaining Power of a "fair working rate of pay," several matters should be noted. First, no basis can be seen for attempting to determine what is "fair" by endeavoring to compare the "working pay" of prisoners of war with the wages of civilian workers. There are too many diverse and unequal factors involved; and the extremely nominal minimum set by the Convention is clearly indicative of the fact that there was no intention on the part of the 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 superior 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 specifically and intentionally deleted from the 1949 Convention.

There is one provision of the new Convention which could render this entire subject moot. An individual account must be kept for each prisoner of war. All of the funds to which he becomes entitled during the period of his captivity, including his working pay, are credited to this account and all of the payments made on his behalf or at his request are deducted therefrom (Article 64). Under Article 34 of the 1929 Convention it then became the obligation of the Detaining Power to deliver to the prisoner of war "the pay remaining to his credit" at the end of his captivity. Under Article 66 of the 1949 Convention, upon the termination of the captivity of a prisoner of war, it will be the responsibility of the Power in whose armed forces he was serving at the time of his capture, and not of the Detaining Power, to settle any balance due 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." In effect, it will, for the most part, merely be creating a future liability on the part of its enemy! This factor may result in the negotiation of agreements between belligerents fixing mutually acceptable "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 specific provision for them.

A number of changes have been embodied in the 1949 Convention with regard 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 the [prisoner-of-war] camps," Article 62 of the present Convention is equally specific that prisoners of war "permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps" will be entitled to working pay. This article also contains a specific provision under which non-medical service medical personnel (Article 32), and retained medical personnel and chaplains (Article 33) are entitled to working pay. And while the prisoners' representative and his advisers are, primarily, paid out of canteen funds, if there are no such funds, these individuals, too, are entitled to working pay from the Detaining Power. Finally, because enlisted men assigned as orderlies in officers' camps are specifically exempted from performing any other work (Article 44), it appears that they should be entitled to working pay from the Detaining Power.

What of the prisoner of war who is the victim of an industrial accident or contracts an industrial disease and is thereby incapacitated, either temporarily or permanently? Does he receive any type of compensation, and, if so, what, when, from whom, and how?

The Regulations attached to the Second Hague Convention of 1899 and to the Fourth Hague Convention of 1907 were silent on this problem. The multilateral prisoner-of-war agreement negotiated at Copenhagen in 1917 adopted a Russian proposal which placed upon the Detaining Power the same responsibility in this regard that it had towards its own citizens; but the British-German agreement, which was negotiated at The Hague in 1918, provided merely that the Detaining Power should provide the injured prisoner of war with a certificate as to his occupational injury. The procedure adopted at Copenhagen was subsequently incorporated in Article 27 of the 1929 Convention, and in 1940, after some abortive negotiations with the British, Germany enacted a law implementing this procedure. The United States subsequently established this same policy, but the United Kingdom considered that it was only required to furnish the injured prisoner of war all required medical and other care.

Inasmuch as no payments were ever, in fact, made to injured prisoners of war by the Detaining Powers after their repatriation, it is not surprising that in drafting the pertinent provisions of the 1949 Convention the Diplomatic Conference replaced the 1929 procedure with one more nearly resembling that which had been adopted by the British and Germans at The Hague in 1918. It may actually be asserted that there is little difference between the previous practice and the present policy.
The procedure established by the 1949 Convention is contained in the somewhat overlapping provisions of Articles 54 and 68. When a prisoner of war sustains an injury as a result of an industrial accident (or incurs an industrial disease), the Detaining Power has the obligation of providing him with all required care, medical, hospital, and general maintenance during the period of his disability and continuation in the status of a prisoner of war. 116

The only other obligation of the Detaining Power is to provide the prisoner of war with a statement, properly certified, "showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment." Also, a copy of this statement must be sent to the Central Prisoners of War Agency. This latter action insures its permanent availability.

If the prisoner of war desires to make a claim for compensation while still in that status, he may do so, but his claim will be addressed, not to the Detaining Power, but to the Power on which he depends and will be transmitted to it through the medium of the Protecting Power. 117 The Convention makes no provision for the procedure to be followed beyond this point, probably for the reason that the problem is a domestic one which would be inappropriate for inclusion in an international convention. Nevertheless, it may well be that, in the long run, the present policy, by transferring responsibility to the Power upon which he depends, upon the repatriation of the prisoner of war, will prove of more value to the disabled prisoner of war than the apparently more generous policy expressed in the 1929 Convention. 118

*Grievance Procedures.* In general, any prisoner of war who believes that the rights guaranteed to him by the 1949 Convention are, in any manner whatsoever, being violated in connection with his utilization as a source of labor, would have the right to avail himself of any of the channels of complaint established by the Convention: to the representatives of the Protecting Power (Articles 78 and 126); to the prisoners' representative (Articles 78, 79, and 81); and, perhaps, to representatives of the International Committee of the Red Cross (Articles 9, 79, 81, and 126). 119 Nevertheless, the Diplomatic Conference felt it advisable to include in Article 50 (which lists the classes of authorized labor) a specific provision permitting prisoners of war to exercise their right of complaint, should they consider that a particular work assignment is in a prohibited industry. It is somewhat difficult to perceive the necessity for this provision or that it adds anything to the general protection otherwise accorded to the prisoner of war by the appropriate provisions of the Convention. In fact, the danger always exists that by this specific provision the draftsmen may have unwittingly diluted the effect of the general protective provisions in areas where no specific provision has been included.
Conclusion

Utilization of prisoner-of-war labor means increased availability of manpower and a reduction in disciplinary problems for the Detaining Power, and an active occupation, better health and morale, and, perhaps, additional purchasing power for the prisoners of war. It is obvious that both sides will have much to gain if all of the belligerents comply with the labor provisions of the 1949 Convention.

On the whole, it is believed that these labor provisions represent an improvement in the protection to be accorded prisoners of war in any future conflict. True, they contain ambiguities and compromises which can serve any belligerent which is so minded as a basis for justifying the establishment of policies which are contrary to the best interests of the prisoners of war detained by it and which are probably contrary to the intent of the drafters. However, it must be assumed that nations which have ratified or adhered to the 1949 Geneva Convention Relative to the Treatment of Prisoners of War, many of which were likewise involved in its drafting, will, to the maximum extent within their capabilities, implement it as the humanitarian charter which it was intended to be. And, in any event, two factors are always present which tend to call forth this type of implementation: the presence of the Protecting Power and the doctrine of reciprocity. Information as to the interpretation and implementation of the Convention by a belligerent is made known to the other side through the Protecting Powers and thus becomes public knowledge with the resulting effect, good or bad, on world public opinion. Policies which, while perhaps complying with a strict interpretation of the Convention, are obviously overly restrictive in an area where a more humanitarian attitude appears justified and could easily be employed, will undoubtedly result in the adoption of an equally or even more restrictive policy by the opposing belligerent. Such retorsion can easily lead to charges of reprisals, which are outlawed, and thus create a situation which, whether or not justified, can only result in harm to all of the prisoners of war held by both sides. While there were nations which, during World War II, appeared to be disinterested in the effect that their treatment of prisoners of war was having on the treatment received by their own personnel detained by the enemy, it is to be hoped that in any future war, even one which represents the “destruction of an ideology,” at the very least, concern for the fate of its own personnel will cause each belligerent to apply the doctrine *pacta sunt servanda* scrupulously in establishing policies which implement, among others, the labor provisions of the Geneva Prisoner of War Convention of 1949.

Notes

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3. The Detaining Power is the state which holds captured members of the enemy armed forces in a prisoner-of-war status. The Power in whose armed forces they were serving at the time of capture is known as the "Power upon which they depend."

4. Part of Art. 76 of Professor Francis Lieber's famous General Orders No. 100, April 24, 1863, "Instructions for the Government of the Armies of the United States in the Field," had dealt with this subject unilaterally; and provisions with respect thereto had likewise been included in Art. 25 of the Declaration drafted at the Brussels Conference of 1874 (2 U. S. Foreign Relations (1875) 1017; 1 A.J.I.L. Supp. 96 (1907)), and in Arts. 71 and 72 of the "Oxford Manual" drafted by the Institute of International Law in 1880 (Annuaire de l'Institut de Droit International, 1881-1882). While these efforts unquestionably influenced in material degree the decisions subsequently reached at the international level, none of them constituted actual international legislation.

5. Art. 6 thereof (cited note 2 above) reads:

"The State may utilise the labour of prisoners of war according to their rank and aptitude. Their tasks shall not be excessive, and shall have nothing to do with military operations.

"Prisoners may be authorised to work for the public service, for private persons, or on their own account.

"Work done for the State shall be paid for according to the tariffs in force for soldiers of the national army employed on similar tasks.

"When the work is for other branches of the public service or for private persons, the conditions shall be settled in agreement with the military authorities.

"The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance."


9. Arts. 49 through 57 and Art. 62 are the basic articles of the 1949 Convention relating to the subject of prisoner-of-war labor. Mention will also be made of a number of other articles which touch on the subject.

10. The author does not believe in the inevitability of major wars in the future, but he does believe, as did the 59 states which sent representatives to the Diplomatic Conference in Geneva in 1949 and the 87 states which have since either ratified or adhered to the four Conventions for the Protection of War Victims produced at that Conference, that human nature being what it is, the outlawing of war and the existence of a state of peace are insufficient reasons for the apathy and attitude of complete disregard of the development of the law of war which has characterized many experts in the field of international law. Fortunately, there is evidence that a change in this attitude has occurred in recent years.

11. A general cartel governing the exchange of prisoners of war was entered into in 1862 (the Dix-Hill Cartel, July 22, 1862, War of the Rebellion, Series II, Vol. IV, p. 266 (1895)), but it was not observed to any great degree by either side. Lewis and Mewha, History of Prisoner of War Utilization by the United States Army, 1776-1945 (hereinafter referred to as Lewis, History), pp. 29-30 (1955).

12. Lewis, History 27, 41. For a vivid fictional, but factually accurate, picture of this waste of manpower in the South, with its resulting evils to the prisoners of war themselves, see Kantor, Andersonville (1955).

13. Note 4 above.


15. Preamble, Declaration of Brussels, note 4 above.

16. Note 4 above.


18. Lewis, History 57. This was not the case in France, where the American Expeditionary Force had started planning for prisoner-of-war utilization even before any were captured, the established policy there being that all except officers would be compelled to work. Ibid. 59-62.

19. See, for example, the Final Act of the Conference of Copenhagen, executed by Austria-Hungary, Germany, Rumania, and Russia on Nov. 2, 1917 (photostatic copy on file in The Army Library, Washington, D. C.); the Agreement between the British and Turkish Governments respecting Prisoners of War and Civilians, executed at Bern on Dec. 28, 1917 (111 Brit. and For. State Papers 557); the Agreement between France and Germany concerning Prisoners of War, executed at Bern on April 26, 1918 (ibid. 713); and the Agreement between the United States of America and Germany Concerning Prisoners of War, Sanitary Personnel, and Civilians, executed at Bern on Nov. 11, 1918 (U. S. Foreign Relations, 1918, Supp. 2, p. 103; 13 A.J.I.L. Supp. 1 (1919)). This latter Agreement contained a section of eleven articles (41-51) relating to prisoner-of-war labor.


22. As the U.S.S.R. was not a party to this Convention, it considered that its relations with Germany and the latter’s allies on prisoner-of-war matters were governed by the Fourth Hague Convention of 1907. Report of the International Committee of the Red Cross on its Activities during the Second World War (hereinafter referred to as ICRC Report), Vol. I, p. 412. (No mention was made by the U.S.S.R. of the situation created by the si omnes clause contained in that Convention.) Japan, which was likewise not a party to the 1929 Convention, nevertheless announced its intention to apply that Convention mutatis mutandis on a basis of reciprocity. Ibid. 443.

23. “The international instruments regulating the treatment of prisoners of war were drawn up on the basis of the experience gained in the war of 1914-1918 and did not contemplate the wholesale and systematic use which many countries have since made of captive labor.” Anon., “The Conditions of Employment of Prisoners of War: The Geneva Convention of 1929 and its Application,” 47 International Labour Review 169 (Feb., 1943).

24. In February, 1944, only 60% of the prisoners of war in the United States were being employed; by April, 1945, that figure had increased to more than 93%. Lewis, History 125. In Germany “the mobilisation of prisoner labour has been organised as part of the general mobilisation of man-power for the execution of the economic programme.” Anon., “The Employment of Prisoners of War in Germany,” 48 International Labour Review 316, 318 (Sept., 1943).

25. “The policy of the Japanese Government was to use prisoners of war and civilian internees to do work directly related to war operations.” Judgment of the International Military Tribunal for the Far East 1082 (mimeo., 1948).

26. Lewis, History 199.

27. 1 ICRC Report 327. See also Pictet, Commentary on the Geneva Convention relative to the Treatment of Prisoners of War (hereinafter referred to as Pictet, Commentary) 260 (1960); Flory, Prisoners of War 71 (1942); Girard-Claudon, Les prisonniers de guerre en face de l'évolution de la guerre 151 (unpublished thesis, Université de Dijon, 1949); Feilchenfeld, Prisoners of War 47 (1948). Art. 49 of the 1949 Convention specifically states that the utilization of prisoner-of-war labor is “with a view particularly to maintaining them in a good state of physical and mental health.”

28. During World War II the Nazi use as miners of prisoners of war who did not have the necessary physical aptitude for this type of work and who were inexperienced was a constant source of trouble. The I. G. Farben Case (U. S. v. Krauch), 8 Trials 1187. The ICRC Delegate in Berlin finally proposed to the German High Command that prisoners of war over 45 years of age be exempted from working as miners, but this proposal was rejected by the Germans on the ground that the 1929 Convention made no reference to age as a criterion of physical qualification for compulsory labor. 1 ICRC Report 329-331. This situation has now been rectified.

29. Major MacKnight’s statement was based, at least in part, upon the U. S. War Department’s Prisoner of War Circular No. 1, Regulations Governing Prisoners of War, sec. 87 (Sept., 1943), which was, in turn, taken from Art. 48 of the 1918 U. S.-German Agreement, note 19 above.

30. Art. 31 speaks of “medical inspections,” while Art. 55 uses the term “medical examinations.” (A similar variation is found in the French version of the 1949 Convention.) It does not appear that any substantive
difference was intended by the draftsmen, particularly inasmuch as Art. 31 considerably simplifies the term "inspection," making it clear that much more than a mere visual inspection was intended.

33. Pictet, Commentary 289. Captured medical service personnel are not prisoners of war and are entitled to be repatriated as soon as possible. Arts. 28 and 30, 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. 6 U.S. Treaties 3114; T.I.A.S., No. 3362; 75 U.N. Treaty Series 31 (1970). However, the Detaining Power may temporarily retain some of these individuals to provide needed medical attention to prisoners of war, primarily those belonging to the armed forces of the Power to which the medical service personnel themselves belong (Art. 33). When so employed they are known as "retained medical personnel."

34. Similarly, the function of determining whether a prisoner of war should be repatriated for medical reasons is not allocated to the retained medical personnel, but is the responsibility of the medical personnel of the Detaining Power and of the Mixed Medical Commissions (Art. 112).

35. During the Russo-Japanese War (1904-1905) the Japanese exempted officer prisoners of war from the requirement to work. Ariga, La guerre russe-japonaise au point de vue de droit international 114 (1907). But compare Takahashi, who stated that Japan did not impose labor on any Russian prisoners of war! International Law Applied to the Russo-Japanese War 125 (1906).

36. The ICRC states that 26,000 German non-commissioned officer prisoners of war, whose identity papers had been taken from them in England, were compelled to work while interned in the United States because of their inability to prove their status. 1 ICRC Report 339. The German General Staff urged German non-commissioned officer prisoners of war to work, probably in order to avoid the deterioration, both physical and mental, which comes to the completely inactive prisoners of war. Ibid.

37. Early in 1945 the U.S. military authorities discovered that many German prisoners of war had false documents purporting to prove non-commissioned status. They thereupon required all German prisoners of war who claimed to be non-commissioned officers to produce proof of such status in the form of a "soldbuch" or other official document. Thousands were unable to do so and were reclassified as privates. A Brief History of the Office of the Provost Marshal General, World War II, 516 (mimeo., 1946). To some extent these may have been the same prisoners of war referred to in the preceding note.

38. It appears to the writer that the U.S. Army has created problems for itself in this respect by the establishment of a "specialist" classification of enlisted men who, although grouped in the same statutory grades as non-commissioned officers, are specifically stated not to be such. U.S. Army Regulations 600-201, June 20, 1956. The strict interpretation of the term "non-commissioned officers" contemplated by the U.S.S.R. is evidenced by its expressed desire to limit non-commissioned officer labor exemption privileges to regular army ("re-enlisted") personnel. Final Record of the Diplomatic Conference of Geneva of 1949 (hereinafter referred to as Final Record), Vol. IIA, pp. 348, 361, 566.

39. Pictet, Commentary 262.

40. Sec. 59, German Regulations, Compilation of Orders No. 13, May 16, 1942. The apparent magnanimity of this provision is somewhat nullified by the last two sentences thereof, which indicate that "the employment of British non-commissioned officers has resulted in so many difficulties that the latter have by far outweighed the advantages. The danger of sabotage, too, has been considerably increased thereby."

41. U.S. War Department Technical Manual 19-500, Enemy Prisoners of War, Oct. 5, 1944, Ch. 5, Sec. 1, para. 4c. A draft revision of this Manual, which is currently under consideration in the Department of the Army, provides that "a non-commissioned officer may, at any time, revoke his voluntary request for work."

42. Pictet, Commentary, Int. cit. The Commentary continues with the statement that "during the Second World War, however, prisoners of war were sometimes more or less compelled to sign a contract for an indefinite period which bound them throughout their captivity; that would be absolutely contrary to the present provision. " The present writer confesses himself unable to identify the portion of Art. 49 of the 1949 Convention which so provides, or to determine wherein, in this respect, it differs from the provisions of the 1929 Convention.

43. 1 ICRC Report 337-338.

44. Note 33 above.

45. Statement of Mr. William E. Gardner (U.K.), IIA Final Record 442. In a statement in a similar vein, Brig. Gen. Joseph V. Dillon, then the Provost Marshal General of the U.S. Air Force, and a member of the U.S. Delegation at Geneva, later wrote:

"Perhaps no section of the Convention gave rise to more debate and expressions of differences of view than that dealing with 'Labour of Prisoners of War.' At the outset, it appeared that all that could be agreed upon was the fact that the 1929 treatment of the subject was inadequate and ambiguous. " "The Genesis of the 1949 Convention Relative to the Treatment of Prisoners of War," 5 Miami Law Quarterly 40, 51 (1950).

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48. Art. 6, Second Hague Convention of 1899, notes 2 and 5 above. The only changes incorporated in Art. 6, Fourth Hague Convention of 1907, note 6 above, were periphrastic in nature.
49. “What constituted a direct relation with war operation was a matter of personal opinion or, indeed, guess.” Dillon, loc. cit. note 45 above, at 52. Similarly, in the I. G. Farben Case (U. S. v. Carl Krauch), 7 Trials, 1, the Military Tribunal said (8 ibid. 1189):

“To attempt a general statement in definition or clarification of the term ‘direct relation to war operations’ would be to enter a field that the writers and students of international law have found highly controversial....”

50. Flory, “Vers une nouvelle conception du prisonnier de guerre?” 58 Revue générale de droit international public 58 (1954); Janner, La Puissance protectrice en droit international d’après les expériences faites par la Suisse pendant la seconde guerre mondiale 54 (1948; original in German); Fellchenfeld, op. cit. note 29 above, at 13.
51. The United States found it necessary to establish a Prisoner of War Employment Review Board, which was called upon to make a great number of decisions in this area. Mason, “German Prisoners of War in the United States,” 39 A.J.L. 198 (1945). Postwar researchers have collated lists which include literally hundreds of occupations as to which specific decisions were made. Lewis, History 146-147, 166-167, 203; Tollefson, “Enemy Prisoners of War,” 32 Iowa Law Review 51, note 62 (1946).
52. Draft Revised or New Conventions for the Protection of War Victims 82-83 (Art. 42) (XVIIth International Red Cross Conference, Stockholm, 1948).
53. “... work which is normally required for the feeding, sheltering, clothing, transportation and health of human beings...” 1 Final Record 83. It is of interest that this was substantially the policy which had been followed by the United States in interpreting the provisions of Art. 31 of the 1929 Convention. MacKnight, loc. cit. note 31 above, at 54.
55. Art. 50 reads:

“Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

(a) agriculture;
(b) industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose;
(c) transport and handling of stores which are not military in character or purpose;
(d) commercial business, and arts and crafts;
(e) domestic service;
(f) public utility services having no military character or purpose.

“Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.”

56. In its Report to the Plenary Assembly of the Diplomatic Conference, Committee II (Prisoners of War) characterized this article as one which “clarifies [it] by a limitative enumeration of the categories of work which prisoners may be required to do.” 2A Final Record 566. On the contrary, the expression “military character and purpose” used in subparas. b, c, and f, of Art. 50, is almost indefinable. As to these subparagraphs, the basic problem, which existed when the words “war operations” were used, remains unchanged. Picquet, Commentary 266.

57. The difficulties experienced in selecting the appropriate verb to be used in the opening sentence of Art. 50 were typical of the over-all drafting problem. The following terms were contained in or suggested for the various texts, beginning with the original ICRC draft, which was submitted to the 1948 Stockholm Conference, and continuing chronologically through the various drafts, amendments, and discussions, until final approval of the article by the Plenary Assembly: “obliged to” (note 52 above); “required to” (1 Final Record 83); “obliged to” (3 ibid. 70); “employed on” (2A ibid. 272); “engaged in” (ibid. at 470); “obliged to” (ibid. at 344); “compelled to” (2B ibid. 176); and “compelled to” (Art. 50, note 55 above).
58. Para. 77, Prisoner of War Circular No. 1, note 31 above. Para. 78 of the same Circular contained the following informative enumeration:

“78. Labor in class one is primarily for the benefit of prisoners. It need not be confined to the prisoner of war camp or to the camp area. Class one labor includes:

a. That which is necessary for the maintenance or repair of the prisoner of war camp compounds including barracks, roads, walks, sewers, sanitary facilities, water pipes, and fences.
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"b. Labor incident to improving or providing for the comfort or health of prisoners, including work connected with the kitchens, canteens, fuel, garbage disposal, hospitals and camp dispensaries.

c. Work within the respective prisoner companies as cooks, cook’s helpers, tailors, cobbles, barbers, clerks and other persons connected with the interior economy of their companies. In apportioning work, consideration will be given by the company commander to the education, occupation, or profession of the prisoner."

59. The utilization of prisoner-of-war labor for the operation and maintenance of military installations occupied by the armed forces of the Detaining Power does not fall within the classification of camp administration referred to in the Convention. While many such uses would probably come within the category of domestic services (cooks, cook’s helpers, waiters, kitchen police, etc.), which are authorized, it would seem that many others are no longer permitted. (Employment in the Prisoner of War Information Bureau maintained by the Detaining Power is specifically authorized by Art. 122.)

60. Fairchild, op. cit. note 28 above, at 190. See also MacKnight, loc. cit. note 31 above, at 57.

61. In the spring of 1940 more than 90% of the Polish prisoners of war held by the Germans were employed in agriculture; and while this figure later dropped considerably, it always remained extremely high. Anon., "The Employment of Prisoners of War in Germany," note 24 above, at 317. In the United States, even though more than 50% of the man-months worked in industry by prisoners of war were performed in agricultural work, the demands for such labor could never be fully met. Lewis, History 125-126. An exception to the foregoing occurred in Canada, where the great majority of prisoners of war were used in the lumbering industry. Anon., "The Employment of Prisoners of War in Canada," 51 International Labour Review 335, 337 (March, 1945).

62. Pictet, Commentary 266. It is interesting to note that the enumeration originally prepared by the ICRC (note 52 above), which was ultimately restored to the Convention at the behest of the U.K. Delegation to the Conference, did not include agriculture as a separate item. A member of the U.S. Delegation urged that it be specifically listed, and his proposal was adopted without discussion or opposition. 2A Final Record 470.

63. 1 ICRC Report 329. For a specific example, see note 30 above. Unfortunately, little data is available concerning the activities of Protecting Powers in this regard, as they rarely publish any details of their wartime activities, even after the conclusion of peace (Levi, "Prisoners of War and the Protecting Power," 55 A.J.I.L. 374, 378 (1961)). An unofficial report of Swiss activities as a Protecting Power during World War II is contained in Janner, note 50 above.

64. The source of some of the wording and punctuation of subpara. (b) of Art. 50 is somewhat obscure. As submitted by Committee II (Prisoners of War) to the Plenary Assembly of the Diplomatic Conference, it read:

"... manufacturing industries, with the exception of iron and steel, machinery and chemical industries and of public works, and building operations which have a military character or purpose" (2A Final Record S85-S86). Although this portion of Art. 50 was approved by the Plenary Assembly without amendment, in the Final Act of the Conference (which is, of course, the official, signed version of the Convention), the same provision reads:

"... manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose" (1 Final Record 254).

These changes in wording and punctuation (made in the English version only) represent a considerable clarification and should eliminate many disputes which might otherwise have arisen. However, it would be interesting to know their origin!

65. Lewis, History 77. After World War II one of the U.S. Military Tribunals at Nuremberg held:

"... as a matter of law that it is illegal to use prisoners of war in armament factories and factories engaged in the manufacture of airplanes for use in the war effort." The Milch Case (U. S. v. Erhard Milch), note 25 above, at 867. The decision would, in part, probably have otherwise had the defense been able to show that the airplanes were intended exclusively for civilian use.

66. Pictet, Commentary 268-269.

67. As indicated in note 57 above, the decision to use the words "compelled to" in the first sentence of Art. 50 was reached only after the consideration and rejection of numerous alternatives. Words such as "prisoners of war may only be employed in" were strongly urged because they would preclude the Detaining Power from using pressure to induce prisoners of war to "volunteer" for work which they could not be compelled to do (2A Final Record 343); and words such as "prisoners of war may be obliged to do only" ("compelled to do only") were just as strongly urged on the very ground that the alternative proposal would preclude volunteering (ibid. at 340). The proponents of the latter position were successful in having their phraseology accepted by the Plenary Assembly.
Art. 25 of the Declaration of Brussels and Art. 71 of the
statement:

merely that many delegations believed that the phrase
military. A bowling alley or a tennis court or a clubhouse might be intended, perhaps exclusively, for use by
the military, but such structures certainly have no military use
purpose."

The foregoing position closely resembles the legal interpretation of the phrase in question proposed
by the present author and approved by The Judge Advocate General of the United States Army in an
unpublished opinion written in 1955 (JAGW 1955/88). It differs from the ICRC position, which is that
"everything which is commanded and regulated by the military authority is of a military character, in contrast
to what is commanded and regulated by the civil authorities." Pictet, Commentary 267.

The present writer finds it impossible to
create some difficulty in future interpretations. " He had been much more vehement at the Diplomatic Conference! (2A Final Record 342-343.)

The test is whether it is intended for military use, and not whether it is intended for use by the
military. A bowling alley or a tennis court or a clubhouse might be intended, perhaps exclusively, for use by
the military, but such structures certainly have no military use
purpose."

The particular task is considered, not the industry as a whole. The specific conditions attending
each job are decisive. For example, an otherwise dangerous task may be made safe by the use of a proper
appliances, and an otherwise safe job rendered dangerous by the circumstances in which the work is required
to be done. Work which is dangerous for the untrained may be safe for those whose training and experience
have made them adept in it." The third criterion mentioned in the text has already been discussed above.

In determining whether an industry was of a nature to require special study, The Judge Advocate
General of the United States Army rendered the following opinion in 1943:

"... If in particular industries the frequency of disabling injuries per million man-hours is:

1. Below 28.0—prisoner-of-war labor is generally available therein;
2. Between 28.0 and 35.0—the industry should be specifically studied, from the point of view of
hazard, before assigning prisoner-of-war labor therein;
3. Over 35.0—prisoner-of-war labor is unavailable, except for the particular work therein which is
not dangerous. . . ."

Those interested in the history and background of this problem and the debate at the Diplomatic
Conference are referred to the following sources: 1 ICRC Report 334; 3 Final Record 70-71; 2A ibid. 272-273,
443-444, 345; 2B ibid. 290-295, 298-299; Pictet, Commentary 277-278.

"This rule has the advantage of being clear and easy to apply. The reference is to objective rules
enforced by that Power and not the personal feelings of any individual member of the armed forces. The
essential thing is that the prisoner concerned may not be the laughing stock of the those around him." Pictet,
Commentary 277.

Although prohibitions against the use of prisoners of war on humiliating work were contained in
Art. 25 of the Declaration of Brussels and Art. 71 of the Oxford Manual (note 4 above), there was no similar
provision in the 1929 Convention. Nevertheless, during World War II the United States recognized the prohibition against the employment of prisoners of war on degrading or menial work as a "well settled rule of the customary law of nations" (MacKnight, loc. cit. note 31 above, at 54), and even prohibited their employment as orderlies for other than their own officers (Lewis, History 113). While this latter type of work is prohibited for personnel of the U. S. Army, it is believed that the prohibition is based upon policy rather than upon the "humiliating" nature of an orderly's functions. Apparently this is settled policy for the United States, as the same rule is found in the draft of the new directive on the subject of prisoner-of-war labor which is being prepared by the U. S. Army.

33. In addition, Art. 25 prescribes specific minimum standards for accommodations; Art. 26 provides for such additional rations as may be necessary because of the nature of the labor on which the prisoners of war are employed; and Art. 27 provides that prisoners of war shall receive clothing appropriate to the work to which they are assigned. It has been asserted that not only must the living conditions of prisoner-of-war laborers not be inferior to those of local nationals, but also that this provision may not "prevent the application of the other provisions of the Convention if, for instance, the standard of living of citizens of the Detaining Power is lower than the minimum standard required for the maintenance of prisoners of war," Pictet, Commentary 271. While the draftsmen did intend to establish two separate standards (2A Final Record 401), at least as to clothing, it is difficult to believe that any belligerent will provide prisoners of war with a higher standard of living than that to which its own civilian citizens have been reduced as a result of a rigid war economy.

84. Ibid. 275.
86. 2A Final Record 275.
87. It could be argued that a proper grammatical construction of the provision of the Convention makes only the protective equipment and not the training subject to national standards. However, this is debatable, and, even if true, it would merely result in the application of an international standard in the very area where the national standard would probably be highest.

88. The Judgment of the International Military Tribunal for the Far East (note 26 above, at 1002) mentioned "forced labor in tropical heat without protection from the sun" as one of the atrocities committed against prisoners of war by the Japanese. The motion picture, "The Bridge on the River Kwai," graphically portrayed the problem.

89. Art. 27 of the 1949 Convention specifically mentions that, in issuing clothing to prisoners of war (without regard to the work at which they are employed), the Detaining Power "shall make allowance for the climate of the region where the prisoners are detained."

90. Art. 89 of the 1949 Convention contains an enumeration of the punishments which may be administered to a prisoner of war as a disciplinary measure for minor violations of applicable rules and regulations.

91. At the Diplomatic Conference Mr. B. J. Wilhelm, the representative of the International Committee of the Red Cross, stated that experience had indicated that the majority of all prisoners of war were maintained in labor detachments. 2A Final Record 276. This is confirmed by the series of articles which had appeared in the International Labour Review during the course of World War II. See 47 International Labour Review 169, note 23 above, at 187 (general); 48 ibid. 316, note 24 above, at 318 (Germany); Anon., "The Employment of Prisoners of War in Great Britain," 49 ibid. 191 (Feb., 1944); and MacKnight, loc. cit. note 31 above, at 49 (United States).

92. In addition to the requirements of Art. 56 for the observance of the present Convention in labor detachments, specific provisions as to these detachments are contained in Arts. 33 (medical services), 35 (spiritual services), and 79 and 81 (prisoners' representatives), among others.

93. For example, Art. 25 provides that the billets provided for prisoners of war must be adequately heated. The fact that the parent prisoner-of-war camp has central heating, while the billets occupied by the men of the labor detachment have separate, but adequate, heating facilities, does not constitute a violation of the Convention.

94. This latter provision is included in order to enable them to register a complaint concerning their treatment, should they believe that it is below Convention standards. Of course, complaints may also be made to the Protecting Power who may visit these detachments whenever they so desire (Arts. 56 and 126), but these latter are not always immediately available, while the prisoners' representatives are. During World War II, both Great Britain and the United States provided for inspections by their own military authorities of the treatment of prisoners of war who were working for private employers. Anon., "The Employment of Prisoners of War in Great Britain," note 91 above, at 192; Mason, loc. cit. note 51 above, at 212.

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96. In Pictet, Commentary 296, the argument is made, and with considerable merit, that escape is an act of war and that only military personnel of the Detaining Power are authorized to respond to this act of war with another act of war—the use of weapons against a prisoner of war. This theory finds support in the safeguards surrounding the use of weapons against prisoners of war, especially those involved in escapes, found in Art. 42 of the 1949 Convention.


98. By becoming parties to the Convention they have given up their sovereign right to enter into special agreements adversely affecting the rights guaranteed to prisoners of war by the Convention.

99. Statement of Mr. R. J. Wilhelm, the representative of the International Committee of the Red Cross, 2A Final Record 275.

100. 2B ibid. 300.

101. The Conference of Government Experts called by the ICRC in 1947 had originally considered setting maximum working hours, but finally decided against it as being "discrimination in favour of PW, which would not be acceptable to the civilian population of the DP." Report on the Work of the Conference of Government Experts 176 (1947). As stated in Anon., "The Conditions of Employment of Prisoners of War," note 23 above, at 194:

"The prisoner cannot expect better treatment than the civilian workers of the detaining Power... His fate depends upon the extent to which the standards of the country where he is imprisoned have been lowered through the exigencies of the war."

102. During World War II, many countries used the piece or task-work method of controlling prisoner-of-war labor. Pictet, Commentary 282; Anon., "The Employment of Prisoners of War in Canada," note 61 above, at 337. In the United States the piece-work system was used, but to control pay rather than work hours. Lewis, History 120-121. As long as the pay does not drop below the minimum prescribed by the Convention, there would appear to be no objection to this procedure.

103. Nor was it subject to national standards in the 1929 Convention, but the Germans refused to accord prisoners of war a weekly day of rest on the ground that the civilian population did not receive it. Janner, op.cit. note 50 above.

104. Pictet, Commentary 313; ICRC Report 286.

105. Actually, Art. 62 refers to "working rate of pay" twice and to "working pay" four times, while Arts. 54 and 64 refer only to "working pay." The term "indemnité de travail" is used in the French version of all of these articles and the difference in English appears to be an error in drafting. The report of the Financial Experts at the 1949 Diplomatic Conference (2A Final Record 557) states:

"It appeared that the expression 'wages' was inappropriate and might give the impression that prisoners of war while fed and housed at the cost of the Detaining Power were in addition being remunerated for their work at a rate corresponding to the remuneration of a civilian worker responsible for maintaining himself and his family out of his wages. For this reason, it was decided to substitute the terms 'working pay' wherever this was necessary."

106. The inadequacy of the minimum set by the Convention, which amounts to approximately six cents a day in money of the United States (approximately 5 d. in British money), is illustrated by the fact that almost a century ago, in 1864, during the American Civil War, the Federal Government set the rate of prisoner-of-war pay at ten cents a day for the skilled and five cents a day for the unskilled! Lewis, History 39. During World War II the United States paid prisoners of war 80 cents a day. Ibid. at 77. Under the incentive of the piece-work system it was possible to increase this to $1.20 a day. Ibid. at 120.

107. For some of these differences, see the quotation in note 105 above, and Mojonny, The Labor of Prisoners of War 24 (unpublished thesis, Indiana University, 1954). For a contrary view, see Pictet, Commentary 115.

108. 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, note 25 above, at 425. Art. 16 of the 1949 Convention specifically prohibits "adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria."

109. This was the policy followed by the United States during World War II. Prisoner of War Circular No. 1, note 31 above, sec. 85.

111. Lauterpacht, loc. cit. note 97 above. Lauterpacht labels the negotiations as "elaborate" and as "concerning the relatively trivial question of the interpretation of Article 27."

112. Prisoner of War Circular No. 1, note 31 above, secs. 91 and 92; MacKnight, loc. cit. note 31 above, at 63.

113. Lauterpacht, loc. cit.

114. E.g., Lewis, History 156.

115. In the British Manual of Military Law, op. cit. note 95 above, sec. 185, note 1, the statement is made that during the World War II negotiations the United Kingdom "considered that its domestic workmen's compensation legislation was too complex and so bound up with the conditions of free civilian workmen as to make it impracticable to apply it to prisoners of war." That position has become no less valid with the passing of the years since the end of that war.

116. Arts. 40 and 95 of the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (6 U. S. Treaties 3516; 75 U.N. Treaty Series 287 (1973); 50 A.J.I.L. Supp. 724 (1956)) place upon the Detaining Power the additional burden of providing compensation for occupational accidents and diseases. The variation between the two conventions was noted by the Co-ordination Committee of the Diplomatic Conference (2B Final Record 149), but Committee II, to which had been assigned the responsibility for preparing the text of the prisoner-of-war convention, determined that such a provision was not necessary for prisoners of war (2A Final Record 402).

117. The suggestion has been made that, "since under Article 51, paragraph 2, he [the prisoner of war] is covered by the national legislation [of the Detaining Power] concerning the protection of labour," a prisoner of war disabled in an industrial accident or by an industrial disease would, while still a prisoner of war, be entitled to benefit from local workmen's compensation laws. Pictet, Commentary 286-287. It is believed that the application of this general provision of the Convention has been restricted in this area by the specific provision on this subject.


119. The availability of the latter as a channel of complaint is not clearly defined. Levie, "Prisoners of War and the Protecting Power," loc. cit. note 63 above, at 396.

120. The activities of the International Committee of the Red Cross are likewise a major deterrent to the improper application of the Convention.