FOREWORD

A list of the treaties relating to the conduct of land warfare which have been ratified by the United States, with the abbreviated titles used in this Manual, is set forth on page iii. The official English texts or a translation of the principal treaty provisions are quoted *verbatim* in bold type in the relevant paragraphs throughout the Manual. It should be noted, however, that the official text of the Hague Conventions of 18 October 1907 is the French text which must be accepted as controlling in the event of a dispute as to the meaning of any provision of these particular conventions. (See TM 27-251.)

The 1949 Geneva Conventions for the Protection of War Victims have been ratified by the United States and came into force for this country on 2 February 1956. The effect of these four conventions upon previous treaties to which the United States is a party is discussed in detail in paragraph 5 of the text. Each of the Hague Conventions of 1899 and 1907 and each of the Geneva Conventions of 1864, 1906, and 1929 will, of course, continue in force as between the United States and such of the other parties to the respective conventions as have not yet ratified or adhered to the later, superseding convention(s) governing the same subject matter. Moreover, even though States may not be parties to, or strictly bound by, the 1907 Hague Conventions and the 1929 Geneva Convention relative to the Treatment of Prisoners of War, the general principles of these conventions have been held declaratory of the customary law of war to which all States are subject. For this reason, the United States has adopted the policy of observing and enforcing the terms of these conventions in so far as they have not been superseded by the 1949 Geneva Conventions which necessarily govern the relations between the parties to the latter (see pars. 6 and 7 of the text).

The essential provisions of each of the earlier conventions mentioned above have been substantially incorporated into the more recent and more comprehensive conventions on the same subject matter, so that observance of the latter will usually include observance of the former. For this reason, only the more recent 1949 Geneva Conventions and the relevant provisions of the 1907 Hague Conventions are quoted in this Manual.

Pertinent information concerning the current status of ratifications, adherences, reservations, and denunciations (withdrawals) will be transmitted by higher authority to commanders in the field, as occasions, arise, thus rendering unnecessary the inclusion of such data in this Manual, and avoiding the frequent changes that such inclusion would entail.

Whenever possible, this Manual should be used in conjunction with TM 27-251, *Treaties Governing Land Warfare.*

FM 27-5, *Civil Affairs/Military Government,* which deals with military government policy and administration, should be consulted in connection with chapter 6 of the present Manual.

CHANGE No. 1

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D. C., *15 July 1976*

THE LAW OF LAND WARFARE

FM 27-10, 18 July 1956, is changed as follows:

Page 5. Paragraph 5 *a* (13) is added:

(13) Geneva protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare of 17 June 1925 *(T. I.A .S.* —), cited herein as Geneva Protocol of 1925.

Page 18. Paragraph 37 *b* is superseded as follows:

b. Discussion of Rule. The foregoing rule prohibits the use in war of poison or poisoned weapons against human beings. Restrictions on the use of herbicides as well as treaty provisions concerning chemical and bacteriological warfare are discussed in paragraph 38.

Page 18. Paragraph 38 is superseded as follows:

38. Chemical and Bacteriological Warfare

a. Treat Provision. Whereas the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilized world; and

Whereas the prohibition of such use has been declared in Treaties to which the majority of Powers of the world are Parties; and

To the end that this prohibition shall be universally accepted as a part of International Law, binding alike the conscience and the practice of nations:

* * * the High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of

warfare and agree to be bound as between themselves according to the terms of this declaration. (Geneva Protocol of 1925.)

b. United States Reservation to the Geneva Protocol of 1925. T he said Protocol shall cease to be binding on the government of the United States with respect to the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials, or devices, in regard to an enemy State if such State or any of its allies fails to respect the prohibitions laid down in the Protocol.

c. Renunciation of Certain Uses in War of Chemical Herbicides and Riot Control Agents. The United States renounces, as a matter of national policy, first use of herbicides in war except use, under regulations applicable to their domestic use, for control of vegetation within US bases and installations or around their immediate defensive perimeters, and first use of riot control agents in war except in defensive military modes to save lives such as:

(1) Use of riot control agents in riot control situations in areas under direct and distinct US military control, to include controlling rioting prisoners of war.

(2) Use of riot control agents in situations in which civilians are used to mask or screen attacks and civilian casualties can be reduced or avoided.

(8) Use of riot control agents in rescue missions in remotely isolated areas, of downed aircrews and passengers, and escaping prisoners.

(4) Use of riot control agents in rear echelon areas outside the zone of immediate combat to protect convoys from civil disturbances, terrorists and paramilitary organizations.

* * * * *

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America by the Constitution and laws of the United States and as Commander-in-Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense shall take all necessary measures to ensure that the use by the Armed Forces of the United States of any riot control agents and chemical herbicides in war is prohibited unless such use has Presidential approval, in advance.

SECTION 2. The Secretary of Defense shall prescribe the rules and regulations he deems necessary to ensure that the national policy herein announced shall be observed by the Armed Forces of the United States. *(Exec. Order No. 11850, 40 Fed. Reg. 16187 (1975).)*

d. Discussion. Although the language of the 1925 Geneva Protocol appears to ban unqualifiedly the use in war of the chemical weapons within the scope of its prohibition, reservations submitted by most of the Parties to the Protocol, including the United States, have, in effect, rendered the Protocol a prohibition only of the first use in war of materials within its scope. Therefore, the United States, like many other Parties, has reserved the right to use chemical weapons against a state if that state or any of its allies fails to respect the prohibitions of the Protocol.

The reservation of the United States does not, however, reserve the right to retaliate with bacteriological methods of warfare against a state if that state or any of its allies fails to respect the prohibitions of the Protocol. The prohibition concerning bacteriological methods of warfare which the United States has accepted under the Protocol, therefore, proscribes not only the initial but also any retaliatory use of bacteriological methods of warfare. In this connection, the United States considers bacteriological methods of warfare to include not only biological weapons but also toxins, which, although not living organisms and therefore susceptible of being characterized as chemical agents, are generally produced from biological agents. All toxins, however, regardless of the manner of production, are regarded by the United States as bacteriological methods of warfare within the meaning of the proscription of the Geneva Protocol of 1925.

Concerning chemical weapons, the United States considers the Geneva Protocol of 1925 as applying to both lethal and incapacitating chemical agents. Incapacitating agents are those producing symptoms that persist for hours or even days after exposure to the agent has terminated. It is the position of the United States that the Geneva Protocol of 1925 does not prohibit the use in war of either chemical herbicides or riot control agents, which are those agents of a type widely used by governments for law enforcement purposes because they produce, in all but the most unusual circumstances, merely transient effects that disappear within minutes after exposure to the agent has terminated. In this connection, however, the United States has unilaterally renounced, as a matter of national policy, certain uses in war of chemical herbicides and riot control agents *(see Exec. Order No. 11850 above).* The policy and provisions of Executive Order No.

11850 do not, however, prohibit or restrict the use of chemical herbicides or riot control agents by US armed forces either (1) as retaliation in kind during armed conflict or (2) in situations when the United States is not engaged in armed conflict. Any use in armed conflict of herbicides or riot control agents, however, requires Presidential approval in advance.

The use in war of smoke and incendiary materials is not prohibited or restricted by the Geneva Protocol of 1925.

Page 19. Paragraphs 39, 40, and 41 are superseded as follows:

39. Bombardment of Undefended Places Forbidden

a. Treaty Provision. The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited. (HR, art. 25.)

b. Interpretation. An undefended place, within the meaning of Article 25, HR, is any inhabited place near or in a zone where opposing armed forces are in contact which is open for occupation by an adverse party without resistance. In order to be considered as undefended, the following conditions should be fulfilled:

(1) Armed forces and all other combatants, as well as mobile weapons and mobile military equipment, must have been evacuated, or otherwise neutralized;

(2) no hostile use shall be made of fixed military installations or establishments;

(3) no acts of warfare shall be committed by the authorities or by the population; and,

(4) no activities in support of military operations shall be undertaken.

The presence, in the place, of medical units, wounded and sick, and police forces retained for the sole purpose of maintaining law and order does not change the character of such an undefended place.

40. Permissible Objects of Attack or Bombardment

a. Attacks Against the Civilian Population as Such Prohibited. Customary international law prohibits the launching of attacks (including bombardment) against either the civilian population as such or individual civilians as such.

b. Defended Places. Defended places, which are outside the scope of the proscription of Article 25, HR, are permissible objects of attack (including bombardment). In this context, defended places include—

(1) A fort or fortified place.

(2) A place that is occupied by a combatant military force or through which such a force is passing. The occupation of a place by medical units alone, however, is not sufficient to render it a permissible object of attack.

(3) A city or town surrounded by detached defense positions, if under the circumstances the city or town can be considered jointly with such defense positions as an indivisible whole.

c. Military Objectives. Military objectives— *i.e,* combatants, and those objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage—are permissible objects of attack (including bombardment). Military objectives include, for example, factories producing munitions and military supplies, military camps, warehouses storing munitions and military supplies, ports and railroads being used for the transportation of military supplies, and other places that are for the accommodation of troops or the support of military operations. Pursuant to the provisions of Article 25, HR, however, cities, towns, villages, dwellings, or buildings which may be classified as military objectives, but which are undefended (para 39 *b),* are not permissible objects of attack.

41. Unnecessary Killing and Devastation

Particularly in the circumstances referred to in the preceding paragraph, loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained. Those who plan or decide upon an attack, therefore, must take all reasonable steps to ensure not only that the objectives are identified as military objectives or defended places within the meaning of the preceding paragraph but also that these objectives may be attacked without probable losses in lives and damage to property disproportionate to the military advantage anticipated. Moreover, once a fort or defended locality has surrendered, only such further damage is permitted as is demanded by the exigencies of war, such as the removal of fortifications, demolition of military buildings, and destruction of military stores *(HR, art. 23, par. (g); GC, art. 53).*

By Order of the Secretary of the Army:

FRED C. WEYAND
General, United States Army
Chief of Staff

Official:

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Major General, United States Army
The Adjutant General

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FIELD MANUAL No. 27-10

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., *18 July 1956*

THE LAW OF LAND WARFARE

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* This manual supersedes FM 27-10, 1 October 1940, including C 1, 15 November 1944.

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ABBREVIATIONS

GWS ..... Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949.

GWS Sea ..... Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949.

GPW ..... Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949.

GC ..... Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

GPW 1929 ..... Geneva Convention Relative to the Treatment of Prisoners of War, 27 July 1929.

GWS 1929 ..... Geneva Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field, 27 July 1929.

H. III ..... Hague Convention No. III Relative to the Opening of Hostilities, 18 October 1907.

H. IV ..... Hague Convention No. IV Respecting the Laws and Customs of War on Land, 18 October 1907.

HR ..... Annex to Hague Convention No. IV, 18 October 1907, embodying the Regulations Respecting the Laws and Customs of War on Land.

H. V ..... Hague Convention No. V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 18 October 1907.

H. IX ..... Hague Convention No. IX concerning Bombardment by Naval Forces in Time of War, 18 October 1907.

H. X ..... Hague Convention No. X for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention, 18 October 1907.

Roerich Pact ..... Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, 15 April 1935.

UCMJ ..... Uniform Code of Military Justice (64 Stat. 108; 50 U.S. C. 551-736).

CHAPTER 1

BASIC RULES AND PRINCIPLES

Section I. GENERAL

1. Purpose and Scope

The purpose of this Manual is to provide authoritative guidance to military personnel on the customary and treaty law applicable to the conduct of warfare on land and to relationships between belligerents and neutral States. Although certain of the legal principles set forth herein have application to warfare at sea and in the air as well as to hostilities on land, this Manual otherwise concerns itself with the rules peculiar to naval and aerial warfare only to the extent that such rules have some direct bearing on the activities of land forces.

This Manual is an official publication of the United States Army. However, those provisions of the Manual which are neither statutes nor the text of treaties to which the United States is a party should not be considered binding upon courts and tribunals applying the law of war. However, such provisions are of evidentiary value insofar as they bear upon questions of custom and practice.

2. Purposes of the Law of War

The conduct of armed hostilities on land is regulated by the law of land warfare which is both written and unwritten. It is inspired by the desire to diminish the evils of war by:

a. Protecting both combatants and noncombatants from unnecessary suffering;

b. Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and

c. Facilitating the restoration of peace.

3. Basic Principles

a. Prohibitory Effect. The law of war places limits on the exercise of a belligerent's power in the interests mentioned in paragraph 2 and requires that belligerents refrain from employing any kind or degree of violence which is not actually necessary for military purposes and that they conduct hostilities with regard for the principles of humanity and chivalry.

The prohibitory effect of the law of war is not minimized by "military necessity" which has been defined as that principle which justifies those measures not forbidden by international law which are indispensable for securing the complete submission of the enemy as soon as possible. Military necessity has been generally rejected as a defense for acts forbidden by the customary and conventional laws of war inasmuch as the latter have been developed and framed with consideration for the concept of military necessity.

b. Binding on States and Individuals. The law of war is binding not only upon States as such but also upon individuals and, in particular, the members of their armed forces.

4. Sources

The law of war is derived from two principal sources:

a. Lawmaking Treaties (or Conventions), such as the Hague and Geneva Conventions.

b. Custom. Although some of the law of war has not been incorporated in any treaty or convention to which the United States is a party, this body of unwritten or customary law is firmly established by the custom of nations and well defined by recognized authorities on international law.

Lawmaking treaties may be compared with legislative enactments in the national law of the United States and the customary law of war with the unwritten Anglo-American common law.

5. Lawmaking Treaties

a. Treaties to Which the United States Is a Party. The United States is a party to the following conventions pertinent to warfare on land:

(1) Hague Convention No. III of 18 October 1907, Relative to the Opening of Hostilities *(36 Stat.*[1] *2259, Treaty Series 598),* **cited herein as *H. III.***

(2) Hague Convention No. IV of 18 October 1907, Respecting the Laws and Customs of War on Land *(36 Stat. 2277; Treaty Series 539),* **cited herein as H. IV, and the Annex thereto, embodying the Regulations Respecting the Laws and Customs of War on Land** *(36 Stat. 2295; Treaty Series 539),* **cited herein as *HR.***

(3) Hague Convention No. V of 18 October 1907, Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land *(36 Stat. 2310; Treaty Series 540),* **cited herein as *H. V.***

[1] *United States Statutes at Large.*

(4) **Hague Convention No. IX of 18 October 1907, Concerning Bombardment by Naval Forces in Time of War** *(36 Stat. 2351; Treaty Series 542),* **cited herein as *H. IX.***

(5) **Hague Convention No. X of 18 October 1907, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention** *(36 Stat. 2371; Treaty Series No. 543),* **cited herein as *H. X.***

(6) **Geneva Convention Relative to the Treatment of Prisoners of War of 27 July 1929** *(47 Stat. 2021; Treaty Series 846),* **cited herein as *GPW 1929.***

(7) **Geneva Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field of 27 July 1929** *(47 Stat. 2074; Treaty Series 847),* **cited herein as *GWS 1929.***

(8) **Treaty on the Protection of Artistic and Scientific Institions and Historic Monuments of 15 April 1985** *(49 Stat. 3267; Treaty Series 899),* **cited herein as the *Roerich Pact.* Only the United States and a number of the American Republics are parties to this treaty.**

(9) **Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949** *(T. I. A. S.*[2] *3362),* **cited herein as GWS.**

(10) **Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949** *(T. I. A. S. 3363),* **cited herein as *GWS* Sea.**

(11) **Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949** *(T. I. A. S. 3364),* **cited herein as *GPW*.**

(12) **Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949** *(T. I. A. S. 3365),* **cited herein as *GC.***

b. Effect of the Geneva Convention of 1949. GWS replaces the previous Geneva Wounded and Sick Conventions of 22 August 1864, 6 July 1906, and 27 July 1929 in relations between parties to GWS *(see GWS, art. 59). GWS Sea* replaces Hague Convention No. X of 18 October 1907, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906 in relations between parties to *GWS Sea (see GWS Sea, art. 58). GPW* replaces *GPW 1929* in relations between parties to *GPW (see GPW, art 134)* ; in relations between parties to *H. IV* and the corresponding convention of 1899 and which are also parties to *GPW,* it is complementary

[2]Treaties and Other International Acts Series.

to Chapter II of the *HR (see GPW, art. 135). GC,* in relations between parties to *H. IV* and the corresponding convention of 1899, is supplementary to Sections II and III of the *HR (see GC, art. 154).*

6. Custom

Evidence of the customary law of war, arising from the general consent of States, may be found in judicial decisions, the writings of jurists, diplomatic correspondence, and other documentary material concerning the practice of States. Even though individual States may not be parties to or otherwise strictly bound by *H. IV* and *GPW 1929,* the former convention and the general principles of the latter have been held to be declaratory of the customary law of war, to which all States are subject.

The Preamble to the *HR* specifically provides:

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

Similarly, a common article of the Geneva Conventions of 1949 *(GWS, art. 63; GWS Sea, art. 62; GPW, art. 142; GC, art. 158)* provides that the denunciation of (withdrawal from) any of the Geneva Conventions of 1949, *** * * shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.**

7. Force of the Law of War

a. Technical Force of Treaties and Position of the United States. Technically, each of the lawmaking treaties regarding the conduct of warfare is, to the extent established by its terms, binding only between the States that have ratified or acceded to, and have not thereafter denounced (withdrawn from), the treaty or convention and is binding only to the extent permitted by the reservations, if any, that have accompanied such ratification or accession on either side. The treaty provisions quoted in this manual in bold-face type are contained in treaties which have been ratified without reservation, except as otherwise noted, by the United States.

These treaty provisions are in large part but formal and specific applications of general principles of the unwritten law. While solemnly obligatory only as between the parties thereto, they may be said also to represent modern international public opinion as to how

belligerents and neutrals should conduct themselves in the particulars indicated.

For these reasons, the treaty provisions quoted herein will be strictly observed and enforced by United States forces without regard to whether they are legally binding upon this country. Military commanders will be instructed which, if any, of the written rules herein quoted are not legally binding as between the United States and each of the States immediately concerned, and which, if any, for that reason are not for the time being to be observed or enforced.

b. Force of Treaties Under the Constitution. Under the Constitution of the United States, treaties constitute part of the "supreme Law of the Land" (art. VI, clause 2). In consequence, treaties relating to the law of war have a force equal to that of laws enacted by the Congress. Their provisions must be observed by both military and civilian personnel with the same strict regard for both the letter and spirit of the law which is required with respect to the Constitution and statutes enacted in pursuance thereof.

c. Force of Customary Law. The unwritten or customary law of war is binding upon all nations. It will be strictly observed by United States forces, subject only to such exceptions as shall have been directed by competent authority by way of legitimate reprisals for illegal conduct of the enemy (see par. 497). The customary law of war is part of the law of the United States and, insofar as it is not inconsistent with any treaty to which this country is a party or with a controlling executive or legislative act, is binding upon the United States, citizens of the United States, and other persons serving this country.

8. Situations to Which Law of War Applicable

a. Types of Hostilities. War may be defined as a legal condition of armed hostility between States. While it is usually accompanied by the commission of acts of violence, a state of war may exist prior to or subsequent to the use of force. The outbreak of war is usually accompanied by a declaration of war (see par. 20).

Instances of armed conflict without declaration of war may include, but are not necessarily limited to, the exercise of armed force pursuant to a recommendation, decision, or call by the United Nations, in the exercise of the inherent right of individual or collective self-defense against armed attack, or in the performance of enforcement measures through a regional arrangement, or otherwise, in conformity with appropriate provisions of the United Nations Charter.

b. Customary Law. The customary law of war applies to all cases of declared war or any other armed conflict which may arise between the United States and other nations, even if the state of war is not recognized by one of them. The customary law is also applicable

to all cases of occupation of foreign territory by the exercise of armed force, even if the occupation meets with no armed resistance.

c. Treaties. Treaties governing land warfare are applicable to various forms of war and armed conflict as provided by their terms. The Hague Conventions apply to "war." Common Article 2 of the Geneva Conventions of 1949 states:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.*(GWS, GWS Sea, GPW, GC, art. 2.)*

d. Special Case of Civil Wars. See paragraph 11.

9. Applicability of Law of Land Warfare in Absence of a Declamation of War

As the customary law of war applies to cases of international armed conflict and to the forcible occupation of enemy territory generally as well as to declared war in its strict sense, a declaration of war is not an essential condition of the application of this body of law. Similarly, treaties relating to “war” may become operative notwithstanding the absence of a formal declaration of war.

10. When Law of Land Warfare Ceases To Be Applicable

The law of land warfare generally ceases to be applicable upon:

a. The termination of a war by agreement, normally in the form of a treaty of peace; or

b. The termination of a war by unilateral declaration of one of the parties, provided the other party does not continue hostilities or otherwise decline to recognize the act of its enemy; or

c. The complete subjugation of an enemy State and its allies, if prior to *a* or *b;* or

d. The termination of a declared war or armed conflict by simple cessation of hostilities.

However, certain designated provisions of the Geneva Conventions of 1949 (see *GC, art. 6;* par 249 herein) continue to be operative, not-

withstanding the termination of any antecedent hostilities, during the continuance of a military occupation. Insofar as the unwritten law of war and the Hague Regulations extend certain fundamental safeguards to the persons and property of the populations of occupied territory, their protection continues until the termination of any occupation having its origin in the military supremacy of the occupant, not withstanding the fact the Geneva Convention relative to the Protection of Civilian Persons may have ceased to be applicable.

11. Civil War

a. Customary Law. The customary law of war becomes applicable to civil war upon recognition of the rebels as belligerents.

b. Geneva Conventions of 1949.

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

***(a)* violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;**

***(b)* taking of hostages;**

***(c)* outrages upon personal dignity, in particular, humiliating and degrading treatment;**

***(d)* the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.**

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict. *(GWS,GPW,GWS, Sea, GC, art. 3.)*

12. Military Government and Martial Law Distinguished

In the practice of the United States, military government is the form of administration which may be established and maintained for the government of areas of the following types that have been subjected to military occupation:

a. Enemy territory.

b. Allied territory recovered from enemy occupation, when that territory has not been made the subject of a civil affairs agreement (see par. 354).

c. Other territory liberated from the enemy, such as neutral territory and areas unlawfully incorporated by the enemy into its own territory, when that territory has not been made the subject of a civil affairs agreement.

d. Domestic territory recovered from rebels treated as belligerents.

Although military government is an accepted concept in the law of the United States, the limits placed upon its exercise are prescribed by the international law of belligerent occupation. Other countries exercise jurisdiction in occupied areas through types of administration analogous to military government even though they may be designated by other names.

In the United States, martial law is the temporary government of the civil population of domestic territory through the military forces, without the authority of written law, as necessity may require. The most prominent distinction between military government, as that term is used herein, and martial law is that the former is generally exercised in the territory of, or territory formerly occupied by, a hostile belligerent and is subject to restraints imposed by the international law of belligerent occupation, while the latter is invoked only in domestic territory, the local government and inhabitants of which are not treated or recognized as belligerents, and is governed solely by the domestic law of the United States.

So far as the United States forces are concerned, military government and martial law are exercised by the military commander under the direction of the President, as Commander in Chief of the Armed Forces.

13. Military Jurisdiction

Military jurisdiction is of two kinds: first, that which is conferred by that branch of a country's municipal law which regulates its military establishment; second, that which is derived from international law, including the law of war.

In the Army of the United States, military jurisdiction is exercised through the following military tribunals:

a. Courts-martial.

b. Military commissions.

c. Provost courts.

d. Other military tribunals.

While general courts-martial have concurrent jurisdiction with military commissions, provost courts, and other types of military tribunals to try any offender who by the law of war is subject to trial by military tribunals *(UCMJ, art. 18),* it has generally been held that military commissions and similar tribunals have no jurisdiction of such purely military offenses specified in the Uniform Code of Military Justice as are expressly made punishable by sentence of court-martial (except where the military commission is also given express statutory authority over the offense *(UCMJ, arts. 104, 106)).* In practice, offenders who are not subject to the Uniform Code of Military Justice but who by the law of war are subject to trial by military tribunals, are tried by military commissions, provost courts, or other forms of military tribunals.

In areas occupied by United States forces, military jurisdiction over individuals, other than members of the Armed Forces, who are charged with violating legislation or orders of the occupant is usually exercised by military government courts. Although sometimes designated by other names, these tribunals are actually military commissions. They sit in and for the occupied area and thus exercise their jurisdiction on a territorial basis.

14. Dissemination of the 1949 Geneva Conventions

a. Wounded and Sick Convention; Wounded and Sick at Sea Convention.

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmed of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains. *(GWS, art. 47, GWS Sea, art. 48.)*

b. Prisoners of War Convention.

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmed of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions. *(GPW, art. 127.)*

c. Civilians Convention.

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries and, in particular, to include the study thereof in their programmed of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of-protected persons, must possess the text of the Convention and be specially instructed as to its provisions. *(GC, art. 144.)*

Section II. PROTECTING POWERS

15. Protecting Powers

The Geneva Conventions of 1949 contain certain common provisions regarding the safeguarding of the interests of the belligerents by nations designated as "Protecting Powers." These provisions are set forth in the following paragraphs.

16. Functions of Protecting Powers

a. Treaty Provision.

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible, the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. *(GWS, art. 8; GWS Sea, art. 8; GPW, art 8; GC, art. 9.)*

b. Article 8, *GWS* and *GWS Sea,* contains the following additional provision:

Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military neccessities.

Except as specifically provided otherwise by *GPW* and *GC*, the activities of representatives or delegates of the Protecting Powers under these conventions may not be restricted even in case of imperative military necessity.

17. Activities of the International Committee of the Red Cross

The provisions of the present Convention [s] constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of [persons protected by the convention] and for their relief.*(GWS art. 9; GWS Sea, art. 9; GPW, art. 9; GC, art. 10.)*

18. Substitutes for Protecting Powers

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When * * * [persons protected by the convention] do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such, an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever, in the present Convention, mention is made of a Protecting Power, such mention also applies to substitute organizations in the sense of the present Article. *(GWS, art. 10; GWS Sea, art. 10; GPW, art. 10; GC, art. 11.)*

19. Conciliation Procedure

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for * * * [persons protected by the convention] possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting. *(GWS, art. 11; GWS Sea, art. 11; GPW, art. 11; GC, art. 12.)*

CHAPTER 2
HOSTILITIES

Section I. COMMENCEMENT OF HOSTILITIES

20. Declaration of War Required

a. Treaty Provision.

The Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war. *(H. III, art. 1.)*

b. Surprise Still Possible. Nothing in the foregoing rule requires that any particular length of time shall elapse between a declaration of war and the commencement of hostilities.

21. Notification to Neutrals

The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral Powers, nevertheless, cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war. *(H. III, art. 2.)*

22. When Articles of Hague Convention No. III Effective Between Parties

Article I of the present Convention shall take effect in case of war between two or more of the Contracting Powers

Article II is binding as between a belligerent Power which is a party to the Convention and neutral Powers which are also parties to the Convention. *(H. III, art. 3.)*

23. Present Effect of Foregoing Rules

The Charter of the United Nations makes illegal the threat or use of force contrary to the purpose of the United Nations. It requires members of the organization to bring about by peaceful means adjustment or settlement of international disputes or situations which might lead to a breach of the peace. However, a nonmember nation or a member nation which violates these provisions of the Charter commits a further breach of international law by commencing hostilities without a declaration of war or a conditional ultimatum as required by the foregoing articles of Hague Convention No. III. Conversely,

a State which resorts to war in violation of the Charter will not render its acts of aggression or breach of the peace any the less unlawful by formally declaring war.

24. Constitutional Provision

Article 1, section 8, clause 11, of the United States Constitution provides that "The Congress shall have power * * * to declare War." The law of war may, however, be applicable to an international conflict, notwithstanding the absence of a declaration by the Congress. (See pars. 8 and 9, concerning the situations to which the law of war has application.)

25. Enemy Status of Civilians

Under the law of the United States, one of the consequences of the existence of a condition of war between two States is that every national of the one State becomes an enemy of every national of the other. However, it is a generally recognized rule of international law that civilians must not be made the object of attack directed exclusively against them.

26. Effect on Enemy Aliens

Enemy aliens located or resident in United States territory are not necessarily made prisoners or interned *en masse* on the breaking out of hostilities. Such persons may be allowed to leave the United States if their departure is consistent with national interest *(GC, art. 35;* par. 274 herein). If the security of the United States makes it absolutely necessary, enemy aliens may be placed in assigned residence or internment *(GC, art. 42;* par. 281 herein). Measures of control are normally taken with respect to at least persons known to be active or reserve members of a hostile army, persons who would be liable to service in the enemy forces, and persons who it is expected would furnish information or other aid to a hostile State. (See ch. V, sec. IV, concerning the treatment of aliens in the territory of a party to the conflict.)

27. Expulsion

In modern practice at the outbreak of hostilities the expulsion of the citizens or subjects of the enemy is generally decreed from seaports, the area surrounding airbases, airports, and fortified places, areas of possible attack, and the actual or contemplated theaters of operation. When expulsion is decreed, the persons expelled should be given such reasonable notice, consistent with public safety, as will enable them to arrange for the collection, disposal, and removal of their goods and property and for the settlement of their personal affairs. Such persons do not, however, benefit from the provisions of Articles 41 through 45, *GC* (pars. 280-284).

Section II. FORBIDDEN CONDUCT WITH RESPECT TO PERSONS

28. Refusal of Quarter

It is especially forbidden * * * to declare that no quarter will be given. (HR, *art. 23, par. (d).)*

29. Injury Forbidden After Surrender

It is especially forbidden * * * to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion. *(HR, art. 23, par. (c).)*

30. Persons Descending by Parachute

The law of war does not prohibit firing upon paratroops or other persons who are or appear to be bound upon hostile missions while such persons are descending by parachute. Persons other than those mentioned in the preceding sentence who are descending by parachute from disabled aircraft may not be fired upon.

31. Assassination and Outlawry

HR provides:

It is especially forbidden * * * to kill or wound treacherously individuals belonging to the hostile nation or army.*(HR, art. 23, par. (b).)*

This article is construed as prohibiting assassination, proscription, or outlawry of an enemy, or putting a price upon an enemy's head, as well as offering a reward for an enemy "dead or alive". It does not, however, preclude attacks on individual soldiers or officers of the enemy whether in the zone of hostilities, occupied territory, or elsewhere.

32. Nationals Not To Be Compelled to Take Part in Operations Against Their Own Country

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war. *(HR, art. 23, 2d par.)*

Section III. FORBIDDEN MEANS OF WAGING WARFARE

33. Means of Injuring the Enemy Limited

a. Treaty Provision.

The right of belligerents to adopt means of injuring the enemy is not unlimited. *(HR, art. 22.)*

b. The means employed are definitely restricted by international declarations and conventions and by the laws and usages of war.

34. Employment of Arms Causing Unnecessary Injury

a. Treaty Provision.

It is especially forbidden * * * to employ arms, projectiles, or material calculated to cause unnecessary suffering. *(HR, art. 23, par. (e).)*

b. Interpretation. What weapons cause "unnecessary injury" can only be determined in light of the practice of States in refraining from the use of a given weapon because it is believed to have that effect. The prohibition certainly does not extend to the use of explosives contained in artillery projectiles, mines, rockets, or hand grenades. Usage has, however, established the illegality of the use of lances with barbed heads, irregular-shaped bullets, and projectiles filled with glass, the use of any substance on bullets that would tend unnecessarily to inflame a wound inflicted by them, and the scoring of the surface or the filing off of the ends of the hard cases of bullets.

35. Atomic Weapons

The use of explosive "atomic weapons," whether by air, sea, or land forces, cannot as such be regarded as violative of international law in the absence of any customary rule of international law or international convention restricting their employment.

36. Weapons Employing Fire

The use of weapons which employ fire, such as tracer ammunition, flamethrowers, napalm and other incendiary agents, against targets requiring their use is not violative of international law. They should not, however, be employed in such a way as to cause unnecessary suffering to individuals.

37. Poison

a. Treaty Provision.

It is especially forbidden * * * to employ poison or poisoned weapons. *(HR, art. 23, par. (a).)*

b. Discussion of Rule. The foregoing rule does not prohibit measures being taken to dry up springs, to divert rivers and aqueducts from their courses, or to destroy, through chemical or bacterial agents harmless to man, crops intended solely for consumption by the armed forces (if that fact can be determined).

38. Gases, Chemicals, and Bacteriological Warfare

The United States is not a party to any treaty, now in force, that prohibits or restricts the use in warfare of toxic or nontoxic gases, of smoke or incendiary materials, or of bacteriological warfare. A treaty signed at Washington, 6 Febuary 1922, on behalf of the United States, the British Empire, France, Italy, and Japan *(3 Malloy, Treaties 3116)* contains a provision (art. V) prohibiting "The use in

war of asphyxiating, poisonous or other gases, and all analogous liquids, materials, or devices," but that treaty was expressly conditioned to become effective only upon ratification by all of the signatory powers, and, not having been ratified by all of the signatories, has never become effective. The Geneva Protocol "for the prohibition of the use in war of asphyxiating, poisonous, or other gases, and of bacteriological methods of warfare," signed on 17 June 1925, on behalf of the United States and many other powers *(94 League of Nations Treaty Series 65),* has been ratified or adhered to by and is now effective between a considerable number of States. However, the United States Senate has refrained from giving its advice and consent to the ratification of the Protocol by the United States, and it is accordingly not binding on this country.

Section IV. BOMBARDMENTS, ASSAULTS, AND SIEGES

39. Bombardment of Undefended Places Forbidden

The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited. *(HR, art. 25.)*

40. Defended Place Defined

Investment, bombardment, assault, and siege have always been recognised as legitimate means of land warfare. Defended places in the sense of Article 25, HR, include:

a. A fort or fortified place.

b. A city or town surrounded by detached defense positions, which is considered jointly with such defense positions as an indivisible whole.

c. A place which is occupied by a combatant military force or through which such a force is passing. The occupation of such a place by medical units alone is not sufficient to make it a defended place.

Factories producing munitions and military supplies, military camps, warehouses storing munitions and military supplies, ports and railroads being used for the transportation of military supplies, and other places devoted to the support of military operations or the accommodation of troops may also be attacked and bombarded even though they are not defended.

41. Unnecessary Killing and Devastation

Particularly in the circumstances referred to in the preceding paragraph, loss of life and damage to property must not be out of proportion to the military advantage to be gained. Once a fort or defended locality has surrendered, only such further damage is permitted as is demanded by the exigencies of war, such as the removal

of fortifications, demolition of military buildings, and destruction of stores *(GC, art. 147;* par. 502 herein).

42. Aerial Bombardment

There is no prohibition of general application against bombardment from the air of combatant troops, defended places, or other legitimate military objectives.

43. Notice of Bombardment

a. Treaty Provision.

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities. *(HR, art. 26.)*

b. Application of Rule. This rule is understood to refer only to bombardments of places where parts of the civil population remain.

c. When Warning is To Be Given. Even when belligerents are not subject to the above treaty, the commanders of United States ground forces will, when the situation permits, inform the enemy of their intention to bombard a place, so that the noncombatants, especially the women and children, may be removed before the bombardment commences.

44. Treatment of Inhabitants of Invested Area

a. General Population. The commander of the investing force has the right to forbid all communications and access between the besieged place and the outside. However, Article 17, *GC* (par. 256), requires that belligerents endeavor to conclude local agreements for the removal from besieged or encircled areas of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas. Provision is also made in Article 23 of the same Convention (par. 262) for the passage of consignments of medical and hospital stores and objects necessary for the religious worship of civilians and of essential foodstuffs, clothing, and tonics intended for children under 15, expectant mothers, and maternity cases.

Subject to the foregoing exceptions, there is no rule of law which compels the commander of an investing force to permit noncombatants to leave a besieged locality. It is within the discretion of the besieging commander whether he will permit noncombatants to leave and under what conditions. Thus, if a commander of a besieged place expels the noncombatants in order to lessen the logistical burden he has to bear, it is lawful, though an extreme measure, to drive them back, so as to hasten the surrender. Persons who attempt to leave or enter a besieged place without obtaining the necessary permission are liable to be fired upon, sent back, or detained.

b. Diplomatic and Consular Personnel. Diplomatic and consular personnel of a neutral State should not be prevented from leaving a besieged place before hostilities commence, but this privilege cannot be claimed while hostilities are in progress. Should they voluntarily decide to remain, they must undergo the same risks as other inhabitants.

45. Buildings and Areas To Be Protected

a. Buildings To Be Spared.

In sieges and bombardments all necessary measures must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand. *(HR, art. 27.)* (See also *GC, arts. 18 and 19; pars. 257 and 258* herein, dealing with the identification and protection of civilian hospitals.)

b. Areas To Be Protected. In order to protect buildings used for medical purposes from being accidentally hit, it is desirable that the wounded and sick should, if possible, be concentrated in an area remote from military objectives or in an area neutralized by arrangement with the enemy. See *GC, arts. 14, 18, and 19;* pars. 253, 257, and 258 herein, concerning the establishment of hospital and safety zones and localities.)

46. Such Buildings to Display Sign Specified in Naval Treaty

a. Treaty Provision.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white. *(H. IX, art 5, 2d par.)*

b. Application of Rule. The foregoing rule adopted in this convention for naval warfare may be adopted for protecting buildings under bombardment in land warfare.

c. Use of Foregoing for Military Purposes. The besieging forces are not required to observe the signs indicating inviolability of buildings that are known to be used for military purposes, such as quarters, warehouses, observation posts, or signal installations.

47. Pillage Forbidden

The pillage of a town or place, even when taken by assault, is prohibited. *(HR, art. 28.)*

Section V. STRATAGEMS

48. Stratagems Permissible

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible. *(HR, art. 24.)*

49. Good Faith

Absolute good faith with the enemy must be observed as a rule of conduct; but this does not prevent measures such as using spies and secret agents, encouraging defection or insurrection among the enemy civilian population, corrupting enemy civilians or soldiers by bribes, or inducing the enemy's soldiers to desert, surrender, or rebel. In general, a belligerent may resort to those measures for mystifying or misleading the enemy against which the enemy ought to take measures to protect himself.

50. Treachery or Perfidy

Ruses of war are legitimate so long as they do not involve treachery or perfidy on the part of the belligerent resorting to them. They are, however, forbidden if they contravene any generally accepted rule.

The line of demarcation between legitimate ruses and forbidden acts of perfidy is sometimes indistinct, but the following examples indicate the correct principles. It would be an improper practice to secure an advantage of the enemy by deliberate lying or misleading conduct which involves a breach of faith, or when there is a moral obligation to speak the truth. For example, it is improper to feign surrender so as to secure an advantage over the opposing belligerent thereby. So similarly, to broadcast to the enemy that an armistice had been agreed upon when such is not the case would be treacherous. On the other hand, it is a perfectly proper ruse to summon a force to surrender on the ground that it is surrounded and thereby induce such surrender with a small force.

Treacherous or perfidious conduct in war is forbidden because it destroys the basis for a restoration of peace short of the complete annihilation of one belligerent by the other.

51. Legitimate Ruses

Among legitimate ruses may be counted surprises, ambushes, feigning attacks, retreats, or flights, simulating quiet and inactivity, use of small forces to simulate large units, transmitting false or misleading radio or telephone messages, deception of the enemy by bogus orders purporting to have been issued by the enemy commander, making use of the enemy's signals and passwords, pretending to communicate with troops or reinforcements which have no existence, de-

ceptive supply movements, deliberate planting of false information use of spies and secret agents, moving landmarks, putting up dummy guns and vehicles or laying dummy mines, erection of dummy installations and airfields, removing unit identifications from uniforms, use of signal deceptive measures, and psychological warfare activities.

52. Improper Use of Identifying Devices

It is especially forbidden * * * to make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention. *(HR, art. 23, par. (f).)*

53. Flags of Truce

Flags of truce must not be used surreptitiously to obtain military information or merely to obtain time to effect a retreat or secure reinforcements or to feign a surrender in order to surprise an enemy. An officer receiving them is not on this account absolved from the duty of exercising proper precautions with regard to them.

54. National Flags, Insignia, and Uniforms as a Ruse

In practice, it has been authorized to make use of national flags, insignia, and uniforms as a ruse. The foregoing rule *(HR, art. 23, par. (f))* does not prohibit such employment, but does prohibit their *improper use.* It is certainly forbidden to employ them during combat, but their use at other times is not forbidden.

55. Improper Use of Distinctive Emblem of Geneva Convention

The use of the emblem of the Red Cross and other equivalent insignia must be limited to the indication or protection of medical units and establishments, the personnel and material protected by *GWS* and other similar conventions. The following are examples of the improper use of the emblem: Using a hospital or other building accorded such protection as an observation post or military office or depot; firing from a building or tent displaying the emblem of the Red Cross; using a hospital train or airplane to facilitate the escape of combatants; displaying the emblem on vehicles containing ammunition or other nonmedical stores; and in general using it for cloaking acts of hostility.

Section VI. TREATMENT OF PROPERTY DURING COMBAT

56. Devastation

The measure of permissible devastation is found in the strict necessities of war. Devastation as an end in itself or as a separate measure of war is not sanctioned by the law of war. There must be some reasonably close connection between the destruction of property and

the overcoming of the enemy's army. Thus the rule requiring respect for private property is not violated through damage resulting from operations, movements, or combat activity of the army; that is, real estate may be used for marches, camp sites, construction of field fortifications, etc. Buildings may be destroyed for sanitary purposes or used for shelter for troops, the wounded and sick and vehicles and for reconnaissance, cover, and defense. Fences, woods, crops, buildings, etc., may be demolished, cut down, and removed to clear a field of fire, to clear the ground for landing fields, or to furnish building materials or fuel if imperatively needed for the army. (See *GC, art. 53;* par. 339b; herein, concerning the permissible extent of destruction in occupied areas.)

57. Protection of Artistic and Scientific Institutions and Historic Monuments

The United States and certain of the American Republics are parties to the so-called *Roetich Pact,* which accords a neutralized and protected status to historic monuments, museums, scientific, artistic, educational, and cultural institutions in the event of war between such States. (For its text, see *49 Stat. 3267; Treaty Series No. 899.)*

58. Destruction and Seizure of Property

It is especially forbidden * * * to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war *(HR, art. 23, par. (g).)*

59. Booty of War

a. Public Property. All enemy public movable property captured or found on a battlefield becomes the property of the capturing State.

b. Private Property. Enemy private movable property, other than arms, military papers, horses, and the like captured or found on a battlefield, may be appropriated only to the extent that such taking is permissible in occupied areas (see pars. 405-411).

c.. Prisoners of War. The property which prisoners of war are to be allowed to retain is specified in Article 18, *GPW* (par. 94).

CHAPTER 3

PRISONERS OF WAR

Section I. PERSONS ENTITLED TO BE TREATED AS PRISONERS OF WAR; RETAINED MEDICAL PERSONNEL

60. General Division of Enemy Population

The enemy population is divided in war into two general classes:

a. Persons entitled to treatment as prisoners of war upon capture, as defined in Article 4, *GPW* (par. 61).

b. The civilian population (exclusive of those civilian persons listed in *GPW*, *art. 4),* who benefit to varying degrees from the provisions of GC (see chs. 5 and 6 herein).

Persons in each of the foregoing categories have distinct rights, duties, and disabilities. Persons who are not members of the armed forces, as defined in Article 4, *GPW*, who bear arms or engage in other conduct hostile to the enemy thereby deprive themselves of many of the privileges attaching to the members of the civilian population (see sec. II of this chapter).

61. Prisoners of War Defined

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

(a) **that of being commanded by a person responsible for his subordinates;**

(b) **that of having a fixed distinctive sign recognizable at a distance;**

(c) **that of carrying arms openly;**

(d) **that of conducting their operations in accordance with the laws and customs of war.**

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favorable treatment under any other provisions of international law.

(6) Inhabitants of a nonoccupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading force, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention:

(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favorable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning

the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention. *(GPW, art. 4.)*

62. Combatants and Noncombatants

The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war. *(HR, art. 3.)*

63. Commandos and Airborne Troops

Commando forces and airborne troops, although operating by highly trained methods of surprise and violent combat, are entitled, as long as they are members of the organized armed forces of the enemy and wear uniform, to be treated as prisoners of war upon capture, even if they operate singly.

64. Qualifications of Members of Militias and Volunteer Corps

The requirements specified in Article 4, paragraphs A *(2) (a)* to *(d), GPW* (par. 61) are satisfied in the following fashion:

a. Command by a Responsible Person. This condition is fulfilled if the commander of the corps is a commissioned officer of the armed forces or is a person of position and authority or if the members of the militia or volunteer corps are provided with documents, badges, or other means of identification to show that they are officers, noncommissioned officers, or soldiers so that there may be no doubt that they are not persons acting on their own responsibility. State recognition, however, is not essential, and an organization may be formed spontaneously and elect its own officers.

b. Fixed Distinctive Sign. The second condition, relative to the possession of a fixed distinctive sign recognizable at a distance is satisfied by the wearing of military uniform, but less than the complete uniform will suffice. A helmet or headdress which would make the silhouette of the individual readily distinguishable from that of an ordinary civilian would satisfy this requirement. It is also desirable that the individual member of the militia or volunteer corps wear a badge or brassard permanently affixed to his clothing. It is not necessary to inform the enemy of the distinctive sign, although it may be desirable to do so in order to avoid misunderstanding.

c. Carrying Arms Openly. This requirement is not satisfied by the carrying of weapons concealed about the person or if the individuals hide their weapons on the approach of the enemy.

d. Compliance With Law of War. This condition is fulfilled if most of the members of the body observe the laws and customs of war, notwithstanding the fact that the individual member concerned may have committed a war crime. Members of militias and volunteer corps should be especially warned against employment of treachery, denial of quarters, maltreatment of prisoners of war, wounded, and dead, improper conduct toward flags of truce, pillage, and unnecessary violence and destruction.

65. The *Levée en Masse*

If the enemy approaches an area for the purpose of seizing it, the inhabitants, if they defend it, are entitled to the rights of regular combatants as a *levée en masse* (see *GPW, art. 4, par. A (6)* ; par. 61 herein), although they wear no distinctive sign. In such a case all the inhabitants of the area maybe considered legitimate enemies until the area is taken. Should some inhabitants of a locality thus take part in its defense, it might be justifiable to treat all the males of military age as prisoners of war. Even if inhabitants who formed the *levée en masse* lay down their arms and return to their normal activities, they may be made prisoners of war.

66. Wounded and Sick

Subject to the provisions of Article 12, the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them. *(GWS, art. 14.)*

67. Medical Personnel and Chaplains

Medical personnel exclusively engaged in the search for, or collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances. *(GWS, art. 24.)*

Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of and religious ministration to prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those

belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

(a) **They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.**

(b) **The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.**

(c) **Although they shall be subject to the internal discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.**

During hostilities the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view. *(GPW, art. 33.)*

(See also *GWS, arts.* 27 *and 32;* pars. 229 and 233 herein.)

68. Persons Temporarily Performing Medical Functions

Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses, or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick * * * who have fallen into the hands of the enemy, shall be prisoners of war, but shall be employed on their medical duties in so far as the need arises. *(GWS, arts.* 25 *and 29.)*

69. Personnel of Aid Societies

The staff of National Red Cross Societies and that of other Voluntary Aid Societies, duly recognized and authorized by their Governments, who may be employed on the same duties as the personnel named in Article 24, are placed on the same footing as the personnel named in the said Article, provided that the staff of such societies are subject to military laws and regulations.

Each High Contracting Party shall notify to the other, either in time of peace, or at the commencement of or during hostilities, but in any case before actually employing them, the names of the societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armed forces. *(GWS, art. 26.)*

70. Enumeration Not Exhaustive

The enumeration of persons entitled to be treated as prisoners of war is not exhaustive and does not preclude affording prisoner-of-war status to persons who would otherwise be subject to less favorable treatment.

71. Interim Protection

a. Treaty Provision.

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal. *(GPW, art. 6.)*

b. Interpretation. The foregoing provision applies to any person not appearing to be entitled to prisoner-of-war status who has committed a belligerent act or has engaged in hostile activities in aid of the armed forces and who asserts that he is entitled to treatment as a prisoner of war or concerning whom any other doubt of a like nature exists.

c. Competent Tribunal. A "competent tribunal" of the United States for the purpose of determining whether a person of the nature described in *a* above is or is not entitled to prisoner-of-war status is a board of not less than three officers acting according to such procedure as may be prescribed for tribunals of this nature.

d. Further Proceedings. Persons who have been determined by a competent tribunal not to be entitled to prisoner-of-war status may

not be executed, imprisoned, or otherwise penalized without further judicial proceedings to determine what acts they have committed and what penalty should be imposed therefore.

Section II. PERSONS NOT ENTITLED TO BE TREATED AS PRISONERS OF WAR

72. Certain Persons in Occupied Areas

Persons in occupied areas not falling within the categories set forth in Article 4, *GPW* (par. 61), who commit acts hostile to the occupant or prejudicial to his security are subject to a special regime, concerning which see chapter 6, section VIII. The provisions of the present section must, in the case of offenses committed in occupied territory, be read subject to the qualifications set forth in chapter 6, section VIII (for example, the limitation on punishments prescribed by *GC, art.* 68; par. 438 herein).

73. Persons Committing Hostile Acts Not Entitled To Be Treated as Prisoners of War

If a person is determined by a competent tribunal, acting in conformity with Article 5, *GPW* (par. 71), not to fall within any of the categories listed in Article 4, *GPW* (par. 61), he is not entitled to be treated as a prisoner of war. He is, however, a "protected person" within the meaning of Article 4, *GC* (par. 247). (See pars. 247 and 248, concerning the status of such "protected persons" who have engaged in conduct hostile to the opposing belligerent.)

74. Necessity of Uniform

Members of the armed forces of a party to the conflict and members of militias or volunteer corps forming part of such armed forces lose their right to be treated as prisoners of war whenever they deliberately conceal their status in order to pass behind the military lines of the enemy for the purpose of gathering military information or for the purpose of waging war by destruction of life or property. Putting on civilian clothes or the uniform of the enemy are examples of concealment of the status of a member of the armed forces.

75. Spies

a Treaty Provision.

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of

obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, intrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory. *(HR, art. 29.)*

b. American Statutory Definition. The first paragraph of the foregoing Hague Regulation has been in effect somewhat modified, as far as American practice is concerned, by the subsequently enacted Article 106 of the Uniform Code of Military Justice (64 *Stat. 138; 50 U. S. C. 700)*, as follows:

ART. 106. **Spies.—Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces of the United States, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.**

c. Article 106 Governs. Insofar as Article 29, *HR*, and Article 106, Uniform Code of Military Justice, are not in conflict with each other, they will be construed and applied together. Otherwise Article 106 governs American practice.

76. Who Included in Definition

The definition embodied in the Hague Regulations (par. 75 *a)* and that contained in Article 106 of the Uniform Code of Military Justice (par. 75 *b)* include persons of all classes, whether military or civilian, without regard to citizenship or sex. Both likewise apply only where the acts are committed in time of war. The Hague definition applies only where the information is obtained or sought 'in the zone of operations," while the statutory definition is not so limitd The latter includes only persons "found lurking as a spy or acting as a spy" in those places specifically designated "or elsewhere." It has not been decided whether the phrase "or elsewhere" justifies trial by a military tribunal of *any* person who is not found in one of the places designated or in the field of military operations or territory under martial law and is not a member of the armed forces or otherwise subject to the Uniform Code of Military Justice. Persons charged with espionage committed in the United States outside military jurisdiction are nevertheless liable to trial and punishment by the civil courts under the espionage laws *(18 U. S. C. (chap. 37)).*

77. Employment of Spies Lawful

The foregoing Article 29, *HR* (par. 75), and Article 24, *HR* (par. 48), tacitly recognize the well-established right of belligerents to employ spies and other secret agents for obtaining information of the enemy. Resort to that practice involves no offense against international law. Spies are punished, not as violators of the laws of war, but to render that method of obtaining information as dangerous, difficult, and ineffective as possible.

78. Punishment

a. Necessity of Trial.

A spy taken in the act shall not be punished without previous trial. *(HR, art. 30.)*

b. Attempts. The spy is punishable with death whether or not he succeeds in obtaining information or in conveying it to the enemy.

c. Immunity upon Rejoining Own Army.

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage. *(HR, art. 31.)*

79. Aiding the Enemy

a. Amenican Statutory Definition.

Any person who—

(1) aids or attempts to aid, the enemy with arms, ammunition, supplies, money, or other thing; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall suffer death or such other punishment as a court-martial or military commission may direct. *(UCMJ, Art. 104; 64 Stat. 138; 50 U.S.C. 698.)*

b. Interpretation. In time of war, the rule of the above article is general in its application to all persons whether or not otherwise subject to military law and without regard to citizenship or military or civil status, who give aid to an enemy government or persons adhering to it. It may be that this statute, should it be subjected to judicial interpretation, would be held to authorize the trial of civilians by military tribunals only when the offense had been committed in territory under martial law or military government, or within the zone of military operations, or within areas invaded by the United States, or within or in the vicinity of a military installation, or in a place otherwise subject to military jurisdiction. Cases occurring in the United States outside military jurisdiction are triable by the civil

courts under the espionage laws mentioned above (par. 76) and laws relating to treason *(18 U.S.C. (chap. 115)).*

80. Individuals Not of Armed Forces Who Engage in Hostilities

Persons, such as guerrillas and partisans, who take up arms and commit hostile acts without having complied with the conditions prescribed by the laws of war for recognition as belligerents (see *GPW, art. 4;* par. 61 herein), are, when captured by the injured party, not entitled to be treated as prisoners of war and may be tried and sentenced to execution or imprisonment.

81. Individuals Not of Armed Forces Who Commit Hostile Acts

Persons who, without having complied with the conditions prescribed by the laws of war for recognition as belligerents (see *GPW, art. 4;* par. 61 herein), commit hostile acts about or behind the lines of the enemy are not to be treated as prisoners of war and may be tried and sentenced to execution or imprisonment. Such acts include, but are not limited to, sabotage, destruction of communications facilities, intentional misleading of troops by guides, liberation of prisoners of war, and other acts not falling within Articles 104 and 106 of the Uniform Code of Military Justice and Article 29 of the Hague Regulations.

82. Penalties for the Foregoing

Persons in the foregoing categories who have attempted, committed, or conspired to commit hostile or belligerent acts are subject to the extreme penalty of death because of the danger inherent in their conduct. Lesser penalties may, however, be imposed.

83. Military Attachés and Diplomatic Representatives of Neutral States

Military attachés and diplomatic representatives of neutral States who establish their identity as such and are accompanying an army in the field or are found within a captured fortress, whether within the territory of the enemy or in territory occupied by it, are not held as prisoners, provided that they take no part in hostilities. They may, however, be ordered out of the theater of war, and, if necessary, handed over by the captor to the ministers of their respective countries. Only if they refuse to quit the theater of war may they be interned.

Section III. GENERAL PROTECTION OF PRISONERS OF WAR

84. Duration of Protection

a. Treaty Provision.

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy

and until their final release and repatriation * * *. *(GPW, art. 5;* see par. 71 herein.)

b. Power of the Enemy Defined. A person is considered to have fallen into the power of the enemy when he has been captured by, or surrendered to members of the military forces, the civilian police, or local civilian defense organizations or enemy civilians who have taken him into custody.

85. Killing of Prisoners

A commander may not put his prisoners to death because their presence retards his movements or diminishes his power of resistance by necessitating a large guard, or by reason of their consuming supplies, or because it appears certain that they will regain their liberty through the impending success of their forces. It is likewise unlawful for a commander to kill his prisoners on grounds of self-preservation, even in the case of airborne or commando operations, although the circumstances of the operation may make necessary rigorous supervision of and restraint upon the movement of prisoners of war.

86. Special Agreements

In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit or such agreements as long as the Convention is applicable to then, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favorable measures have been taken with regard to them by one or other of the Parties to the conflict. *(GPW, art. 6.)*

87. Renunciation of Rights Prohibited

a. *Treaty Provision.*

Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be. *(GPW, art. 7.)*

b. Interpretation. Subject to the exception noted in paragraph 199, prisoners of war are precluded from renouncing not only their rights but also their status as prisoners of war, even if they do so voluntarily. The prohibition extends equally to prisoners renouncing their status in order to become civilians or to join the armed forces of the Detaining Power.

88. Responsibility for the Treatment of Prisoners

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with. *(GPW, art. 12.)*

89. Humane Treatment of Prisoners

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited. *(GPW, art. 13.)*

90. Respect for the Person of Prisoners

Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favorable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires. *(GPW, art. 14.)*

91. Maintenance of Prisoners

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health. *(GPW, art. 15.)*

92. Equality of Treatment

a. Treaty Provision.

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationalisty, religious belief or political opinions, or any other distinction founded on similar criteria. *(GPW, art. 16.)*

b. The foregoing provision does not preclude the segregation of prisoners of war to maintain order in camps, to impose punishment, or for medical reasons. (See *GPW, art. 79, 5th par.;* par. 155 herein.)

Section IV. BEGINNING OF CAPTIVITY

93. Questioning of Prisoners

Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this equivalent information.

If he wilfully infringes this rule, he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand. *(GPW, art. 17.)*

94. Property of Prisoners

a. Treaty Provision.

All effects and articles of personal use, except arms, horses, military equipment and military documents shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise sums taken away in any currency other than that of the Detaining Power and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity. *(GPW, art. 18.)*

b. Transactions With Prisoners. It is not proper for members of the forces of the Detaining Power to engage in bartering and other transactions with prisoners of war concerning their personal effects.

c. Unexplained Possession of Large Sums of Money by Prisoners of War. The unexplained possession by a prisoner of war of a large sum of money justifiably leads to the inference that such funds are not his own property and are in fact either property of the enemy government or property which has been looted or otherwise stolen.

95. Evacuation of Prisoners

Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone. *(GPW, art. 19.)*

96. Conditions of Evacuation

The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible. *(GPW, art. 20.)*

Section V. INTERNMENT OF PRISONERS GENERALLY

97. Restriction of Liberty of Movement

The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary. *(GPW, art. 21, 1st par.)*

98. Places and Conditions of Internment

Prisoners of war maybe interned only in premises located on land and affording every guarantee of hygiene and healthfulness.

Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favorable climate.

The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent. *(GPW, art. 22.)*

99. Security of Prisoners

No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favor of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner of war camps.

Whenever military considerations permit, prisoner of war camps shall be indicated in the day-time by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such. *(GPW, art. 23.)*

100. Permanent Transit Camps

Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment as in other camps. *(GPW, art 24.)*

Section VI. QUARTERS, FOOD, AND CLOTHING

101. Quarters

Prisoners of war shall be quartered under conditions as favorable as those for the forces of the Detaining Power who are

billeted in the same area. The said conditions shall make allowante for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them. *(GPW, art. 25.)*

102. Food

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited. *(GPW, art. 26.)*

103. Clothing

Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war

who work shall receive appropriate clothing, wherever the nature of the work demands. *(GPW, art. 27.)*

104. Canteens

Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned. *(GPW, art. 28.)*

105. Cost of Quarters, Food, and Clothing

Prisoners, including officers, are furnished quarters, food, and clothing without cost to them.

Section VII. HYGIENE AND MEDICAL ATTENTION

106. Hygiene

The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose. *(GPW, art. 29.)*

107. Medical Attention

Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power. *(GPW, art. 30.)*

108. Medical Inspections

Medical inspections of prisoners of war shall be held at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e. g., periodic mass miniature radiography for the early detection of tuberculosis. *(GPW, art. 81.)*

109. Prisoners Engaged on Medical Duties

Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49. *(GPW, art. 32.)*

Section VIII. RELIGIOUS, INTELLECTUAL, AND PHYSICAL ACTIVITIES

110. Religious Freedoms

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held. *(GPW, art. 34.)*

111. Retained Chaplains

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practicing the same religion. They shall enjoy the necessary facilities including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71. *(GPW, art. 85.)*

112. Prisoners Who Are Ministers of Religion

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Retaining Power. They shall not be obliged to do any other work. *(GPW, art. 36.)*

113. Prisoners Without a Minister of Their Religion

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed, at the request of the prisoners concerned, to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious

authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security. *(GPW, art. 37.)*

114. Recreation, Study, Sports, and Games

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise, including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps. *(GPW, art. 38.)*

Section IX. DISCIPLINE

115. Administration

Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must however, salute the camp commander regardless of his rank. *(GPW, art. 39.)*

116. Badges and Decorations

The wearing of badges of rank and nationality, as well as of decorations, shall be permitted. *(GPW, art. 40.)*

117. Posting of the Convention and of Regulations and Orders Concerning Prisoners

In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, in places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them

in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand. *(GPW, art. 41.)*

118. Use of Weapons

The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances. *(GPW, art. 42.)*

Section X. RANK OF PRISONERS OF WAR

119. Notification of Ranks

Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognize promotions in rank which haye been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend. *(GPW, art. 43.)*

120. Treatment of Officers

Officers and prisoners of equivalent status shall be treated with regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way. *(GPW, art. 44.)*

121. Treatment of Other Prisoners

Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way. *(GPW, art. 45.)*

Section XI. TRANSFER OF PRISONERS OF WAR

122. Conditions

The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favorable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure. *(GPW, art. 46.)*

123. Circumstances Precluding Transfer

Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred. *(GPW, art. 47.)*

124. Procedure for Transfer

In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms [55 pounds] per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.

The costs of transfers shall be borne by the Detaining Power. *(GPW, art. 48.)*

Section XII. LABOR OF PRISONERS OF WAR

125. General

The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work. *(GPW, art. 49.)*

126. Authorized Work

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. *(GPW, art. 50.)*

127. Working Conditions

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.

The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures. *(GPW, art. 51.)*

128. Dangerous or Humiliating Labor

Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour. *(GPW, art. 52.)*

129. Duration of Labor

The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece work are employed, the length of the working period shall not be rendered excessive thereby. *(GPW, art. 53.)*

130. Working Pay and Occupational Accidents and Disease

The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123. *(GPW, art. 54.)*

131. Medical Supervision

The fitness of prisoners of war for work shall be periodically verified by medical examinations at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom. *(GPW, art. 65.)*

132. Labor Detachments

The organization and administration of labour detachments shall be similar to those of prisoner of war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp. *(GPW, art. 56.)*

133. Prisoners Working for Private Employers

The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care,

treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend. *(GPW, art. 57.)*

Section XIII. FINANCIAL RESOURCES OF PRISONERS OF WAR

134. Ready Money

Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or by the camp administration who will charge them to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect. *(GPW, art. 58.)*

135. Amounts in Cash Taken From Prisoners

Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts. *(GPW, art. 59.)*

136. Advances of Pay

The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

Category I : Prisoners ranking below sergeants: eight Swiss francs.

Category II : Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss francs.

Category III : Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: fifty Swiss francs.

Category IV : Majors, lieutenant-colonels, colonels, or prisoners of equivalent rank: sixty Swiss francs.

Category V : General officers or prisoners of war of equivalent rank: seventy-five Swiss francs.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

(a) shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above;

(b) may temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitations will be given without delay to the Protecting Power. *(GPW, art. 60.)*

137. Supplementary Pay

The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention. *(GPW, art. 61.)*

138. Working Pay

Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to 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, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay. *(GPW, art. 62.)*

139. Transfer of Funds

Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependents shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention. *(GPW, art. 63.)*

140. Prisoners' Accounts

The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

(1) The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any

other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.

(2) The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sum transferred under Article 63, third paragraph. *(GPW, art. 64.)*

141. Management of Prisoners' Accounts

Every item entered into the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war. *(GPW, art. 65.)*

142. Winding Up of Accounts

On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity. *(GPW, art. 66.)*

143. Adjustments Between Parties to the Conflict

Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities. *(GPW, art. 67.)*

144. Claims for Compensation

Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim by a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible oflicer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123. *(GPW, art. 68.)*

Section XIV. RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

145. Notification of Measures Taken

Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures. *(GPW, art. 69.)*

146. Capture Card

Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or to another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner. *(GPW, art. 70.)*

147. Correspondence

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner of war mail must be securely sealed and labeled so as clearly to indicate their contents, and must be addressed to offices of destination. *(GPW, art. 71.)*

148. Relief Shipments

Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers musical instruments sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule be sent in collective parcels. *(GPW, art. 72.)*

149. Special Agreements for Collective Relief Shipments

In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations concerning collective shipments, which are annexed to the present Convention, shall be applied.

The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients. *(GPW, art. 73.)*

150. Exemption From Postal and Transport Charges

a. Treaty Provision.

All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence relief shipments and authorized remittances of money addressed to prisoners of war or dispatched by them through the post ollice, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them. *(GPW, art. 74.)*

b. The Universal Postal Convention provides that correspondence, parcel post, insured letters and boxes and postal money orders addressed to, or sent by, prisoners of war and interned civilians are exempt from postal charges. (Article 37, Universal Postal Convention of 1952, *T. I. A. S. 2800.)*

To enjoy these franking privileges the article must bear the notation *"Service des prisonniers de guerre"* (Prisoners of War Service) or *"Service des internes"* (Internees Service) which may be followed by a translation.

151. Special Means of Transport

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

(a) correspondence, lifts and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaux referred to in Article 122;

(b) correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionately by the Parties to the conflict whose nationals are benefited thereby. *(GPW, art. 75.)*

152. Censorship and Examination

The censoring of correspondence addressed to prisoners of war or dispatched by them shall be done as quickly as possible. Mail shall be censored only by the dispatching State and the receiving State, and once only by each.

The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by Parties to the conflict either for military or political reasons, shall be only temporary and its duration shall be as short as possible. *(GPW, art. 76.)*

153. Preparation, Execution, and Transmission of Legal Documents

The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instrument papers or documents intended for prisoners of war or dispatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures. *(GPW, art. 77.)*

Section XV. RELATIONS OF PRISONERS OF WAR AND THE AUTHORITIES

154. Complaints and Requests

Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited nor considered to be a part of the correspondence quota referred to in Article 71. They must be transmitted immediately. Even if they are recognized to be unfounded, they may not give rise to any punishment.

Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers. *(GPW, art. 78.)*

155. Election of Prisoners' Representatives

In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any ether organization which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not otlicers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where

the Detaining Power refuses toapprove aprisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs *(GPW, art. 79.)*

156. Duties of Prisoners' Representatives

a. Treaty Provision.

Prisoners' representatives shall further the physical, spiritual and intellectual well-being of prisoners of war.

In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance, this organization will be within the province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention.

Prisoners' representatives shall not be held responsible simply by reason of their duties, for any offences committed by prisoners of war. *(GPW, art. 80.)*

b. Rights and Duties. The rights and duties of prisoners' representatives are set forth in the following articles of *GPW:* 57 (par. 133); 78-81 (pars. 154-157); 98 (par. 174); 104 (par. 180); 107 (par. 183); 125 (par. 206); and 127 (par. *14).*

157. Prerogatives of Prisoners' Representatives

Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspection of labour detachments, receipt of supplies, etc.).

Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to consult freely his prisoners' representative.

All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining authorities the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachment shall

enjoy the same facilities for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 71.

Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

In case of dismissal, the reasons therefor shall be communicated to the Protecting Power. *(GP W, art. 81.)*

Section XVI. PENAL AND DISCIPLINARY SANCTIONS

158. Applicable Legislation

a. Pri.soners of War.

A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall en. tail disciplinary punishments only. *(GPW, art. 82.)*

b. Retained Medical Personnel, Chaplains, and Persons of Like Status. Retained medical personnel, chaplains, and persons of like status benefit from the disciplinary and penal safeguards prescribed by Articles 82-108, *GPW* (pars. 158-184).

159. Choice of Disciplinary or Judicial Proceeding

In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures. *(GPW, art. 83.)*

160. Courts

A prisoner of war shall be tried only by a military court, unless existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guaran-

tees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105. *(GPW, art. 84.)*

161. Acts Committed Before Capture

a. Treaty Provision.

Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention. *(GPW, art. 85.)*

b. Applicability. The foregoing provision applies only to personnel who are entitled to treatment as prisoners of war, including prisoners accused of war crimes under international or national law.

c. In signing and ratifying *GPW* several nations indicated that they would not consider themselves bound by the obligation which follows from the foregoing provision to extend the application of the Convention to prisoners of war who have been convictd of having committed war crimes and crimes against humanity and that persons so convicted would be subject to the conditions obtaining in the country in question for those who undergo punishment.

162. Repetition of Punishment

No prisoner of war may be punished more than once for the same act or on the same charge. *(GPW, art. 86.)*

163. Penalties

a. Treaty Provision.

Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

When fixing the penalty, the courts or atithorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall beat liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

No prisoner of war maybe deprived of his rank by the Detaining Power, or prevented from wearing his badges *(GPW, art. 87.)*

b. Persons to Whom Applicable. **The foregoing provision applies**

only to personnel who are entitled to treatment as prisoners of war, including prisoners accused of war crimes.

164. Execution of Penalties

Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.

In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.

Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war. *(GPW, art. 88.)*

165. Forms of Disciplinary Punishment

The disciplinary punishments applicable to prisoners of war are the following:

(1) A fine which shall not exceed 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days.

(2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention.

(3) Fatigue duties not exceeding two hours daily.

(4) Confinement.

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war. *(GPW, art. 89.)*

166. Duration of Disciplinary Punishment

The duration of any single punishment shall in no case exceed thirty days. Any pediod of confinement awaiting the hearing of a disciplinary off ence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts

at the same time when he is awarded punishment whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more. *(GPW, art. 90.)*

167. Successful Escape

The escape of a prisoner of war shall be deemed to have succeeded when:

(1) he has joined the armed forces of the Power on which he depends, or those of an allied Power;

(2) he has left the territory under the control of the Detaining Power, or of an ally of the said Power;

(3) he has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape. *(GPW, art. 91.)*

168. Unsuccessful Escape

A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention. *(GPW, art. 92.)*

169. Connected Offenses

Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence

against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, or the wearing of civilian clothing, shall occasion disciplinary punishment only.

Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only. *(GPW, art. 93.)*

170. Notification of Recapture

If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made. *(GPW, art. 94.)*

171. Confinement Awaiting Hearing

A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interesta of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offense against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline. *(GPW, art. 95.)*

172. Competent Authorities and Right of Defense

a. Treaty Provision.

Acts which constitute offences against discipline shall be investigated immediately.

Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power. *(GPW, art. 96.)*

b. Officers Exercising Displinary Jurisdiction. Either a camp commander, or a responsible officer who replaces him, or an officer to whom he has delegated disciplinary powers may impose disciplinary punishments on prisoners of war interned by the United States within the permissible limits established in Article 89, *GPW* (par. 165). It is not necessary that he be designated as summary court officer, and he is not subject to the limitations on the duration of commanding officers' nonjudicial punishment established by Article 15 of the Uniform Code of Military Justice.

173. Premises for Execution of Punishment

Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women. *(GPW, art. 97.)*

174. Essential Safeguards During Punishment

A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 78 and 126.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand over to the infirmary the perishable goods contained in such parcels. *(GPW, art. 98.)*

175. Judicial Proceedings: General Principles

No prisoner of war maybe tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel. *(GPW, art. 99.)*

176. Death Penalty

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which am punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power on which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. *(GPW, art. 100.)*

177. Delay in Execution of the Death Penalty

If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107. *(GPW, art. 101.)*

178. Conditions for Validity of Sentence

a. Treaty Provision.

A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed. *(GPW, art. 102.)*

b. Interpretation. Prisoners of war, including those accused of war crimes against whom judicial proceedings are instituted, are subject to the jurisdiction of United States courts-martial and military commissions. They are entitled to the same procedural safeguards accorded to military personnel of the United States who are tried by courts-martial under the Uniform Code of Military Justice or by other military tribunals under the laws of war. *(See UCMJ, arts. 2 (9), 18, and 21.)*

179. Confinement Awaiting Trial

Judicial investigatims relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.

The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial. *(GPW, art. 103.)*

180. Notification of Proceedings

In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This period of three weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

The said notification shall contain the following information:

(1) Surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any;

(2) Place of internment or confinement;

(3) Specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable;

(4) Designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting

Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned. *(GPW, art. 104.)*

181. Rights and Means of Defense

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time bef ore the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held *in camera* in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly. (GPW, *art. 105.)*

182. Appeals

Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right

of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so. *(GPW, art. 106.)*

183. Notification of Finding and Sentence

Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced on a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

(1) the precise wording of the finding and sentence;
(2) a summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of tht prosecution and the defence;
(3) notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing subparagraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power. *(GPW, art. 107.)*

184. Execution of Penalties

Sentences pronounced on prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same conditions as in the ease of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore,

they shall be entitled to receive and despatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph.*(GPW, art. 108.)*

Section XVII. TERMINATION OF CAPTIVITY

185. Parole Permitted If Laws of Their Country Allow

a. Treaty Prwvision.

Prisoners of war maybe partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or forbidding its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and towards the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given.*(GPW, art. 21, 2d and 3d pars.)*

b. Violation of Parole. Persons who violate the terms of their paroles are, upon recapture, treated as prisoners of war but may be punished under the provisions of Article 134 of the Uniform Code of Military Justice for violation of parole.

186. Form and Substance of Parole

The parole should be in writing and signed by the prisoner. It should state in clear and unequivocal language exactly what acts the prisoner is obligated not to do, particularly as to whether he is bound to refrain from all acts against the captor or only from taking part directly in military operations.

187. Parole of United States Personnel

a. General Prohibition. Subject to the exception set forth in the following subparagraph, military personnel of the United States Army are forbidden to give their parole to a Detaining Power.

b. Temporary Parole. A member of the United States Army may be authorized to give his parole to the enemy that he will not attempt

to escape, if such parole is authorized for the specific purpose of permitting him to perform certain acts materially contributing to the welfare of himself or of his fellow prisoners. Such authorization will extend only for such a short period of time as is reasonably necessary for the performance of such acts and will not normally be granted solely to provide respite from the routine rigors of confinement or for other purely personal relief. A parole of this nature may be authorized, for example, to permit a prisoner to visit a medical establishment for treatment or to allow a medical officer or chaplain to carry out his normal duties. A member of the United States Army may give a parole of this nature only when specifically authorized to do so by the senior officer or non-commissioned officer exercising command authority.

188. Direct Repatriation and Accommodation in Neutral Countries of Wounded and Sick

Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.

Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the cooperation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the following Article. They may, in addition, conclude agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity.

No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities. *(GPW, art. 109.)*

189. Cases of Repatriation and Accommodation

The following shall be repatriated direct:

(1) Incurately wounded and sick whose mentaI or physical fitness seems to have been graveiy diminished.

(2) Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitnseems to have been gravely diminished.

(3) Wounded and sick who have recovered, but whose mentaI or physical fitness seems to have been gravely and permanently diminished.

The following may be accommodated in a neutral country:

(1) Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.

(2) Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

The conditions which prisoners of war accommodated in a neutral country must fulfill in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

(1) Those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation;

(2) Those whose mental or physical powers remain, even after treatment, considerably impaired.

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention. *(GPW, art. 110).*

190. Internment in a Neutral Country

The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers, shall endeavour to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities. *(GPW, art. 111.)*

191. Mixed Medical Commissions

Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them. The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously

injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission. *(GPW, art. 112.)*

192. Prisoners Entitled to Examination by Mixed Medical Commissions

Besides those who are designated by the medicaI authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories listed below shall be entitled to present themselves for examination by the Mixed Medical Commissions provided for in the foregoing Article:

(1) Wounded and sick proposed by a physician or surgeon who is of the same nationality, or a national of a Party to the conflict allied with the Power on which the said prisoners depend, and who exercises his functions in the camp.
(2) Wounded and sick proposed by their prisoners' representative.
(3) Wounded and sick proposed by the Power on which they depend, or by an organization duly recognized by the said Power and giving assistance to the prisoners.

Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by Mixed Medical Commissions, but shall be examined only after those belonging to the said categories.

The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the Mixed Medical Commission, likewise the prisoners' representative of the said prisoners, shall have permission to be present at the examination. *(GPW, art. 113.)*

193. Prisoners Meeting With Accidents

Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country. *(GPW, art. 114.)*

194. Prisoners Serving a Sentence

No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

Prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment. *(GPW, art. 115.)*

195. Costs of Repatriation

The cost of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend. *(GPW, art. 116.)*

196. Activity After Repatriation

a. Treaty Provision.

No repatriated person may be employed on active military service. *(GPW, art. 117.)*

b. Interpretation. The foregoing applies only to persons repatriated under Articles 109 through 116, *GPW* (pars. 188–195), by reasons of wounds or sickness. Although it is not possible to frame any comprehensive rule concerning what constitutes "active military service," Article 117 does not preclude a repatriated person from performing medical or strictly administrative duties but does foreclose service in combat against the power formerly detaining the individual or an ally thereof.

197. Exchange of Prisoners of War

Exchange of prisoners of war, other than those whose repatriation is required by *GPW*, may be effected by agreement between the belligerents. No belligerent is obliged to exchange prisoners of war, except if a general cartel requiring such exchange has been concluded. The conditions for exchange are as prescribed by the parties thereto, and exchanges need not necessarily be on the basis of number for number or rank for rank. (See par. 469.)

198. Release and Repatriation at Close of Hostilities

Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the

Power on which the prisoners depend. This apportionment shall be carried out on the following basis:

(a) **If the two Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.**

(b) **If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as its frontier or its port of embarkation nearest to the territory of the Power on which the prisoners of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war.** *(GPW, art. 118.)*

199. Asylum

A Detaining Power may, in its discretion, lawfully grant asylum to prisoners of war who do not desire to be repatriated.

200. Details of Procedure

Repatriation shall be effected in conditions similar to those laid down in Articles 46 to 48 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 118 and to those of the following paragraphs.

On repatriation, any articles of value impounded from prisoners of war under Article 18, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be dispatched to the Information Bureau set up under Article 122.

Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can reasonably carry. Each prisoner shall in all cases be authorized to carry at least twenty-five kilograms [55 pounds].

The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.

Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence.

Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of the proceedings or until punishment has been completed.

By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay. *(GPW, art 119.)*

201. Death

Wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power; a certified copy shall be sent to the Central Agency.

Death certificates, in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidIy as possible to the Prisoner of War Information Bureau established in accordance with Article 122. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 17, and also the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The detaining authorities shall ensure that prisoners of war who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in ac-

cordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance With the wishes of the home country. *(GPW, art. 120.)*

202. Prisoners Killed *or* lnjured in Special Circumstances

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an ofiicial enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible. *(GPW, art. 121.)*

Section XVIII. INFORMATION BUREAUS AND RELIEF SOCIETIES FOR PRISONERS OF WAR

203. National Bureaus

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall beat liberty to employ prisoners of war in such a Bureau

under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in the fourth, fifth and sixth paragraphs of this Article regarding any enemy person belonging to one of the categories referred to in Article 4, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.

The Bureau shall immediately forward such information by the most rapid means to the Powers concerned, through the intermediary of the Protecting Powers and likewise of the Central Agency provided for in Article 123.

This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 17, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names, rank, army, regimental, personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner maybe sent.

The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital, and deaths, and shall transmit such information in the manner described in the third paragraph above.

Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

The Information Bureau shall also be responsible for replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any enquiries necessary to obtain the information which is asked for if this is not in its possession.

All written communications made by the Bureau shall be authenticated by a signature or a seal.

The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Such articles shall be sent by the Bureau in sealed packets which shall

be accompanied by statements giving clear and full particulars of the identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the Parties to the conflict concerned. *(GPW, art. 122.)*

204. Central Agency

A Central Prisoners of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency.

The function of the Agency shall be to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief societies provided for in Article 125. *(GPW, art. 123.)*

205. Exemption From Charges

The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 74, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates. *(GPW, art. 124.)*

206. Relief Societies and Other Organizations

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, for distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such societies or organizations maybe constituted in the territory of the Detaining Power or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations vvhose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

As soon as relief supplies or material intended for the abovementioned purposes are handed over to prisoners of war, or very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organization making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners. *(GPW, art. 125.)*

207. Supervision

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited. *(GPW, art. 126.)*

CHAPTER 4

THE WOUNDED AND SICK

Section I. GENERAL PROVISIONS

208. Protected Persons

a. Prisoners of War. *GWS* applies to the wounded and sick belonging to the categories of persons listed in paragraph A of Article 4, *GPW;* paragraph 61 herein *(GWS, art. 13).*

b. Other Persons. Wounded and sick persons who are in the hands of the enemy but who are not prisoners of war benefit from those provisions of *GC* pertaining to the treatment and protection of the wounded and sick.

209. Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea

a. Hospital Ships. Military hospital ships, which are to be marked in the manner specified by Article 43, *GWS Sea,* may in no circumstances be attacked and captured but must be respected and protected, provided their names and descriptions have been notified to the Parties to the conflict ten days before those ships are employed. *(GWS Sea, art. 22.)* Any hospital ship in a port which falls into the hands of the enemy is to be authorized to leave the port. *(GWS Sea, art. 29.)*

b. Treaty Provision.

Hospital ships entitled to the protection of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, shall not be attacked from the land. *(GWS, art. 20.)*

c. Coastal Rescue Craft. Small craft employed by a State or by the officially recognized lifeboat institutions for coastal rescue operations are to be respected and protected, so far as operational requirements permit. *(GWS Sea, art. 27.)*

d. Retained Personnel and Wounded and Sick Put Ashore. The religious, medical, and hospital personnel of hospital ships retained to care for the wounded and sick are on landing subject to *GWS. (GWS Sea, art. 37.)* Other forces put ashore become subject to *GWS. (GWS Sea, art. 4.)*

210. Application by Neutral Powers

Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded and sick, and to members of the medical personnel and to chaplains of the armed forces of

the Parties to the conflict, received or interned in their territory, as well as to dead persons found. *(GWS, art. 4.)*

211. Duration of Application

For the protected persons who have fallen into the hands of the enemy, the present Convention shall apply until their final repatriation. *(GWS, art. 5.)*

212. Special Agreements

In addition to the agreements expressly provided for in Articles 10, 15, 23, 28, 31, 36, 37 and 52, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of the wounded and sick, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

Wounded and sick, as well as medical personnel and chaplains, shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict. *(GWS, art. 6.)*

213. Non-renunciation of Rights

Wounded and sick, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be. *(GWS, art. 7.)*

214. Prohibition of Reprisals

Reprisals against the wounded, sick, personnel, buildings or equipment protected by the Convention are prohibited. *(GWS, art. 46.)*

Section II. WOUNDED AND SICK

215. Protection and Care

a. Treaty Provision.

Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances.

They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria Any attempts upon their

lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

The Party to the conflict which is compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care. *(GWS, art. 12.)*

b. National Habits and Backgrounds. The foregoing is not intended to prohibit concessions, particularly with respect to food, clothing, and shelter, which take into account the different national habits and backgrounds of the wounded and sick.

216. Search for Casualties

At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, an armistice or a suspension of fire shall be arranged, or local arrangements made, to permit the removal, exchange and transport of the wounded left on the battlefield.

Likewise, local arrangements may be concluded between Parties to the conflict for the removal or exchange of wounded and sick from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way to that area. *(GWS, art. 15.)*

217. Wounded Falling Into Enemy Hands

Parties to the conflict shall record as soon as possible, in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification.

These records should if possible include:

***(a)* designation of the Power on which he depends;**
***(b)* army, regimental, personal or serial number;**
***(c)* surname;**
***(d)* first name or names;**
(e) date of birth;
***(f)* any other particulars shown on his identity card or disc;**
***(g)* date and place of capture or death;**

(h) particulars concerning wounds or illness, or cause of death.

As soon as possible the above mentioned information shall be forwarded to the Information Bureau described in Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of a double identity disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel. *(GWS, art. 16.)*

218. Graves Registration Service

Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body.

Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation, the circumstances and reasons for cremation shall be stated in detail in the death certificate or on the authenticated list of the dead.

They shall further ensure that the dead are honorably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found. For this purpose, they shall organize at the commencement of hostilities an Official Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies, whatever the site of the graves, and the possible transportation to the home country. These provisions shall likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

As soon as circumstances permit, and at latest at the end of hostilities, these Services shall exchange, through the Information Bureau mentioned in the second paragraph of Article 16, lists showing the exact location and markings of the graves, together with particulars of the dead interred therein. *(GWS, art. 17.)*

219. Voluntary Care

a. Treaty Provision.

The military authorities may appeal to the charity of the inhabitants voluntarily to collect and care for, under their direction, the wounded and sick, granting persons who have responded to this appeal the necessary protection and facilities. Should the adverse Party take or retake control of the area, he shall likewise grant these persons the same protection and the same facilities.

The military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick of whatever nationality. The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed the wounded or sick.

The provisions of the present Article do not relieve the occupying Power of its obligation to give both physical and moral care to the wounded and sick. *(GWS, art. 18.)*

b. Compulsion in Occupied Areas. An occupying authority may not bring pressure to bear on the population in order to induce them to give treatment to the wounded and sick.

Section III. MEDICAL UNITS, ESTABLISHMENTS, PERSONNEL AND TRANSFERS

220. Protection

a. Treaty Provision.

Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict. Should they fall into the hands of the adverse Party, their personnel shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of the wounded and sick found in such establishments and units.

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety. *(GWS, art. 19.)*

b. Nature of Protection Required. See paragraph *225b.*

221. Search of Medical Units, Establishments, and Transports

GWS does not confer immunity from search by the enemy on medical units, establishments, or transports.

222. Discontinuance of Protection of Medical Establishments and Units

The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded. *(GWS, art. 21.)*

223. Conditions Not Depriving Medical Units and Establishments of Protection

a. Treaty Provision.

The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 19:

(1) That the personnel of the unit or establishment are armed, and that they use the arms in their own defense, or in that of the wounded and sick in their charge.

(2) That in the absence of armed orderlies, the unit or establishment is protected by a picket or by sentries or by an escort.

(3) That small arms and ammunition taken from the wounded and sick and not yet handed to the proper service, are found in the unit or establishment.

(4) That personnel and material of the veterinary service are found in the unit or establishment, without forming an integral part thereof.

(5) That the humanitarian activities of medical units and establishments or of their personnel extend to the care of civilian wounded or sick. *(GWS, art. 22.)*

b. Self-Defense Defined. Although medical personnel may carry arms for self-defense, they may not employ such arms against enemy forces acting in conformity with the law of war. These arms are for their personal defense and for the protection of the wounded and sick under their charge against marauders and other persons violating the law of war. Medical personnel who use their arms in circumstances not justified by the law of war expose themselves to penalties for violation of the law of war and, provided they have been given due warning to cease such acts, may also forfeit the protection of the medical unit or establishment of which they form part or which they are protecting.

c. Arms and Ammunition Taken From the Wounded and Sick. As provided in substance by the foregoing article, the presence of such

arms and ammunition in a medical unit or establishment is not of itself cause for denying the protection to be accorded such organizations under *GWS*. However, such arms and ammunition should be turned in as soon as practicable and, in any event, are subject to confiscation.

224. Hospital Zones and Localities

In time of peace, the High Contracting Parties and, after the the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital zones and localities so organized as to protect the wounded and sick from the effects of war, as well as the personnel entrusted with the organization and administration of these zones and localities and with the care of the persons therein assembled.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the hospital zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital zones and localities *(GWS, art. 23.)*

225. Protection of Permanent Personnel

a. Treaty Provision. See Article 24, *GWS* (par 67).

b. What Is Meant by Respect and Protection. The respect and protection accorded personnel of certain categories by Articles 19 (par. 220), 24 (par. 67), and 25 (par. 226), *GWS*, mean that they must not knowingly be attacked, fired upon, or unnecessarily prevented from discharging their proper functions. The accidental killing or wounding of such personnel, due to their presence among or in proximity to combatant elements actually engaged, by fire directed at the latter, gives no just cause for complaint.

226. Protection of Auxiliary Personnel

a. *Treaty Provision.*

Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands. *(GWS, art. 25.)*

b. Nature of Protection. See paragraph 225 *b,* and Article 29, *GWS* (par. 68).

227. Personnel of Aid Societies

See Article 26, *GWS* (par. 69).

228. The American National Red Cross

The American National Red Cross is the only voluntary aid society now authorized by this Government to render aid to the Army Medical Service in time of war, and any other society desiring to render similar assistance can do so only through the American National Red Cross (Pres. Proc., 22 Aug. 1911, *37 Stat. 1716).* The President is authorized to accept the assistance tendered by the Red Cross and to employ the same under the Armed Forces (act 17 Jul 1953, *67 Stat. 178; 36 U.S.C. 17, 17a.)* Personnel of the Red Cross serving with or accompanying an armed force in the field in time of war or serving with or accompanying the armed forces without the continental limits of the United States and certain named territories are subject to the Uniform Code of Military Justice *(USMJ, Art. 2 (10) (11)).*

229. Societies of Neutral Countries

A recognized Society of a neutral country can only lend the assistance of its medical personnel and units to a Party to the conflict with the previous consent of its own Government and the authorization of the Party to the conflict concerned. That personnel and those units shall be placed under the control of that Party to the conflict.

The neutral Government shall notify this consent to the adversary of the State which accepts such assistance. The Party to the conflict who accepts such assistance is bound to notify the adverse Party thereof before making any use of it.

In no circumstances shall this assistance be considered as interference in the conflict.

The members of the personnel named in the first paragraph shall be duly furnished with the identity cards provided for in Article 40 before leaving the neutral country to which they belong. *(GWS, art. 97.)*

230. Retained Personnel

a. Treaty Provision.

Personnel designated in Articles 24 and 26 who fall into the hands of the adverse Party, shall be retained only in so far as the state of health, the spiritual needs and the number of prisoners of war require.

Personnel thus retained shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the

Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. Within the framework of the military laws and regulations of the Detaining Power, and under the authority of its competent service, they shall continue to carry out, in accordance with their professional ethics, their medical and spiritual duties on behalf of prisoners of war, preferably those of the armed forces to which they themselves belong. They shall further enjoy the following facilities for carrying out their medical or spiritual duties:

(a) They shall be authorized to visit periodically the prisoners of war in labour units or hospitals outside the camp. The Detaining Power shall put at their disposal the means of transport required.

(b) In each camp the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel. For this purpose, from the outbreak of hostilities, the Parties to the conflict shall agree regarding the corresponding seniority of the ranks of their medical personnel, including those of the societies designated in Article 26. In all questions arising out of their duties, this medical officer, and the chaplains, shall have direct access to the military and medical authorities of the camp who shall grant them the facilities they may require for correspondence relating to these questions.

(c) Although retained personnel in a camp shall be subject to its internal discipline, they shall not, however, be required to perform any work outside their medical or religious duties.

During hostilities the Parties to the conflict shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief.

None of the preceding provisions shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of the prisoners of war. *(GWS, art. 28.)*

b. Discipline. See paragraph 67.

231. Return of Religious and Medical Personnel

a. Treaty Provision.

Personnel whose retention is not indispensable by virtue of the provisions of Article 28 shall be returned to the Party to the conflict to whom they belong, as soon as a road is open for their return and military requirements permit.

Pending their return, they shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the

Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. They shall continue to fulfill their duties under the orders of the adverse Party and shall preferably be engaged in the care of the wounded and sick of the Party to the conflict to which they themselves belong.

On their departure, they shall take with them the effects, personal belongings, valuables and instruments belonging to them. *(GWS, art. 30.)*

b. Security Measures. Nothing in the foregoing article precludes reasonable measures to prevent such personnel, upon their return to their own army, from carrying information of strategic or tactical value. The movements and activities of religious and medical personnel whose return is contemplated may be restricted as far as reasonably necessary to prevent their acquisition of such information, provided they are not thereby denied the facilities afforded them by Article 28, *GWS* (par. 230). Should they become possessed of such information, their return to their own army may be delayed until the information has ceased to be of substantial value.

232. Selection of Personnel for Return

The selection of personnel for return under Article 30 shall be made irrespective of any consideration of race, religion or political opinion, but preferably according to the chronological order of their capture and their state of health.

As from the outbreak of hostilities, Parties to the conflict may determine by special agreement the percentage of personnel to be retained, in proportion to the number of prisoners and the distribution of the said personnel in the camps. *(GWS, art. 31.)*

233. Return of Personnel Belonging to Neutral Countries

a. Treaty Provision.

Persons designated in Article 27 who have fallen into the hands of the adverse Party may not be detained.

Unless otherwise agreed, they shall have permission to return to their country, or if this is not possible, to the territory of the Party to the conflict in whose service they were, as soon as a route for their return is open and military considerations permit.

Pending their release, they shall continue their work under the direction of the adverse Party; they shall preferably be engaged in the care of the wounded and sick of the Party to the conflict in whose service they were.

On their departure, they shall take with them their effects, personal articles and valuables and the instruments, arms and if possible the means of transport belonging to them.

The Parties to the conflict shall secure to this personnel, while in their power, the same food, lodging, allowances and pay as are

granted to the corresponding personnel of their armed forces. The food shall in any case be sufficient as regards quantity, quality and variety to keep the said personnel in a normal state of health. *(GWS, art. 32.)*

b. Security Measures. Security measures similar to those taken with respect to religious and medical personnel (par. *231b)* may be applied to personnel of aid societies of neutral countries.

234. Buildings and Stores

a. Treaty Provision.

The material of mobile medical units of the armed forces which fall into the hands of the enemy, shall be reserved for the care of wounded and sick.

The buildings, material and stores of fixed medical establishments of the armed forces shall remain subject to the laws of war, but may not be diverted from their purpose as long as they are required for the care of wounded and sick. Nevertheless, the commanders of forces in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are nursed in them.

The material and stores defined in the present Article shall not be intentionally destroyed. *(GWS, art. 33.)*

b. Material of Mobile Medical Units. The material of mobile medical units falling into the hands of the enemy need not be restored to the belligerent from whom it was taken. It must, however, be used only for the care of the wounded and sick, and does not constitute war booty, within the meaning of Article 53, *HR* (pars. 403, 408) or unwritten international law, until *GWS* ceases to be operative.

235. Property of Aid Societies

The real and personal property of aid societies which are admitted to the privileges of the Convention shall be regarded as private property.

The right of requisition recognized for belligerents by the laws and customs of war shall not be exercised except in case of urgent necessity, and only after the welfare of the wounded and sick has been ensured. *(GWS, art. 34.)*

236. Protection of Medical Transports

a. Treaty Provision.

Transports of wounded and sick or of medical equipment shall be respected and protected in the same way as mobile medical units.

Should such transports or vehicles fall into the hands of the adverse Party, they shall be subject to the laws of war, on condi-

tion that the Party to the conflict who captures them shall in all cases ensure the care of the wounded and sick they contain.

The civilian personnel and all means of transport obtained by requisition shall be subject to the general rules of international law. *(GWS, art. 35.)*

b. Civilian Personnel. The rules of international law applicable to civilians connected with medical transports may vary depending on whether such persons accompany the armed forces *(GPW, art. 4A (4);* par. 61 herein) are members of the staff of voluntary aid societies either of a belligerent State *(GWS, art. 26;* par. 69 herein) or of a neutral State *(GWS, art 27;* par. 229 herein), or are civilians not otherwise protected by *GWS* or *GPW (GC, art. 4;* par. 247 herein).

237. Medical Aircraft

a. Treaty Provision.

Medical aircraft, that is to say, aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment, shall not be attacked, but shall be respected by the belligerents, while flying at heights, times and on routes specifically agreed upon between the belligerents concerned.

They shall bear, clearly marked, the distinctive emblem prescribed in Article 38, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification that may be agreed upon between the belligerents upon the outbreak or during the course of hostilities.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Medical aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

In the event of an involuntary landing in enemy or enemy-occupied territory, the wounded and sick, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Article 24 and the Articles following. *(GWS, art. 36.)*

b. Converted Aircraft. It is not necessary that the aircraft should have been specially built and equipped for medical purposes. There is no objection to converting ordinary aircraft into medical aircraft or to using former medical aircraft for other purposes, provided the distinctive markings are removed.

Section IV. THE RED CROSS EMBLEM

238. Emblem of the Convention

a. Treaty Provision.

As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces.

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, those emblems are also recognized by the terms of the present Convention. *(GWS, art. 38.)*

b. Emblems Other Than the Red Cross. Turkey uses the Red Crescent; Iran, the Red Lion and Sun. Israel signed *GWS* subject to the reservation that it will use a Red Shield of David as its distinctive sign.

c. Misuse of the Emblem. See *Article 23 (f), HR* (par. 52). See also pertinent United States statutes.

239. Use of the Emblem

Under the direction of the competent military authority, the emblem shall be displayed on the flags, armlets and on all equipment employed in the Medical Service. *(GWS, art. 39.)*

240. Identification of Medical and Religious Personnel

The personnel designated in Article 24 and in Articles 26 and 27 [Articles 36 and 37 of *GWS Sea]* **shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.**

Such personnel, in addition to wearing the identity disc mentioned in Article 16 [Article 19 of *GWS Sea],* **shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the surname and first names, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.**

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the High Contracting Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity

cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss, they shall be entitled to receive duplicates of the cards and to have the insignia replaced. *(GWS, art. 40.)*

241. Identification of Auxiliary Personnel

The personnel designated in Article 25 shall wear, but only while carrying out medical duties, a white armlet bearing in its centre the distinctive sign in miniature; the armlet shall be issued and stamped by the military authority.

Military identity documents to be carried by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and their authority for wearing the armlet. *(GWS, art. 41.)*

242. Marking of Medical Units and Establishments

The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities.

In mobile units, as in fixed establishments, it may be accompanied by the national flag of the Party to the conflict to which the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy shall not fly any flag other than that of the Convention.

Parties to the conflict shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to the enemy land, air or naval forces, in order to obviate the possibility of any hostile action. *(GWS, art. 42.)*

243. Marking of Units of Neutral Countries

The medical units belonging to neutral countries which may have been authorized to lend their services to a belligerent under the conditions laid down in Article 27, shall fly, along with the flag of the Convention, the national flag of that belligerent, wherever the latter makes use of the faculty conferred on him by Article 42.

Subject to orders to the contrary by the responsible military authorities, they may, on all occasions, fly their national flag, even if they fall into the hands of the adverse Party. *(GWS, art. 43.)*

244. Restrictions in the Use of the Emblem

With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the Red Cross on

a white ground and the words "Red Cross", or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 38, second paragraph, in respect of the countries which use them. The National Red Cross Societies and other Societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.

The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the Red Cross on a white ground.

As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick. *(GWS, art. 44.)*

245. United States Reservation

The United States, in ratifying the Geneva Convention * * * does so with the reservation that * * * nothing contained therein shall make unlawful, or obligate the United States of America to make unlawful, any use or right of use within the United States of America and its territories and possessions of the Red Cross emblem, sign, insignia, or words as was lawful by reason of domestic law and a use begun prior to January 5,1905, provided such use by pre-1905 users does not extend to the placing of the Red Cross emblem, sign, or insignia upon aircraft, vessels, vehicles, buildings or other structures, or upon the ground. *(T. I. A. S. 3362.)*

CHAPTER 5
CIVILIAN PERSONS

Section I. GENERAL PROVISIONS

246. Protection of Civilians Generally

The protection of civilian persons is governed by both *GC* and *HR*, the former supplementing the latter insofar as both relate to occupied territory. Certain provisions of *GC* are applicable only in the territory of a party to the conflict, others to belligerently occupied territory, a number to both or to civilian populations generally. Those relating exclusively to occupied areas appear in chapter 6, while the requirements of *GC* having to do with the territory of a belligerent or with both such territory and occupied territory or with the general protection of civilian persons are set forth in this chapter.

247. Definition of Protected Persons

a. Treaty Provision.

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention. *(GC, art. 4.)*

b. Interpretation. Subject to qualifications set forth in paragraph 248, those protected by *GC* also include all persons who have engaged in hostile or belligerent conduct but who are not entitled to treatment as prisoners of war.

c. Wider Scope of Certain Articles. Part II, *GC* (sec. II of this chapter), has a broader scope than the rest of *GC.* (See *GC, art. 13;* par. 252 herein.)

248. Derogations

a. Domestic and Occupied Territory.

Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case such persons shall nevertheless be treated with humanity, and in ease of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be. *(GC, art. 5.)* (See also par. 73.)

b. Other Area. Where, in territories other than those mentioned in *a* above, a Party to the conflict is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person is similarly not entitled to claim such rights and privileges under *GC* as would, if exercised in favor of such individual person, be prejudicial to the security of such State.

c. Acts Punishable. The foregoing provisions impliedly recognize the power of a Party to the conflict to impose the death penalty and lesser punishments on spies, saboteurs, and other persons not entitled to be treated as prisoners of war, except to the extent that that power has been limited or taken away by Article 68, GO (par. 438).

249. Beginning and End of Application

a. *Treaty Provision.*

The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention. *(GC, art. 6.)*

b. Reestablishment of Protected Persons. The word "reestablishment," as used in *a*, refers to protected persons who cannot be repatriated because, for example, they would be liable to persecution in their own country, or because their homes have been destroyed.

250. Special Agreements

In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.

Protected persons shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourble measures have been taken with regard to them by one or other of the Parties to the conflict. *(GC, art. 7.)*

251. Non-renunciation of Rights

Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be. *(GC, art.* 8.)

Section II. GENERAL PROTECTION OF POPULATIONS AGAINST CERTAIN CONSEQUENCES OF WAR

252. Field of Application

a. Treaty Provision.

The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion,

and are intended to alleviate the sufferings caused by war. *(GC art. 13.)*

b. The State and Its Own Nationals. The provisions mentioned in a concern not only the relations between a given nation and aliens but also the relations between a nation and its own nationals, and also apply to neutral inhabitants of the countries in conflict.

253. Hospital and Safety Zones and Localities

In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant-mothers and mothers of children under seven.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and Localities. *(GC, art. 14.)*

254. Neutralized Zones

a. Treaty Provision.

Any Party to the conflict may, either director through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction:

***(a)* wounded and sick combatants or non-combatants;**

***(b)* civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.**

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralized zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralization of the zone. *(GC, art. 15.)*

b. By Whom Agreements Concluded. The agreements mentioned in *a* and elsewhere in this section may be concluded either by the governments concerned or by subordinate military commanders.

255. General Protection of Wounded and Sick

The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment. *(GC, art. 16.)*

256. Evacuation of Wounded and Sick

The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas. *(GC, art. 17.)*

257. Protection of Hospitals

Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.

States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19.

Civilian hospitals shall be marked by means of the emblem provialed for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, but only if so authorized by the State.

The Parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.

In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives. *(GC, art. 18.)*

258. Discontinuance of Protection of Hospitals

a. Treaty Provision.

The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian

duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants and not yet handed to the proper service, shall not be considered to be acts harmful to the enemy. *(GC, art. 19.)*

b. Meaning of Acts Harmful to the Enemy. Acts harmful to the enemy are not only acts of warfare proper but any activity characterizing combatant action, such as setting up observation posts or the use of the hospital as *a* liaison center for fighting troops.

259. Hospital Staff

a. Treaty Provision.

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases, shall be respected and protected.

In occupied territory and in zones of military operations, the above personnel shall be recognizable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armlet which they shall wear on the left arm while carrying out their duties. This armlet shall be issued by the State and shall bear the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Other personnel who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection and to wear the armlet, as provided in and under the conditions prescribed in this Article, while they are employed on such duties. The identity card shall state the duties on which they are employed.

The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel. *(GC, art. 20.)*

b. Interpretation. The persons "regularly and solely engaged in the operation and administration of civilian hospitals" include all members of the professional staff and all employees of hospitals, whether or not in direct contact with the wounded and sick, provided they have no occupation other than their work in the hospitals.

260. Land and Sea Transport

Convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected in the same manner as the hospitals provided for in Article 18, and shall be marked, with the consent of the State, by the display of the distinctive emblem provided for in Article *38* of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. *(GC, art. 21.)*

261. Air Transport

Aircraft exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases, or for the transport of medical personnel and equipment, shall not be attacked, but shall be respected while flying at heights, times and on routes specifically agreed upon between all the Parties to the conflict concerned.

They may be marked with the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Such aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination if any. *(GC, art. 22.)*

262. Consignments of Medical Supplies, Food, and Clothing

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

(a) that the consignments may be diverted from their destination,

(b) that the control may not be effective, or

(c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which

would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution of the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed. *(GC, art. 23.)*

263. Measures Relating to Child Welfare

The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means. *(GC, art. 24.)*

264. Family News

All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. This correspondence shall be forwarded speedily and without undue delay.

If, as a result of circumstances, it becomes difficult or impossible to exchange family correspondence by the ordinary post, the Parties to the conflict concerned shall apply to a neutral intermediary, such as the Central Agency provided for in Article 140, and shall decide in consultation with it how to ensure the fulfillment of their obligations under the best possible conditions, in particular with the cooperation of the National Red Cross (Red Crescent, Red Lion and Sun) Societies.

If the Parties to the conflict deem it necessary to restrict family correspondence, such restrictions shall be confined to the compulsory use of standard forms containing twenty-five freely chosen words, and to the limitation of the number of these forms dispatched to one each month. *(GC, art. 25.)*

265. Dispersed Families

Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations. *(GC, art. 26.)*

Section Ill. PROVISIONS COMMON TO THE TERRITORIES OF THE PARTIES TO THE CONFLICT AND TO OCCUPIED TERRITORIES

266. General

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war. *(GC, art, 27.)*

267. Danger Zones

The presence of a protected person may not be used to render certain points or areas immune from military operations. *(GC, art. 28.)*

268. Responsibilities

The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred. *(GC, art. 29.)*

269. Application to Protecting Powers and Relief Organizations

Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them.

These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations.

Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the Detaining or Occupying Powers shall facilitate as much as possible visits to protected persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons. *(GC, art. 30.)*

270. Prohibition of Coercion

a. Treaty Provision.

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties. *(GC, art. 31.)*

b. Guides. Among the forms of coercion prohibited is the impressment of guides from the local inhabitants.

271. Prohibition of Corporal Punishment, Torture, Etc.

The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents. *(GC, art. 32.)*

272. Individual Responsibility, Collective Penalties, Reprisals, Pillage

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited. *(GC, art. 33.)* (See also pars. 47 and 397.)

273. Hostages

The taking of hostages is prohibited. *(GC, art. 34.)*

Section IV. ALIENS IN THE TERRITORY OF A PARTY TO THE CONFLICT

274. Right to Leave the Territory

All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their depature is contrary to the national interest of the State. The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. Those persons permitted to leave may provide themselves with the necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use.

If any such person is refused permission to leave the territory, he shall be entitled to have such refusal reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose.

Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave. *(GC, art. 35.)*

275. Conditions of Departure

Departures permitted under the foregoing Articles shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food. All costs in connection therewith, from the point of exit in the territory of the Detaining Power, shall be borne by the country of destination, or, in the case of accommodation in a neutral country, by the Power whose nationals are benefited. The practical details of such movements may, if necessary, be settled by special agreements between the Powers concerned.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands. *(GC, art. 36.)*

276. Persons in Confinement

Protected persons who are confined pending proceedings or serving a sentence involving loss of liberty, shall during their confinement be humanely treated.

As soon as they are released, they may ask to leave the territory in conformity with the foregoing Articles. *(GC, art. 37.)*

277. Non-repatriated Persons: General

With the exception of special measures authorized by the present Convention, in particular by Articles 27 and 41 thereof,

the situation of protected persons shall continue to be regulated, in principle, by the provisions concerning aliens in time of peace. In any case, the following rights shall be granted to them:

(1) They shall be enabled to receive the individual or collective relief that may be sent to them.
(2) They shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned.
(3) They shall be allowed to practise their religion and to receive spiritual assistance from ministers of their faith.
(4) If they reside in an area particularly exposed to the dangers of war, they shall be authorised to move from that area to the same extent as the nationals of the State concerned.
(5) Children under fifteen years, pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned. *(GC, art. 38.)*

278. Non-repatriated Persons: Means of Existence

Protected persons who, as a result of the war, have lost their gainful employment, shall be granted the opportunity to find paid employment. That opportunity shall, subject to security considerations and to the provisions of Article 40, be equal to that enjoyed by the nationals of the Power in whose territory they are.

Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents.

Protected persons may in any case receive allowances from their home country, the Protecting Power, or the relief societies referred to in Article 30. *(GC, art. 39.)*

279. Non-repatriated Persons: Employment

Protected persons may be compelled to work only to the same extent as nationals of the Party to the conflict in whose territory they are.

If protected persons are of enemy nationality, they may only be compelled to do work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings and which is not directly related to the conduct of military operations.

In the cases mentioned in the two preceding paragraphs, protected persons compelled to work shall have the benefit of the

same working conditions and of the same safeguards as national workers, in particular as regards wages, hours of labour, clothing and equipment, previous training and compensation for occupational accidents and diseases.

If the above provisions are infringed, protected persons shall be allowed to exercise their right of complaint in accordance with Article 30. *(GC, art. 40.)*

280. Internment or Assigned Residence

a. Treaty Provision.

Should the Power in whose hands protected persons may be consider the measures of control mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more severe than that of assigned residence or internment, in accordance with the provisions of Articles 42 and 43.

In applying the provisions of Article 39, second paragraph, to the cases of persons required to leave their usual places of residence by virtue of a decision placing them in assigned residence elsewhere, the Detaining Power shall be guided as closely as possible by the standards of welfare set forth in Part III, Section IV of this Convention *(GC, art. 41.)*

b. Penal Legislation. The foregoing provision does not preclude the application of ordinary penal legislation to protected persons.

281. Grounds for Internment or Assigned Residence; Voluntary internment

The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.

If any person, acting through the representatives of the Protecting Power, voluntarily demands internment and if his situation renders this step necessary, he shall be interned by the Power in whose hand he may be. *(GC, art. 42.)*

282. Procedure

a. Treaty Provision.

Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case with a view

to the favorable amendment of the initial decision, if circumstances permit.

Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of any protected persons who have been interned or subjected to assigned residence, or who have been released from internment or assigned residence. The decisions of the courts or boards mentioned in the first paragraph of the present Article shall also, subject to the same conditions, be notified as rapidly as possible to the Protecting Power. (GC, *art. 43.)*

b. Prohibited Areas. The term "assigned residence" refers to measures taken with respect to individuals or families and does not include prohibitions on entry into or residence in specified zones, which have been imposed on groups of people by reason of their nationality or like criteria.

283. Refugees

a. Treaty Provision.

In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any government. (GC, *art. 44.)*

b. Purpose. The purpose of the foregoing article is to insure that refugees who may only technically remain enemy aliens are not on that basis automatically subject to control measures, notwithstanding the fact they actually are not protected by their government. However, the quoted provision does not in any way deny the right of a State to intern any such person or subject him to any other recognized measure of control when there is any additional reason that renders necessary the taking of such action as may be required for the security of the State in a moment of national crisis.

***284.* Transfer to Another Power**

Protected persons shall not be transferred to a Power which is not a party to the Convention.

This provision shall in no way constitute an obstacle to the repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities.

Protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention. If protected persons are transferred under such circumstances, responsibility for the application of the present Convention rests

on the Power accepting them, while they are in its custody. Nevertheless, if that Power fails to carry out the provisions of the present Convention in any important respect, the Power by which the protected persons were transferred shall, upon being so notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the protected persons. Such request must be complied with.

In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.

The provisions of this Article do not constitute an obstacle to the extradition, in pursuance of extradition treaties concluded before the outbreak of hostilities, of protected persons accused of offences against ordinary criminal law. *(GC, art. 45.)*

285. Cancellation of Restrictive Measures

In so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons shall be cancelled as soon as possible after the close of hostilities.

Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities. *(GC, art. 46.)*

Section V. REGULATIONS FOR THE TREATMENT OF INTERNEES

286. Cases of Internment and Provisions Applicable

The Parties to the conflict shall not intern protected persons, except in accordance with the provisions of Articles 41, 42, 43, 68 and 78. *(GC, art. 79.)*

287. Civil Capacity

Internees shall retain their full civil capacity and shall exercise such attendant rights as may be compatible with their status. *(GC, art. 80.)*

288. Maintenance

Parties to the conflict who intern protected persons shall be bound to provide free of charge for their maintenance, and to grant them also the medical attention required by their state of health.

No deduction from the allowances, salaries or credits due to the internees shall be made for the repayment of these costs.

The Detaining Power shall provide for the support of those dependent on the internees, if such dependents are without adequate means of support or are unable to earn a living. *(GC, art. 81.)*

289. Grouping of Internees

The Detaining Power shall, as far as possible, accommodate the internees according to their nationality language and customs. Internees who are nationals of the same country shall not be separated merely because they have different languages.

Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health or for the purposes of enforcement of the provisions of Chapter IX of the present Section. Internees may request that their children who are left at liberty without parental care shall be interned with them.

Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodations from other internees, together with facilities for leading a proper family life. *(GC, art. 82.)*

290. Location of Places of Internment

The Detaining Power shall not set up places of internment in areas particularly exposed to the dangers of war.

The Detaining Power shall give the enemy Powers, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of places of internment.

Whenever military considerations permit, internment camps shall be indicated by the letters IC, placed so as to be clearly visible in the daytime from the air. The Powers concerned may, however, agree upon any other system of marking. No place other than an internment camp shall be marked as such. *(GC, art. 83.)*

291. Separate Internment

Internees shall be accommodated and administered separately from prisoners of war and from persons deprived of liberty for any other reason. *(GC, art. 84.)*

292. Accommodation; Hygiene

The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas, or in districts the climate of which is injurious to the internees. In all cases where the district, in which a protected person is temporarily

interned, is in an unhealthy area or has a climate which is harmful to his health, he shall be removed to a more suitable place of internment as rapidly as circumstances permit.

The premises shall be fully protected from dampness, adequately heated and lighted, in particular between dusk and lights out. The sleeping quarters shall be sufficiently spacious and well ventilated, and the internees shall have suitable bedding and sufficient blankets, account being taken of the climate, and the age, sex, and state of health of the internees.

Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning.

Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory. *(GC, art. 85.)*

293. Premises for Religious Services

The Detaining Power shall place at the disposal of interned persons, of whatever denomination, premises suitable for the holding of their religious services. *(GC, art.. 86.)*

294. Canteens

a. Treaty Provision.

Canteens shall be installed in every place of internment except where other suitable facilities are available. Their purpose shall be to enable internees to make purchases, at prices not higher than local market prices, of foodstuffs and articles of everyday use, including soap and tobacco, such as would increase their personal well-being and comfort.

Profits made by canteens shall be credited to a welfare fund to be set up for each place of internment, and administered for the benefit of the internees attached to such place of internment. The Internee Committee provided for in Article 102 shall have the right to check the management of the canteen and of the said fund.

When a place of internment is closed down, the balance of the welfare fund shall be transferred to the welfare fund of a place

of internment for internees of the same nationality, or, if such a place does not exist, to a central welfare fund which shall be administered for the benefit of all internees remaining in the custody of the Detaining Power. In case of a general release, the said profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned. *(GC, art. 87.)*

b. Limitation on Privilege. Interned persons are not entitled to more favorable treatment than the population at large with respect to canteen facilities and are equally subject to regulations, such as those pertaining to rationing, which are applied to the population generally.

295. Air-Raid Shelters and Protective Measures

In all places of internment exposed to air raids and other hazards of war, shelters adequate in number and structure to ensure the necessary protection shall be installed. In case of alarms, the internees shall be free to enter such shelters as quickly as possible, excepting those who remain for the protection of their quarters against the aforesaid hazards. Any protective measures taken in favour of the population shall also apply to them.

All due precautions must be taken in places of internment against the danger of fire. *(GC, art. 88.)*

***296.* Food**

Daily food rations for internees shall be sufficient in quantity, quality, and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.

Internees shall also be given the means by which they can prepare for themselves any additional food in their possession.

Sufficient drinking water shall be supplied to internees. The use of tobacco shall be permitted.

Internees who work shall receive additional rations in proportion to the kind of labour which they perform.

Expectant and nursing mothers, and children under fifteen years of age, shall be given additional food, in proportion to their physiological needs. *(GC, art. 89.)*

***297.* Clothing**

When taken into custody, internees shall be given all facilities to provide themselves with the necessary clothing, footwear and change of underwear, and later on, to procure further supplies if required. Should any internees not have sufficient clothing, account being taken of the climate, and be unable to procure any,

it shall be provided free of charge to them by the Detaining Power.

The clothing supplied by the Detaining Power to internees and the outward markings placed on their own clothes shall not be ignominious nor expose them to ridicule.

Workers shall receive suitable working outfits, including protective clothing, whenever the nature of their work so requires. *(GC, art. 90.)*

298. Medical Attention

Every place of internment shall have an adequate infirmary, under the direction of a qualified doctor, where internees may have the attention they require, as well as an appropriate diet. Isolation wards shall be set aside for cases of contagious or mental diseases.

Maternity cases and internees suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital care, must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population.

Internees shall, for preference, have the attention of medical personnel of their own nationality.

Internees may not be prevented from presenting themselves to the medical authorities for examination. The medical authorities of the Detaining Power shall, upon request, issue to every internee who has undergone treatment an official certificate showing the nature of his illness or injury, and the duration and nature of the treatment given. A duplicate of this certificate shall be forwarded to the Central Agency provided for in Article 140.

Treatment, including the provision of any apparatus necessary for the maintenance of internees in good health, particularly dentures and other artificial appliances and spectacles, shall be free of charge to the internee. *(GC, art. 91.)*

299. Medical Inspection

Medical inspections of internees shall be made at least once a month. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of internees, and to detect contagious diseases, especially tuberculosis, malaria, and venereal diseases. Such inspections shall include, in particular, the checking of weight of each internee and, at least once a year, radioscopic examination. *(GC, art. 92)*

300. Religious Freedoms

Internees shall enjoy complete latitude in the exercise of their religious duties including attendance at the services of their

faith, on condition that they comply with the disciplinary routine prescribed by the detaining authorities.

Ministers of religion who are interned shall be allowed to minister freely to the members of their community. For this purpose, the Detaining Power shall ensure their equitable allocation amongst the various places of internment in which there are internees speaking the same language and belonging to the same religion. Should such ministers be too few in number, the Detaining Power shall provide them with the necessary facilities, including means of transport, for moving from one place to another, and they shall be authorized to visit any internees who are in hospital. Ministers of religion shall be at liberty to correspond on matters concerning their ministry with the religious authorities in the country of detention and, as far as possible, with the international religious organizations of their faith. Such correspondence shall not be considered as forming a part of the quota mentioned in Article 107. It shall, however, be subject to the provisions of Article 112.

When internees do not have at their disposal the assistance of ministers of their faith, or should these latter be too few in number, the local religious authorities of the same faith may appoint, in agreement with the Detaining Power, a minister of the internees' faith or, if such a course is feasible from a denominational point of view, a minister of similar religion or a qualified layman. The latter shall enjoy the facilities granted to the ministry he has assumed. Persons so appointed shall comply with all regulations laid down by the Detaining Power in the interests of discipline and security. *(GC, art. 93.)*

301. Recreational Study, Sports, and Games

The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees, whilst leaving them free to take part in them or not. It shall take all practicable measures to ensure the exercise thereof, in particular by providing suitable premises.

All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside.

Internees shall be given opportunities for physical exercise, sports and outdoor games. For this purpose, sufficient open spaces shall be set aside in all places of internment. Special playgrounds shall be reserved for children and young people. *(GC, art. 94.)*

302. Working Conditions

a. Treaty Provision.

The Detaining Power shall not employ internees as workers, unless they so desire. Employment which, if undertaken under compulsion by a protected person not in internment, would involve a breach of Articles 40 or 51 of the present Convention, and employment on work which is of a degrading or humiliating character are in any case prohibited.

After a working period of six weeks, internees shall be free to give up work at any moment, subject to eight days' notice.

These provisions constitute no obstacle to the right of the Detaining power to employ interned doctors, dentists and other medical personnel in their professional capacity on behalf of their fellow internees, or to employ internees for administrative and maintenance work in places of internment and to detail such persons for work in the kitchens or for other domestic tasks, or to require such persons to undertake duties connected with the protection of internees against aerial bombardment or other war risks. No internee may, however, be required to perform tasks for which he is, in the opinion of a medical officer, physically unsuited.

The Detaining Power shall take entire responsibility for all working conditions, for medical attention, for the payment of wages, and for ensuring that all employed internees receive compensation for occupational accidents and diseases. The standards prescribed for the said working conditions and for compensation shall be in accordance with the national laws and regulations, and with the existing practice; they shall in no case be inferior to those obtaining for work of the same nature in the same district. Wages for work done ahail be determined on an equitable baais by special agreements between the internees, the Detaining Power, and, if the case arises, employers other than the Detaining Power, due regard being paid to the obligation of the Detaining Power to provide for free maintenance of internees and for the medical attention which their state of health may require. Internees permanently detailed for categories of work mentioned in the third paragraph of this Article, shall be paid fair wages by the Detaining Power. The working conditions and the scale of compensation for occupational accidenta and diseases to internees thus detailed, shall not be inferior to those applicable to work of the same nature in the same district. *(GC, art. 95.)*

b. Wages. Since internees are free of normal financial responsibilities, they are not entitled to receive from the Detaining Power by way of wages the whole of the amount paid over by their employers.

303. Labor Detachments

All labour detachments shall remain part of and dependent upon a place of internment. The competent authorities of the Detaining Power and the commandant of a place of internment shall be responsible for the observance in a labour detachment of the provisions of the present Convention. The commandant shall keep an up-to-date list of the labour detachments subordinate to him and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross and of other humanitarian organizations who may visit the places of internment. *(GC, art. 96.)*

304. Valuables and Personal Effects

Internees shall be permitted to retain articles of personal use. Monies, cheques, bonds, etc., and valuables in their possession may not be taken from them except in accordance with established procedure. Detailed receipts shall be given therefor.

The amounts shall be paid into the account of every internee as provided for in Article 98. Such amounts may not be converted into any other currency unless legislation in force in the territory in which the owner is interned so requires or the internee gives his consent.

Articles which have above all a personal or sentimental value may not be taken away.

A woman internee shall not be searched except by a woman.

On release or repatriation, internees shall be given all articles, monies or other valuables taken from them during internment and shall receive in currency the balance of any credit to their accounta kept in accordance with Article 98, with the exception of any articles or amounts withheld by the Detaining Power by virtue of its legislation in force. If the property of an internee is so withheld, the owner shall receive a detailed receipt.

Family or identity documents in the possession of internees may not be taken away without a receipt being given. At no time shall internees be left without identity documents. If they have none, they shall be issued with special documents drawn up by the detaining authorities, which will serve as their identity papers until the end of their internment.

Internees may keep on their persons a certain amount of money, in cash or in the shape of purchase coupons, to enable them to make purchases. *(GC, art. 97.)*

305. Financial Allowance and Individual Accounts

All internees shall receive regular allowances, sufficient to enable them to purchase goods and articles, such as tobacco,

toilet requisites, etc. Such allowances may take the form of credits or purchase coupons.

Furthermore, internees may receive allowances from the Power to which they owe allegiance, the Protecting Powers, the organizations which may assist them, or their families, as well as the income on their property in accordance with the law of the Detaining Power. The amount of allowances granted by the Power to which they owe allegiance shall be the same for each category of internees (infirm, sick, pregnant women, etc.), but may not be allocated by that Power or distributed by the Detaining Power on the basis of discriminations between internees which are prohibited by Article 27 of the present Convention.

The Detaining Power shall open a regular account for every internee, to which shall be credited the allowances named in the present Article, the wages earned and the remittances received, together with such sums taken from him as may be available under the legislation in force in the territory in which he is interned. Internees shall be granted all facilities consistent with the legislation in force in such territory to make remittances to their families and to other dependants. They may draw from their accounts the amounts necessary for their personal expenses, within the limits fixed by the Detaining Power. They shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts. A statement of accounts shall be furnished to the Protecting Power on request, and shall accompany the internee in case of transfer. *(GC, art. 98.)*

306. Camp Administration

Every place of internment shall be put under the authority of a responsible officer, chosen from the regular military forces or the regular civil administration of the Detaining Power. The oilicer in charge of the place of internment must have in his possession a copy of the present Convention in the oillcial language, or one of the oflicial languages, of his country and shall be responsible for its application. The staff in control of internees shall be instructed in the provisions of the present Convention and of the administrative measures adopted to ensure its application.

The text of the present Convention and the texts of special agreements concluded under the said Convention shall be posted inside the place of internment, in a language which the internees understand, or shall be in the possession of the Internee Committee.

Regulations, orders, notices and publications of every kind shall be communicated to the internees and posted inside the places of internment, in a language which they understand.

Every order and command addressed to internees individually, must likewise, be given in a language which they understand. *(GC, art. 99.)*

307. General Discipline

The disciplinary regime in places of internment shall be consistent with humanitarian principles, and shall in no circumstances include regulations imposing on internees any physical exertion dangerous to their health or involving physical or moral victimization. Identification by tattooing or imprinting signs or markings on the body, is prohibited.

In particular, prolonged standing and roll-calls, punishment drill, military drill and manoeuvres, or the reduction of food rations, are prohibited. *(GC, art. 100.)*

308. Complaints and Petitions

a. Treaty Provision.

Internees shall have the right to present to the authorities in whose power they are, any petition with regard to the conditions of internment to which they are subjected.

They shall also have the right to apply without restriction through the Internee Committee or, if they consider it necessary, direct to the representatives of the Protecting Power, in order to indicate to them any points on which they may have complaints to make with regard to the conditions of internment.

Such petitions and complaints shall be transmitted forthwith and without alteration, and even if the latter are recognized to be unfounded, they may not occasion any punishment.

Periodic reports on the situation in places of internment and as to the needs of the internees, may be sent by the Internee Committees to the representatives of the Protecting Powers. *(GC, art. 101.)*

b. Censorship. The Detaining Power has the right to examine and censor the complaints, petitions, and reports referred to above in the same manner as correspondence addressed to internees or dispatched by them. It may also examine such complaints and reports to the representatives of the Protecting Power to verify that they are what they purport to be and to delete matter not constituting either a complaint or a report within the meaning of the foregoing provision.

309. Election of Internee Committees

In every place of internment, the internees shall freely elect by secret ballot every six months, the members of a Committee em-

powered to represent them before the Detaining and the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. The members of the Committee shall be eligible for re-election.

Internees so elected shall enter upon their duties after their election has been approved by the detaining authorities. The reasons for any refusals or dismissals shall be communicated to the Protecting Powers concerned. *(GC, art. 102.)*

310. Duties of Internee Committees

The Internee Committees shall further the physical, spiritual and intellectual well-being of the internees.

In case the internees decide, in particular, to organize a system of mutual assistance amongst themselves, this organization would be within the competence of the Committees in addition to the special duties entrusted to them under other provisions of the present Convention. *(GC, art. 103.)*

311. Prerogatives of Internee Committees

Members of Internee Committees shall not be required to perform any other work, if the accomplishment of their duties is rendered more difficult thereby.

Members of Internee Committees may appoint from amongst the internees such assistants as they may require. All material facilities shall be granted to them, particularly a certain freedom of movement necessary for the accomplishment of their duties (visits to labour detachments, receipt of supplies, etc.).

All facilities shall likewise be accorded to members of Internee Committees for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, and with the organizations which give assistance to internees. Committee members in labour detachments shall enjoy similar facilities for communication with their Internee Committee in the principal place of internment. Such communications shall not be limited, nor considered as forming a part of the quota mentioned in Article 107.

Members of Internee Committees who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs. *(GC, art. 104.)*

312. Notification of Measures Taken

Immediately upon interning protected persons, the Detaining Powers shall inform them, the Power to which they owe allegiance and their Protecting Power of the measures taken for executing the provisions of the present Chapter. The Detaining Powers

shall likewise inform the Parties concerned of any subsequent modifications of such measures. *(GC, art, 106.)*

313. Internment Card

As soon as he is interned, or at the latest not more than one week after his arrival in a place of internment, and likewise in cases of sickness or transfer to another place of internment or to a hospital, every internee shall be enabled to send direct to his family, on the one hand, and to the Central Agency provided for by Article 140, on the other, an internment card similar, if possible, to the model annexed to the present Convention, informing his relatives of his detention, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any way. *(GC, art. 106.)*

314. Correspondence

Internees shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each internee, the said number shall not be less than two letters and four cards monthly; these shall be drawn up so as to conform as closely as possible to the models annexed to the present Convention. If limitations must be placed on the correspondence addressed to internees, they may be ordered only by the Power to which such internees owe allegiance, possibly at the request of the Detaining Power. Such letters and cards must be conveyed with reasonable despatch; they may not be delayed or retained for disciplinary reasons.

Internees who have been a long time without news, or who find it impossible to receive news from their relatives, or to give them news by the ordinary postal route, as well as those who are at a considerable distance from their homes, shall be allowed to send telegrams, the charges being paid by them in the currency at their disposal. They shall likewise benefit by this provision in cases which are recognized to be urgent.

As a rule, internees' mail shall be written in their own language. The Parties to the conflict may authorize correspondence in other languages. *(GC, art. 107.)*

315. Relief Shipments

Internees shall be allowed to receive, by post or by any other means, individual parcels or collective shipments containing in particular foodstuffs, clothing, medical supplies, as well as books and objects of a devotional, educational or recreational character which may meet their needs. Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

Should military necessity require the quantity of such shipments to be limited, due notice thereof shall be given to the Protecting Power and to the International Committee of the Red Cross, or to any other organization giving assistance to the internees and responsible for the forwarding of such shipments.

The conditions for the sending of individual parcels and collective shipments shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the internees of relief supplies. Parcels of clothing and foodstuffs may not include books. Medical relief supplies shall, as a rule, be sent in collective parcels. *(GC, art. 108.)*

316. Collective Relief

In the absence of special agreements between Parties to the conflict regarding the conditions for the receipt and distribution of collective relief shipments, the regulations concerning collective relief which are annexed to the present Convention shall be applied.

The special agreements provided for above shall in no case restrict the right of Internee Committees to take possession of collective relief shipments intended for internees, to undertake their distribution and to dispose of them in the interests of the recipients.

Nor shall such agreements restrict the right of representatives of the Protecting Powers, the International Committee of the Red Cross, or any other organization giving assistance to internees and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients. *(GC, art. 109.)*

317. Exemption From Postal and Transport Charges

a. Treaty Provision.

All relief shipments for internees shall be exempt from import, customs and other dues.

All matter sent by mail, including relief parcels sent by parcel post and remittances of money, addressed from other countries to internees or dispatched by them through the post office, either direct or through the Information Bureaux provided for in Article 136 and the Central Information Agency provided for in Article 140, shall be exempt from all postal dues both in the countries of origin and destination and in intermediate countries. To this end, in particular, the exemption provided by the Universal Postal Convention of 1947 and by the agreements of

the Universal Postal Union in favour of civilians of enemy nationality detained in camps or civilian prisons, shall be extended to the other interned persons protected by the present Convention. The countries not signatory to the above-mentioned agreements shall be bound to grant freedom from charges in the same circumstances.

The cost of transporting relief shipments which are intended for internees and which, by reason of their weight or any other cause, cannot be sent through the post office, shall be borne by the Detaining Power in all the territories under its control. Other Powers which are Parties to the present Convention shall bear the cost of transport in their respective territories.

Costs connected with the transport of such shipments which are not covered by the above paragraphs, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the charges for telegrams sent by internees, or addressed to them. *(GC, art. 110.)*

b. Exemption Under Universal Postal Convention of 1952. See paragraph 150b.

318. Special Means of Transport

Should military operations prevent the Powers concerned from fulfilling their obligation to ensure the conveyance of the mail and relief shipments proqded for in Articles 106, 107, 108 and 113, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake the conveyance of such shipments by suitable means (rail, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport, and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

***(a)* correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 140 and the National Bureaux referred to in Article 136;**

***(b)* correspondence and reports relating to internees which the Protecting Powers, the International Committee of the Red Cross or any other organization assisting the internees exchange either with their own delegates or with the Parties to the conflict.**

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport if it should

so prefer, nor precluding the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

The costs occasioned by the use of such means of transport shall be borne, in proportion to the importance of the shipments, by the Parties to the conflict whose nationals are benefited thereby. *(GC, art. 111.)*

319. Censorship and Examination

a. Treaty Provision.

The censoring of correspondence addressed to internees or dispatched by them shall be done as quickly as possible.

The examination of consignments intended for internees shall not be carried out under conditions that will expose the goods in them to deterioration. It shall be done in the presence of the addressee, or of a fellow-internee duly delegated by him. The delivery to internees of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by the Parties to the conflict either for military or political reasons, shall be only temporary and its duration shall be as short as possible. *(GC, art. 112.)*

b. Material Subject to Censorship. The Detaining Power may examine and censor all communications sent to or by internees, including correspondence and telegrams *(GC, art. 107;* par. 314 herein) and relief shipments (*GC, art, 108;* par. 315 herein) with a view to deleting matter prejudicial to its military security. See paragraph 308b concerning the censorship of complaints, petitions, and reports submitted pursuant to Article 101, *GC.*

320. Execution and Transmission of Legal Documents

The Detaining Powers shall provide all reasonable facilities for the transmission through the Protecting Power or the Central Agency provided for in Article 140, or as otherwise required, of wills, powers of attorney, letters of authority, or any other documents intended for internees or dispatched by them.

In all cases the Detaining Powers shall facilitate the execution and authentication in due legal form of such documents on behalf of internees, in particular by allowing them to consult a lawyer. *(GC, art. 123.)*

321. Management of Property

The Detaining Power shall afford internees all facilities to enable them to manage their property, provided this is not incompatible with the conditions of internment and the law which is applicable. For this purpose, the said Power may give them permission to leave the place of internment in urgent cases and if circumstances allow. *(GC, art. 114.)*

322. Facilities for Preparation and Conduct of Cases

In all cases where an internee is a party to proceedings in any court, the Detaining Power shall, if he so requests, cause the court to be informed of his detention and shall, within legal limits, ensure that all necessary steps are taken to prevent him from being in anyway prejudiced, by reason of his internment, as regards the preparation and conduct of his case or as regards the execution of any judgment of the court. *(GC, art 115.)*

323. Visits

Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible.

As far as is possible, internees shall be permitted to visit their homes in urgent cases, particularly in cases of death or serious illness of relatives. *(GC, art. 116.)*

324. Penal and Disciplinary Sanctions: General Provisions

Subject to the provisions of the present Chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment.

If general laws, regulations or orders declare acts committed by internees to be punishable, whereas the same acts are not punishable when committed by persons who are not internees, such acts shall entail disciplinary punishments only.

No internee maybe punished more than once for the same act, or on the same count. *(GC, art. 117.)*

325. Penalties

The courts or authorities shall in passing sentence take as far as possible into account the fact that the defendant is not a national of the Detaining Power. They shall be free to reduce the penalty prescribed for the offence with which the internee is charged and shall not be obliged, to this end, to apply the minimum sentence prescribed.

Imprisonment in premises without daylight and; in general, all forms of cruelty without exception are forbidden.

Internees who have served disciplinary or judicial sentences shall not be treated differently from other internees.

The duration of preventive detention undergone by an internee shall be deducted from any disciplinary or judicial penalty involving confinement to which he may be sentenced.

Internee Committees shall be informed of all judicial proceedings instituted against internees whom they represent, and of their result. *(GC, art 118.)*

326. Disciplinary Punishments

The disciplinary punishments applicable to internees shall be the following:

(1) A fine which shall not exceed 50 per cent of the wages which the internee would otherwise receive under the provisions of Article 95 during a period of not more than thirty days.

(2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention.

(3) Fatigue duties, not exceeding two hours daily, in connection with the maintenance of the place of internment.

(4) Confinement.

In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee's age, sex and state of health.

The duration of any single punishment shall in no case exteed a maximum of thirty consecutive days, even if the internee is answerable for several breaches of discipline when his case is dealt with, whether such breaches are connected or not. *(GC, art. 119.)*

327. Escapes

Internees who are recaptured after having escaped or when attempting to escape, shall be liable only to disciplinary punishment in respect of this act, even if it a repeated offence.

Article 118, paragraph 3, notwithstanding, internees punished as a result of escape or attempt to escape, may be subjected to special surveillance, on condition that such surveillance does not affect the state of their health, that it is exercised in a place of internment and that it does not entail the abolition of any of the safeguards granted by the present Convention.

Internees who aid and abet an escape or attempt to escape, shall be liable on this count to disciplinary punishment only. *(GC, art. 120.)*

328. Connected Offenses

Escape, or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance in cases where an internee is prosecuted for offences committed during his escape.

The Parties to the conflict shall ensure that the competent authorities exercise leniency in deciding whether punishment inflicted for an offence shall be of a disciplinary or judicial nature, especially in respect of acts committed in connection with an escape, whether successful or not. *(GC, art. 121.)*

329. Investigations and Confinement Awaiting Hearing

Acts which constitute offences against discipline shall be investigated immediately. This rule shall be applied, in particular, in cases of escape or attempt to escape. Recaptured internees shall be handed over to the competent authorities as soon as possible.

In cases of offences against discipline, confinement awaiting trial shall be reduced to an absolute minimum for all internees, and shall not exceed fourteen days. Its duration shall in any case be deducted from any sentence of confinement.

The provisions of Articles 124 and 125 shall apply to internees who are in confinement awaiting trial for offences against discipline. *(GC, art. 122.)*

330. Procedure

Without prejudice to the competence of courts and higher authorities, disciplinary punishment may be ordered only by the commandant of the place of internment, or by a responsible officer or official who replaces him, or to whom he has delegated his disciplinary powers.

Before any disciplinary punishment is awarded, the accused internee shall be given precise information regarding the off ences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced in the presence of the accused and of a member of the Internee Committee.

The period elapsing between the time of award of a disciplinary punishment and its execution shall not exceed one month.

When an internee is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

A record of disciplinary punishments shall be maintained by the commandant of the place of internment and shall be open to inspection by representatives of the Protecting Power.*(GC, art. 123.)*

331. Premises for Disciplinary Punishments

Internees shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo punishment therein.

The premises in which disciplinary punishments are undergone shall conform to sanitary requirements; they shall in particular be provided with adequate bedding. Internees undergoing pun-

ishment shall be enabled to keep themselves in a state of cleanliness.

Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women. *(GC, art. 124.)*

332. Essential Safeguards

Internees awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, if they so request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the infirmary of the place of internment or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of their punishment; such consignments shall meanwhile be entrusted to the Internee Committee, who will hand over to the infirmary the perishable goods contained in the parcels.

No internee given a disciplinary punishment may be deprived of the benefit of the provisions of Articles 107 and 143 of the Present Convention. *(GC, art. 125.)*

333. Provisions Applicable to Judicial Proceedings

The provisions of Articles 71 to 76 inclusive shall apply, by analogy, to proceedings against internees who are in the national territory of the Detaining Power. *(GC, art. 126.)*

334. Transfers: Conditions

The transfer of internees shall always be effected humanely. As a general rule, it shall be carried out by rail or other means of transport, and under conditions at least equal to those obtaining for the forces of the Detaining Power in their changes of station. If, as an exceptional measure, such removals have to be effected on foot, they may not take place unless the internees are in a fit state of health, and may not in any case expose them to excessive fatigue.

The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred.

Sick, wounded or infirm internees and maternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands.

If the combat zone draws close to a place of internment, the internees in the said place shall not be transferred unless their removal can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

When making decisions regarding the transfer of internees, the Detaining Power shall take their interests into account and, in particular, shall not do anything to increase the difficulties of repatriating them or returning them to their own homes. *(GC, art. 127.)*

335. Transfers: Method

In the event of transfer, internees shall be of5cially advised of their departure and of their new postal address. Such notification shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited if the conditions of transfer so require but in no case to less than twenty-five kilograms per internee [55 pounds].

Mail and parcels addressed to their former place of internment shall be forwarded to them without delay.

The commandant of the place of internment shall take, in agreement with the Internee Committee, any measures needed to ensure the transport of the internees' community property and of the luggage the internees are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph. *(GC, art. 128.)*

336. Wills and Death Certificates

The wills of internees shall be received for safe-keeping by the responsible authorities; and in the event of the death of an internee his will shall be transmitted without delay to a person whom he has previously designated.

Deaths of internees shall be certified in every case by a doctor, and a death certificate shall be made out, showing the causes of death and the conditions under which it occurred.

An official record of the death, duly registered, shall be drawn up in accordance with the procedure relating thereto in force in the territory where the place of internment is situated, and a duly certified copy of such record shall he transmitted without

delay to the Protecting Power as well as to the Central Agency referred to in Article 140. *(GC, art. 129.)*

337. Burial and Cremation

The detaining authorities shall ensure that internees who die while interned are honorably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized.

Deceased internees shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene on account of the religion of the deceased or in accordance with his expressed wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. The ashes shall be retained for safe-keeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request.

As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward Mite of graves of deceased. internees to the Powers on whom the deceased internees depended, through the Information Bureaux provided for in Article: 136. Such lists shall include all particulars necessary for the identification of the deceased internees, as well as the exact location of their graves. *(GC, art. 130.)*

338. Internees Killed or Injured in Special Circumstances

a. Treaty Provision.

Every death or serious injury of an internee, caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official inquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. The evidence of any witnesses shall be taken, and a report including such evidence shall be prepared and forwarded to the said Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all necessary steps to ensure the prosecution of the person or persons responsible. *(GC, art. 131.)*

b. Criminal Prosecution. If a criminal prosecution is undertaken on the facts revealed on preliminary investigation, there need not be any other official inquiry.

339. Release, Repatriation, and Accommodation in Neutral Countries During Hostilities or Occupation

Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.

The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time. *(GC, art. 132.)*

340. Release, Repatriation and Accommodation in Neutral Countries After the Close of Hostilities

Internment shall cease as soon as possible after the close of hostilities.

Internees in the territory of a Party to the conflict against whom penal proceedings are pending for offences not exclusively subject to disciplinary penalties may be detained until the close of such proceedings and, if circumstances require, until the completion of the penalty. The same shall apply to internees who have been previously sentenced to a punishment depriving them of liberty.

By agreement between the Detaining Power and the Powers concerned, committees may be set up after the close of hostilities, or of the occupation of territories, to search for dispersed internees. *(GC, art. 133.)*

341. Repatriation and Return to Last Place of Residence

The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation. *(GC, art. 134.)*

342. Costs

The Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned, or, if it took them into custody while they were in transit or on the high seas, the cost of completing their journey or of their return to their point of departure.

Where a Detaining Power refuses permission to reside in its territory to a released internee who previously had his permanent domicile therein, such Detaining Power shall pay the cost of the said internee's repatriation. If, however, the internee elects to return to his country on his own responsibility or in obedience to the

Government of the Power to which he owes allegiance, the Detaining Power need not pay the expenses of his journey beyond the point of his departure from its territory. The Detaining Power need not pay the costs of repatriation of an internee who was interned at his own request.

If internees are transferred in accordance with Article 45, the transferring and receiving Powers shall agree on the portion of the above costs to be borne by each.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands. *(GC, art. 135.)*

Section VI. INFORMATION BUREAUS, CENTRAL AGENCY, AND RELIEF SOCIETIES

343. National Bureaus

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official Information Bureau responsible for receiving and transmitting information in respect of the protected persons who are in its power.

Each of the parties to the conflict shall, within the shortest possible period, give its Bureau information of any measure taken by it concerning any protected persons who are kept in custody for more than two weeks, who are subjected to assigned residence or who are interned. It shall, furthermore, require its various departments concerned with such matters to provide the aforesaid Bureau promptly with information concerning all changes pertaining to these protected persons, as, for example, transfers, releases, repatriations, escapes, admittances to hospitals, births, and deaths. *(GC, art. 136.)*

344. Transmission of Information

Each national Bureau shall immediately forward information concerning protected persons by the most rapid means to the Powers of whom the aforesaid persons are nationals, or to Powers in whose territory they resided, through the intermediary of the Protecting Powers and likewise through the Central Agency provided for in Article 140. The Bureaux shall also reply to all enquiries which may be received regarding protected persons.

Information Bureaux shall transmit information concerning a protected person unless its transmission might be detrimental to the person concerned or to his or her relatives. Even in such a case, the information may not be withheld from the Central Agency which, upon being notified of the circumstances, will take the necessary precautions indicated in Article 140.

All communications in writing made by any Bureau shall be authenticated by a signature or a seal.*(GC, art. 137.)*

345. Particulars Required

The information received by the national Bureau and transmitted by it shall be of such a character as to make it possible to identify the protected person exactly and to advise his next of kin quickly. The information in respect of each person shall include at least his surname, first names, place and date of birth, nationality, last residence and distinguishing characteristics, the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent to him and the name and address of the person to be informed.

Likewise, information regarding the state of health of internees who are seriously ill or seriously wounded shall be supplied regularly and if possible every week.*(GC, art. 138.)*

346. Forwarding of Personal Valuables

Each national Information Bureau shall, furthermore be responsible for collecting all personal valuables left by protected persons mentioned in Article 136, in particular those who have been repatriated or released, or who have escaped or died; it shall forward the said valuables to those concerned, either direct, or, if mcessary, through the Central Agency. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full identity particulars of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Detailed records shall be maintained of the receipt and despatch of all such valuables. *(GC, art. 139.)*

347. Central Agency

A Central Information Agency for protected persons, in particular for internees, shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency, which may be the same as that provided for in Article 123 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

The function of the Agency shall be to collect all information of the type set forth in Article 136 which it may obtain through official or private channels and to transmit it as rapidly as possible to the countries of origin or of residence of the persons concerned, except in cases where such transmissions might be detrimental to the persons whom the said information concerns, or to

their relatives. It shall receive from the Parties to the conflict all reasonable facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross and of the relief societies described in Article 142. *(GC, art. 140.)*

348. Exemption From Charges

The national Information Bureau and the Central Information Agency shall enjoy free postage for all mail, likewise the exemptions provided for in Article 110, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates. *(GC, art 141.)*

349. Relief Societies and Other Organizations

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the protected persons, shall receive from these Powers, for themselves or their duly accredited agents, all facilities for visiting the protected persons, for distributing relief supplies and material from any source, intended for educational, recreational or religious purposes, or for assisting them in organizing their leisure time within the places of internment. Such societies or organizations maybe constituted in the territory of the Detaining Power, or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the supply of effective and adequate relief to all protected persons.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times. *(GC, art. 142.)*

350. Supervision

Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of impera tive military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting Power and, when occasion arises, the Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties. *(GC, art. 143.)*

CHAPTER 6

OCCUPATION

Section I. GENERAL

351. Military Occupation

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised. *(HR, art. 42.)*

352. Invasion Distinguished

a. Nature of Invasion. If resistance is offered, the state of invasion within any portion of a belligerent's territory corresponds with the period of resistance. If the invasion is unresisted, the state of invasion lasts only until the invader has taken firm control of the area with the intention of holding it. Invasion is not necessarily occupation, although occupation is normally preceded by invasion and may frequently coincide with it. An invader may attack with naval or air forces or its troops may push rapidly through a large portion of enemy territory without establishing that effective control which is essential to the status of occupation. Small raiding parties or flying columns, reconnaissance detachments or patrols moving through an area cannot be said to occupy it. Occupation, on the other hand, is invasion plus taking firm possession of enemy territory for the purpose of holding it.

b. Application of Law of Occupation. The rules set forth in this chapter apply of their own force only to belligerently occupied areas, but they should, as a matter of policy, be observed as far as possible in areas through which troops are passing and even on the battlefield.

353. Subjugation or Conquest Distinguished

Belligerent occupation in a foreign war, being based upon the possession of enemy territory, necessarily implies that the sovereignty of the occupied territory is not vested in the occupying power. Occupation is essentially provisional.

On the other hand, subjugation or conquest implies a transfer of sovereignty, which generally takes the form of annexation and is normally effected by a treaty of peace. When sovereignty passes, belligerent occupation, as such, of course ceases, although the territory may and usually does, for a period at least, continue to be governed through military agencies.

354. Friendly Territory Subject to Civil Affairs Administration Distinguished

Civil affairs administration is that form of administration established in friendly territory whereby a foreign government pursuant to an agreement, expressed or implied, with the government of the area concerned, may exercise certain authority normally the function of the local government.

Such administration is often established in areas which are freed from enemy occupation. It is normally required when the government of the area concerned is unable or unwilling to assume full responsibility for its administration. Territory subject to civil affairs administration is not considered to be occupied.

If circumstances have precluded the conclusion of a civil affairs agreement with the lawful government of allied territory recovered from enemy occupation or of other territory liberated from the enemy, military government may be established in the area as a provisional and interim measure (see par. 12 *b* and *c*). A civil affairs agreement should, however, be concluded with the lawful government at the earliest possible opportunity.

355. Occupation as Question of Fact

Military occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded.

356. Effectiveness of Occupation

It follows from the definition that belligerent occupation must be both actual and effective, that is, the organized resistance must have been overcome and the force in possession must have taken measures to establish its authority. It is sufficient that the occupying force can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district. It is immaterial whether the authority of the occupant is maintained by fixed garrisons or flying columns, whether by small or large forces, so long as the occupation is effective. The number of troops necessary to maintain effective occupation will depend on various considerations such as the disposition of the inhabitants, the number and density of the population, the nature of the terrain, and similar factors. The mere existence of a fort or defended area within the occupied district, provided the fort or defended area is under attack, does not render the occupation of the remainder of the district ineffective. Similarly, the mere existence of local resistance groups does not render the occupation ineffective.

357. Proclamation of Occupation

In a strict legal sense no proclamation of military occupation is necessary. However, on account of the special relations established between the inhabitants of the occupied territory and the occupant by virtue of the presence of the occupying forces, the fact of military occupation, with the extent of territory affected, should be made known. The practice of the United States is to make this fact known by proclamation.

358. Occupation Does Not Transfer Sovereignty

Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these. rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force.

It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress. (See *GC, art. 47;* par. 365 herein.)

359. Oath of Allegiance Forbidden

It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.*(HR, art. 45.)*

360. Maintenance of Occupation

Occupation, to be effective, must be maintained. In case the occupant evacuates the district or is driven out by the enemy, the occupation ceases. It does not cease, however, if the occupant, after establishing its authority, moves forward against the enemy, leaving a smaller force to administer the affairs of the district. Nor does the existence of a rebellion or the activity of guerrilla or para-military units of itself cause the occupation to cease, provided the occupant could at any time it desired assume physical control of any part of the territory. If, however, the power of the occupant is effectively displaced for any length of time, its position towards the inhabitants is the same as before occupation.

361. Termination of Occupation

The law of belligerent occupation generally ceases to be applicable under the conditions set forth in paragraphs 353 and 360. However, with respect to the provisions of *GC* alone, Article 6 of that Convention provides:

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be

bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention; 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention. *(GC, art. 6, 3d and 4th pars.)*

Section II. ADMINISTRATION OF OCCUPIED TERRITORY

362. Necessity for Military Government

Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory. The necessity for such government arises from the failure or inability of the legitimate government to exercise its functions on account of the military occupation, or the undesirability of allowing it to do so. (See par. 12, which discusses military government, and par. 354, dealing with civil affairs administration.)

363. Duty to Restore and Maintain Public Order

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. *(HR, art. 43.)*

364. Occupation Costs

The economy of an occupied country can only be required to bear the expenses of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear.

365. Inviolability of Rights

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory. (GC, *art. 47.)*

366. Local Governments Under Duress and Puppet Governments

The restrictions placed upon the authority of a belligerent government cannot be avoided by a system of using a puppet government, central or local, to carry out acts which would be unlawful if performed directly by the occupant. Acts induced or compelled by the occupant are nonetheless its acts.

367. Functions of Government

a. Paramount Authority of Occupant. The functions of the hostile government—whether of a general, provincial, or local character—continue only to the extent they are sanctioned by the occupant.

b. Functions of Local Government. The occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions. It may, for example, call upon the local authorities to administer designated rear areas, subject to the guidance and direction of the occupying power. Such action is consistent with the status of occupation, so long as there exists the firm possession and the purpose to maintain paramount authority.

368. Nature of Government

It is immaterial whether the government over an enemy's territory consists in a military or civil or mixed administration. Its character is the same and the source of its authority the same. It is a government imposed by force, and the legality of its acts is determined by the law of war.

369. Local Law and New Legislation

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligation under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them. *(GC, art. 64.)*

370. Laws in Force

In restoring public order and safety, the occupant will continue in force the ordinary civil and penal (criminal) laws of the occupied territory except to the extent it may be authorized by Article 64, *GC* (par 369), and Article 43, *HR* (par. 363), to alter, suspend, or repeal such laws (see also *HR art. 23 (h)* ; par. 372 herein; and *GC, art. 51;* par. 418 herein). These laws will be administered by the local officals as far as practicable. Crimes not of a military nature and not

affecting the occupant's security are normally left to the jurisdiction of the local courts.

371. Nature of Laws Suspended or Repealed

The occupant may alter, repeal, or suspend laws of the following types:

a. Legislation constituting a threat to its security, such as laws relating to recruitment and the bearing of arms.

b. Legislation dealing with political process, such as laws regarding the rights of suffage and of assembly.

c. Legislation the enforcement of which would be inconsistent with the duties of the occupant, such as laws establishing racial discrimination.

372. Prohibition as to Rights and Rights of Action

It is especially forbidden * * * to declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party. *(HR, art. 23, par. (h).)*

373. Suspension of Ordinary Courts

The ordinary courts of justice should be suspended only if:

a. Judges and magistrates abstain from fulfilling their functions (see *GC, art. 54;* par. 422 herein); or

b. The courts are corrupt or unfairly constituted; or

c. Local judicial administration has collapsed during the hostilities preceding the occupation and the occupant must set up its own courts to ensure that offenses against the local laws are properly tried.

In such cases, the occupant may establish courts of its own and make this measure known to the inhabitants.

374. Immunity of Occupation Personnel From Local Law

Military and civilian personnel of the occupying forces and occupation administration and persons accompanying them are not subject to the local law or to the jurisdiction of the local courts of the occupied territory unless expressly made subject thereto by a competent officer of the occupying forces or occupation administration. The occupant should see to it that an appropriate system of substantive law applies to such persons and that tribunals are in existence to deal with civil litigation to which they are parties and with offenses committed by them.

375. Freedom of Movement

The occupant may withdraw from individuals the right to change their residence, restrict freedom of internal movement, forbid visits to certain districts, prohibit emigation and immigration (but see *GC, art. 48;* par. 381 herein), and require that all individuals carry identification documents.

376. Commercial Restrictions

The occupant has the right to regulate commercial intercourse in the occupied territory. It may subject such intercourse to such prohibitions and restrictions as are essential to the purposes of the occupation. The commander of the occupying forces will usually find it advisable to forbid intercourse between the occupied territory and the territory still in the possession of the enemy.

377. Censorship

The belligerent occupant may establish censorship of the press, radio, theater, motion pictures, and television, of correspondence, and of all other means of communication. It may prohibit entirely the publication of newspapers or prescribe regulations for their publication and circulation. The occupant is not required to furnish facilities for postal service, but may take charge of them itself, especially if the officials of the occupied district fail to act or to obey its orders.

378. Means of Transportation

The belligerent occupant exercises authority over all means of transportation, both public and private, within the occupied district, and may seize them and regulate their operation.

Section III. RIGHTS OF THE POPULATION OF OCCUPIED TERRITORY

379. Other Provisions of Law

Articles 27-34, *GC* (pars. 266-273), apply to occupied territory and should be read together with the provisions of this section.

380. Respect for Human Rights

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. *(HR, art. 46, 1st par.)*

381. Special Cases of Repatriation

Protected persons who are not nationals of the Power whose territory is occupied, may avail themselves of the right to leave the territory subject to the provisions of Article 35, and decisions thereon shall be taken according to the procedure which the Occupying Power shall establish in accordance with the said Article. *(GC, art. 48.)*

382. Deportations, Transfers, Evacuations

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies *(GC, art. 49.)*

383. Children

The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

A special section of the Bureau setup in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available.

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under fifteen years, ex-

pectant mothers, and mothers of children under seven years. *(GC, art. 50.)*

384. Food and Medical Supplies for the Population

a. Treaty Provision.

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

* * * * * * *

The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements *(GC, art. 55, 1st and 3d pars.)*

b. Other Articles To Be Supplied. The other articles which the occupant is required to provide under the above provision include all urgently required goods which may be essential to the life of the territory.

385. Hygiene and Public Health

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.

If new hospitals are setup in occupied territory and if the competent organs of the occupied State are not operating there, the occupying authorities shall, if necessary, grant them the recognition provided for in Article 18. In similar circumstances, the occupying authorities shall also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 20 and 21.

In adopting measures of health and hygiene and in their implementation, the Occupying Power shall take into consideration the moral and ethical susceptibilities of the population of the occupied territory. *(GC, art. 56.)*

386. Requisition of Hospitals

The Occupying Power may requisition civilian hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick, and then on condition that suitable

arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation.

The material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population. *(GC, art. 57.)*

387. Spiritual Assistance

The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities.

The Occupying Power shall also accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory. *(GC, art. 58.)*

Section IV. RELIEF

388. Collective Relief

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power. *(GC, art. 59.)*

389. Responsibilities of the Occupying Power

Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55,56 and 59. The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power. *(GC, art. 60.)*

390. Distribution

The distribution of the relief consignments referred to in the foregoing Articles shall be carried out with the cooperation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body.

Such consignments shall be exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory. The Occupying Power shall facilitate the rapid distribution of these consignments.

All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories. *(GC, art. 61.)*

391. Individual Relief

Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.*(GC, art. 62.)*

392. National Red Cross and Other Relief Societies

Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power:

(a) recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences Other relief societies shall be permitted to continue their humanitarian activities under similar conditions;

(b) the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.

The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues. (GC, *art. 63.)*

Section V. TREATMENT OF ENEMY PROPERTY

393. Destruction and Seizure of Property

a. Prohibition.

It is especially forbidden * * * to destroy or seize the enemy's

property, unless such destruction or seizure be imperatively demanded by the necessities of war. *(HR, art. 23, par. (g).)*

b. Occupying Power.

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations. *(GC, art. 53.)*

c. General Devastation. See paragraph 56.

394. Determination Whether Property Is Public or Private

a. Beneficial Ownership. Under modern conditions, the distinction between public and private property is not always easy to draw. For the purpose of treatment of property under belligerent occupation, it is often necessary to look beyond strict legal title and to ascertain the character of the property on the basis of the beneficial ownership thereof. Thus, for example, trust funds, pension funds, and bank deposits generated by private persons are not to be regarded as public property simply by reason of their being held by a State-owned bank.

b. Property of Mixed Ownership. For the purpose of determining what type of control the occupant may exercise over property (by way of confiscation, seizure, requisition, ete.), the most cogent evidence of public character is such a complete or partial assumption by the State of the economic risk involved in the holding and management of the property in question that, the State, rather than private individuals or corporation, would be subjected to a substantial portion of the loss were the property to be appropriated for the use of the occupant. Should property which is ostensibly private be subjected to a large measure of governmental control and management or perform f unctions which are essentially public, these facts would tend to indicate that the property should be regarded in practice as public.

If property which is appropriated by the occupant is beneficially owned in part by the State and in part by private interests, the occupation authorities should compensate the private owners to the extent of their interest. Such compensation should bear the same relationship to the full compensation which would be paid if the property were entirely privately owned as their interest bears to the total value of the property concerned. The occupant may take what measures it deems necessary to assure that no portion of the compensation paid on account of private interests accrues to the State.

c. Property of Unknown Ownership. If it is unknown whether certain property is public or private, it should be treated as public property until its ownership is ascertained.

395. Seized Property

Valid capture or seizure of property requires both an intent to take such action and a physical act of capture or seizure. The mere presence within occupied territory of property which is subject to appropriation under international law does not operate to vest title thereto in the occupant.

396. Title to Captured or Seized Enemy Property

Public property captured or seized from the enemy, as well as private property validly captured on the battlefield and abandoned property, is property of the United States (see *U. S. Const., Art. I, sec. 8, cl. 11),* and failure to turn over such property to the proper authorities or disposal thereof for personal profit is a violation of Article 103 of the Uniform Code of Military Justice.

397. Pillage

a. Treaty Provision.

Pillage is formally forbidden. *(HR, art. 47.)* (See also *HR, art. 28;* par. 47 herein; *GC, art 33;* par. 272 herein.)

b. Violation of military law. A member of the armed forces who before or in the presence of the enemy quits his place of duty to plunder or pillage is guilty of the offense of misbehavior before the enemy. *(UCMJ, Art. 99* (6).)

398. Private Gain by Officers and Soidiers

Neither officers nor soldiers of the United States are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate.

399. Property Control

Property within occupied territory may be controlled by the occupant to the degree necessary to prevent its use by or for the benefit of the hostile forces or in a manner harmful to the occupant. Conservators may be appointed to manage the property of absent persons (including nationals of the United States and of friendly States) and of internees, property managed by such persons, and property of persons whose activities are deemed to be prejudicial to the occupant. However, when the owners or managers of such property are again able to resume control of their property and the risk of its hostile use no longer exists, it must be returned to them.

Measures of property control must not extend to confiscation. However, the authority of the occupant to impose such controls does not limit its power to seize or requisition property or take such other action with respect to it as may be authorized by other provisions of law.

400. Real Property of a State

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct. *(HR, art. 55.)*

401. State Real Property Susceptible of Direct Military Use

Real property of a State which is of direct military use, such as forts, arsenals, dockyards, magazines, barracks, railways, bridges, piers, wharves, airfields, and other military facilities, remains in the hands of the occupant until the close of the war, and may be destroyed or damaged, if deemed necessary to military operations.

402. Occupant's Disposition of Real Property of a State

Real property of the enemy State which is essentially of a non-military nature, such as public buildings and offices, land, forests, parks, farms, and mines, may not be damaged or destroyed unless such destruction is rendered absolutely necessary by military operations (see *Art. 53, GC;* par. 393 herein). The occupant does not have the right of sale or unqualified use of such property. As administrator or usufructuary he should not exercise his rights in such a wasteful and negligent manner as seriously to impair its value. He may, however, lease or utilize public lands or buildings, sell the crops, cut and sell timber, and work the mines. The term of a lease or contract should not extend beyond the conclusion of the war.

403. Movable Property of a State

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for operations of the war.

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval laws, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made. *(HR, art. 53.)*

404. Classes of Movable Property

All movable property belonging to the State susceptible of military use may be taken possession of and utilized for the benefit of the occupant's government. Under modern conditions of warfare, a large proportion of State property may be regarded as capable of being used

for military purposes. However, movable property which is *not* susceptible of military use must be respected and cannot be appropriated.

405. Municipal, Religious, Charitable, and Cultural Property

a. Treaty Provision.

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings. *(HR, art. 56.)*

b. Use of Such Premises. The property included in the foregoing rule may be requisitioned in case of necessity for quartering the troops and the sick and wounded, storage of supplies and material, housing of vehicles and equipment, and generally as prescribed for private property. Such property must, however, be secured against all avoidable injury, even when located in fortified places which are subject to seizure or bombardment.

c. Religious Buildings, Shrines, and Consecrated Places. In the practice of the United States, religious buildings, shrines, and consecrated places employed for worship are used only for aid stations, medical installations, or for the housing of wounded personnel awaiting evacuation, provided in each case that a situation of emergency requires such use.

406. Private Property: General

a. Treaty Provision.

Private property cannot be confiscated. *(HR, art. 46, 2d par.)*

b. Prohibited Acts. The foregoing prohibition extends not only to outright taking in violation of the law of war but also to any acts which, through the use of threats, intimidation, or pressure or by actual exploitation of the power of the occupant, permanently or temporarily deprive the owner of the use of his property without his consent or without authority under international law.

407. Private Real Property

Immovable private enemy property may under no circumstances be seized. It may, however, be requisitioned (see par. 412).

408. Private Movable Property Susceptible of Direct Military Use

See Article 53, *HR* (par. 403).

409. Receipts

If private property is seized in conformity with the preceding paragraph, a receipt therefor should be given the owner or a record made of the nature and quantity of the property and the name of the owner

or person in possession in order that restoration and compensation may be made at the conclusion of the war.

410. Types of Private Property Susceptible to Direct Military Use

a. Seizure. The rule stated in the foregoing paragraph includes everything susceptible of direct military use, such as cables, telephone and telegraph plants, radio, television, and telecommunications equipment, motor vehicles, railways, railway plants, port facilities, ships in port, barges and other watercraft, airfields, aircraft, depots of arms, whether military or sporting, documents connected with the war, all varieties of military equipment, including that in the hands of manufacturers, component parts of or material suitable only for use in the foregoing, and in general all kinds of war material.

b. Destruction. The destruction of the foregoing property and all damage to the same is justifiable only if it is rendered absolutely necessary by military operations. (See *GC, art. 53;* par. *393b herein.)*

411. Submarine Cables

a. Treaty Provision.

Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.*(HR, art. 54.)*

b. Application. The foregoing provision applies only to activities on land and does not deal with seizure or destruction of cables in the open sea.

412. Requisitions

a. Treaty Provision.

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in operations of the war against their country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible. *(HR, art. 52.)*

b. What May Be Requsisitioned. Practically everything may be requisitioned under this article that is necessary for the maintenance of the army, such as fuel, food, clothing, building materials, machinery, tools, vehicles, furnishings for quarters, etc. Billeting of troops in occupied areas is also authorized.

413. Requisitioning of Foodstuffs and Medical Supplies

The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods. *(GC, art. 55, 2d par.)*

414. Requisition of Hospitals

See Article 57, *GC* (par. 386).

415. Method of Requisitioning

Requisitions must be made under the authority of the commander in the locality. No prescribed method is fixed, but if practicable requisitions should be accomplished through the local authorities by systematic collection in bulk. They may be made direst by detachments if local authorities fail or if circumstances preclude resort to such authorities.

416. Prices and Compensation for Requisitioned Articles and Services

The prices of articles and services requisitioned will be fixed by agreement if possible, otherwise by military authority. Receipts should be taken up and compensation paid promptly.

417. Method of Enforcing Requisition

Coercive measures will be limited to the amount and kind necessary to secure the articles requisitioned.

Section VI. SERVICES OF INHABITANTS AND OF OFFICIALS

418. Labor of Protected Persons

The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

The Occupying Power may not compel protected persons to work unless they art over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation} or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.

The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.

In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character. *(GC, art. 51.)* (See also *HR, art. 23,* 2d par.; par. 32 herein.)

419. Services Which May be Requisitioned

The services which may be obtained from inhabitants by requisition include those of professional men, such as engineers, physicians and nurses and of artisans and laborers, such as clerks, carpenters, butchers, bakers, and truck drivers. The officials and employees of railways, trucklines, airlines, canals, river or coastwise steamship companies, telegraph, telephone, radio, postal and similar services, gas, electric, and water works, and sanitary authorities, whether employed by the State or private companies, may be requisitioned to perform their professional duties only so long as the duties required do not directly concern the operations of war against their own country. The occupant may also requisition labor to restore the general condition of the public works to that of peace, including the repair of roads, bridges, and railways, and to perform services on behalf of the local population, such as the care of the wounded and sick and the burial of the dead.

420. Prohibited Labor

The prohibition against forcing the inhabitants to take part in military operations against their own country precludes requisitioning their services upon works directly promoting the ends of the war, such as construction of fortifications, entrenchments, and military airfields or the transportation of supplies or ammunition in the zone of operations. There is no objection in law to their being employed voluntarily and for pay in such work.

421. Protection of Workers

No contract, agreement or regulation shall impair the right of any worker, whether voluntary or not and wherever he may be,

to apply to the representatives of the Protecting Power in order to request the said Power's intervention.

All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory; in order to induce them to work for the Occupying Power, are prohibited. *(GC, art. 52.)*

422. Judges and Public Officials

The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience.

This prohibition does not prejudice the application of the second paragraph of Article 51. It does not affect the right of the Occupying Power to remove public officials from their posts. *(GC, art. 54.)*

423. Oath of Officals

The occupant may require such officials as are continued in their offices to take an oath to perform their duties conscientiously and not to act to its prejudice. Every such official who declines to take such oath may be removed; but, whether he does so or not, he owes strict obedience to the occupant as long as he remains in office.

424. Salaries of Officials

The salaries of civil officials of the hostile government who remain in the occupied territory and continue the work of their offices, especially those who can properly continue it under the circumstances arising out of the war--such as judges, administrative or police officers, officers of city or communal governments-are paid from the public revenues of the occupied territory, until the military government has reason wholly or partially to dispense with their services. Salaries or incomes connected with purely honorary titles are always suspended.

Section VII. PUBLIC FINANCE

425. Taxes

a. Treaty Provision.

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound. *(HR, art. 48.)*

b. Surplus. The first charge upon such taxes is for the cost of the administration of the occupied territory. The balance may be used for the purposes of the occupant.

426. Changes in Taxes

a. When Existing Rules May Be Disregarded. If, due to the flight or unwillingness of the local officials, it is impracticable to follow the rules of incidence and assessment in force, then the total amount of taxes to be paid may be allotted among the districts, towns, etc., and the local authorities required to collect it.

b. New Taxes. Unless required to do so by considerations of public order and safety, the occupant must not create new taxes.

427. Taxes Collected by Local Authorities

The words "for the benefit of the State" were inserted in the foregoing article *(HR, art. 48;* par. 425 herein) to exclude local taxes, dues, and tolls collected by local authorities. The occupant may supervise the expenditure of such revenue and prevent its hostile use.

428. Contributions

a. Treaty Provision.

If, in addition to the taxes mentioned in the above Article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question. *(HR, art. 49.)*

b. Prohibited Purposes. Contributions may not be levied for the enrichment of the occupant, for the payment of war expenses generally, or for other than the needs of the occupying forces and the administration of the occupied territory.

429. Methods of Levying Contributions

No contribution shall be collected except under a written order, and on the responsibility of a Commander-in-chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors. *(HR, art. 51.)*

430. Currency and Exchange Controls

The occupying power may leave the local currency of the occupied area in circulation. It is also authorized to introduce its own currency or to issue special currency for use only in the occupied area, should the introduction or issuance of such currency become necessary. The occupant may also institute exchange controls, including clearing arrangements, in order to conserve the monetary assets of the occupied territory. Such measures must not, however, be utilized to en-

rich the occupant or other-wise circumvent the restrictions placed on requisitions, contributions, seizures, and other measures dealing with property. Intentional debasement of currency by the establishment of fictitious valuation or exchange rates, or like devices, as well as failure to take reasonable steps to prevent inflation, are violative of international law.

431. Expropriation of Property for Local Benefit

In order to ensure public order and safety, as required by Article 43, *HR*, (par. 363) an occupant is authorized to expropriate either public or private property solely for the benefit of the local population. The occupant is obliged, unless absolutely prevented, to respect the laws in force in the occupied area in so doing.

Section VIII. SECURITY OF THE OCCUPANT: PENAL LEGISLATION AND PROCEDURE

432. Enforcement of Obedience

Subject to the restrictions imposed by international law, the occupant can demand and enforce from the inhabitants of occupied territory such obedience as may be necessary for the security of its forces, for the maintenance of law and order, and for the proper administration of the country. It is the duty of the inhabitants to carry on their ordinary peaceful pursuits, to behave in an absolutely peaceful manner, to take no part whatever in the hostilities carried on, to refrain from all injurious acts toward the troops or in respect to their operations, and to render strict obedience to the orders of the occupant. As to neutrals resident in occupied territory, see paragraphs 547-551.

433. Security Measures

a. Treaty Provision.

If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body setup by the said Power.

Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention.*(GC, art. 78.)*

b. Function of Competent Body. "Competent bodies" to review the internment or assigned residence of protected persons may be created with advisory functions only, leaving the final decision to a high official of the Government.

434. Penal Legislation

See paragraphs 369-371, regarding penal legislation which may be repealed or suspended and legislation which may be promulgated by the occupant.

435. Publication

a. Treaty Provision.

The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive. *(GC, art. 65).*

b. Form of Publication. The penal provisions referred to in the foregoing article must be promulgated in written form. It is not sufficient that they be announced by radio or loudspeakers.

436. Competent Courts

In case of a breach of the penal provisions promulgated by it by virtue of the second paragraph of Article 64, the Occupying Power may hand over the accused to its properly constituted. non-political military courts, on condition that the said courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country. *(GC, art. 66.)*

437. Applicable Law

The courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence. They shall take into consideration the fact that the accused is not a national of the Occupying Power. *(GC, art. 67.)*

438. Penalties

a. Treaty Provision.

Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying

forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed. Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. The courts provided for under Article 66 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.

The penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 may impose the death penalty on a protected person only in cases where the person is guilty of espionage, or serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.

The death penalty may not be pronounced against a protected person unless the attention of the court has been particularly called to the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offence. *(GC, art. 68.)*

b. Reservation as to Death Penalty. The United States has reservd the right to impose the death penalty in accordance with the provisions of Article 68, 2d paragraph, without regard to whether the offenses referred to therein are punishable by death under the law of the occupied territory at the time the occupation begins.

c. Other Offenses and Penalties. The foregoing article does not preclude the imposition of penalties, such as fines, not depriving the protected person of liberty. Acts in violation of the laws promulgated by the Occupying Power which are not solely intended to harm that Power, as, for example, traveling without a permit or violating exchange control regulations, are also punishable by internment or imprisonment or other penalties depriving the protected person of liberty.

439. Deduction From Sentences of Period Spent Under Arrest

In all cases, the duration of the period during which a protected person accused of an offence is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment awarded. *(GC, art. 69.)*

440. Offenses Committed Before Occupation

Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace. *(GC, art. 70.)*

441. Penal Procedure

No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and shall be brought to trial as rapidly as possible. The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it shall be enabled, at any time, to obtain information regarding the state of such proceedings Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons.

The notification to the Protecting Power, as provided for in the second paragraph above, shall be sent immediately, and shall in any case reach the Protecting Power three weeks before the date of the first hearing. Unless, at the opening of the trial, evidence is submitted that the provisions of this Article are fully complied with, the trial shall not proceed. The notification shall include the following particulars:

(a) description of the accused;
(b) place of residence or detention;
(c) specification of the charge or charges (with mention of the penal provisions under which it is brought);
(d) designation of the court which will hear the case;
(e) place and date of the first hearing. *(GC, art. 71.)*

442. Right of Defense

Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.

Failing a choice by the accused, the Protecting Power may provide him with an advocate or counsel. When an accused person has to meet a serious charge and the Protecting Power is not functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel.

Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have the right at any time to object to the interpreter and to ask for his replacement. *(GC, art. 72.)*

443. Right of Appeal

A convicted person shall have the right of appeal provided for by the laws applied by the court. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

The penal procedure provided in the present Section shall apply, as far as it is applicable, to appeals. Where the laws applied by the Court make no provision for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power. *(GC, art. 73.)*

444. Assistance by the Protecting Power

Representatives of the Protecting Power shall have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held in camera in the interests of the security of the Occupying Power, which shall then notify the Protecting Power. A notification in respect of the date and place of trial shall be sent to the Protecting Power.

Any judgment involving a sentence of death, or imprisonment for two years or more, shall be communicated, with the relevent grounds, as rapidly as possible to the Protecting Power. The notification shall contain a reference to the notification made under Article 71, and, in the case of sentences of imprisonment, the name of the place where the sentence is to be served. A record of judgments other than those referred to above shall be kept by the court and shall be open to inspection by representatives of the Protecting Power. Any period allowed for appeal in the case of sentences involving the death penalty, or imprisonment

of two years or more, shall not run until notification of judgment has been received by the Protecting Power. *(GC, art. 74.)*

445. Death Sentence

In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of at least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences *(GC, art. 76.)*

446. Treatment of Detainees

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health.

They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Such persons shall have the right to receive at least one relief parcel monthly. *(GC, art. 76.)*

447. Close of Occupation

Protected persons who have been accused of offences or convicted by the courts in occupied territory, shall be handed over

at the close of occupation, with the relevant records, to the authorities of the liberated territory. *(GC, art. 77.)*

448. Penalty for Individual Acts of Inhabitants

No general penalty, pecuniary or otherwise shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible. *(HR, art. 50.)* (See also *GC, art. 33;* par. 272 herein.)

CHAPTER 7

NONHOSTILE RELATIONS OF BELLIGERENTS

Section I. GENERAL

449. Nonintercourse

All intercourse between the territories occupied by belligerent armies, whether by traffic, communication, travel, or in any other way, ceases. This is the general rule to be observed without special proclamation.

450. Exceptions to Rule

Exceptions to this rule, whether by safe-conduct, license to trade, exchange of mails, or travel from one territory into the other, are made on behalf of individuals only with the approval of the Government or the highest military authority.

451. Forms of Nonhostile Relations of Belligerents

The conduct of war and the restoration of peace require certain nonhostile relations between belligerents. These relations are conducted through parlementaires, military passports, safe-conducts, safeguards, cartels, capitulations, and armistices.

452. Communication Between Belligerent States and Armies

One belligerent may communicate with another directly by radio, through parlementaires, or in a conference, and indirectly through a Protecting Power, a third State other than a Protecting Power, or the International Committee of the Red Cross.

453. Good Faith Essential

It is absolutely essential in all nonhostile relations that the most scrupulous good faith shall be observed by both parties, and that no advantage not intended to be given by the adversary shall be taken.

Section II. MILITARY PASSPORTS, SAFE-CONDUCTS AND SAFEGUARDS

454. General

Persons within an area occupied by a belligerent may be protected from molestation or interference through military passports, safe-conducts, and safeguards. These devices are a matter of international law only when granted or posted by arrangement with the enemy.

455. Militay Passport

A military passport is a document issued by order of a commander of belligerent forces, authorizing a person or persons named therein, *residing or sojourning within territory occupied by such forces,* to travel unmolested within such territory, with or without permission to pass, or to pass and return, by designated routes, through the lines, subject to such further conditions and limitations as the commander may prescribe.

456. Safe-Conduct

a. General. Documents like passports, issued by the same authority and for similar purposes, to persons *residing or sojourning outside of the occupied area,* who desire to enter and remain within or pass through such areas, are called safe-conducts. Similar documents, issued by the same authority, to persons residing within or without the occupied areas, to permit them to carry specified goods to or from designated places within those areas, and to engage in trade otherwise forbidden by the general rule of nonintercourse, are also called safe-conducts. Safe-conducts for goods in which the grantee is given a continuing right for a prescribed period, or until further orders, to engage in the specified trade, are sometimes called licenses to trade.

b. Safe-Conducts for Ambassadors and Diplomatic Agents. Ambassadors and other diplomatic agents of neutral powers, accredited to the enemy, may receive safe-conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary and unless they may reach the place of their destination conveniently by another route There is, however, no legal requirement that such safe-conducts be issued. Safe-conducts of this nature are usually given by the supreme authority of the State and not by subordinate officers.

457. Safeguard

A safeguard is a detachment, guard, or detail posted by a commander for the protection of persons, places, or property of the enemy, or of a neutral. The term also includes a written order left by a commander with an enemy subject or posted upon enemy property for the protection of the individual or property concerned. It is usually directed to the succeeding commander and requests the grant of protection. The effect of a safeguard is to pledge the honor of the nation that the person or property shall be respected by the national armed forces. The violation of a safeguard is a grave violation of the law of war and, if committed by a person subject to the Uniform Code of Military Justice, is punishable under Article 102 thereof with death or such other punishment as a court-martial may direct.

Soldiers on duty as safeguards occupy a protected status. They may not be attacked, and it is customary to send them back, together with their equipment and arms, to their own army when the locality is occupied by the enemy and as soon as military exigencies permit.

Section III. PARLEMENTAIRES

458. Negotiations Between Belligerents

In the past, the normal means of initiating negotiations between belligerents has been the display of a white flag. In current practice, radio messages to the enemy and messages dropped by aircraft are becoming increasingly important as a prelude to conversations between representatives of the belligerent forces.

The white flag, when used by troops, indicates a desire to communicate with the enemy. The hoisting of a white flag has no other signification in international law. It may indicate that the party hoisting it desires to open communication with a view to an armistice or a surrender. If hoisted in action by an individual soldier or a small party, it may signify merely the surrender of that soldier or party. It is essential, therefore, to determine with reasonable certainty that the flag is shown by actual authority of the enemy commander before basing important action upon that assumption.

The enemy is not required to cease firing when a white flag is raised. To indicate that the hoisting is authorized by its commander, the appearance of the flag should be accompanied or followed promptly by a complete cessation of fire from that side. The commander authorizing the hoisting of the flag should also promptly send a parlementaire or parlementaires.

459. Parlementaires

Parlementaires are agents employed by commanders of belligerent forces in the field, to go in person within the enemy lines, for the purpose of communicating or negotiating openly and directly with the enemy commander.

460. Inviolability of Parlementaire

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and the interpreter who may accompany him. *(HR, art. 32.)*

461. Fire Not To Be Directed on the Parlementaire

Fire should not be intentionally directed on parlementaires or those accompanying them. If, however, the parlementaires or those near them present themselves during an engagement and are killed or wounded, it furnishes no ground for complaint. It is the duty of the

parlementaire to select a propitious moment for displaying his flag, such as during the intervals of active operations, and to avoid dangerous zones by making a detour.

462. Credentials of Parlementaire

Parlementaires must be duly authorized in a written instrument signed by the commander of the forces.

463. Reception of Parlementaire

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all the necessary steps to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily. *(HR, art. 33.)*

464. Conditions for Receipt of Parlementaire

A commander may declare the formalities and conditions upon which he will receive a parlementaire and fix the hour and place at which he must appear. The present rule is that a belligerent may not declare beforehand, even for a specified period-except in case of reprisal for abuses of the flag of truce-that he will not receive parlementaires. An unnecessary repetition of visits need not be allowed.

While within the lines of the enemy, the parlementaire must obey all instructions given him. He may be required to deliver his message to a subordinate of the commander.

465. Detention of Parlementaire

In addition to the right of detention for abuse of his position, a parlementaire may be detained in case he has seen anything or obtained knowledge which may be detrimental to the enemy, or if his departure would reveal information on the movement of troops. He should be detained only so long as circumstances imperatively demand, and information should be sent at once to his commander as to such detention, as well as of any other action taken against him or against his party.

466. Loss of Inviolability

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery. *(HR, art. 34.)*

467. Abuse of Flag of Truce

It is an abuse of the flag of truce, forbidden as an improper ruse under Article 23 *(f)*, HR (par. 52), for an enemy not to halt and cease firing while the parlementaire sent by him is advancing and being received by the other party; likewise, if the flag of truce is made

use of for the purpose of inducing the enemy to believe that a parlementaire is going to be sent when no such intention exists. It is also an abuse of a flag of truce to carry out operations under the protection accorded by the enemy to it and those accompanying it. An individual or a party acts treacherously in displaying a white flag indicative of surrender as a ruse to permit attack upon the forces of the other belligerent. An abuse of a flag of truce may authorize a resort to reprisals.

468. Neutral Areas

If it is anticipated that negotiations between belligerents may be prolonged, a neutralized area may by agreement of the parties be set aside for the site of the negotiations. The belligerents may agree that no combat activity will take place within or over the area and that forces will be detailed to maintain the security of the area. The area designated as neutral on maps interchanged by representatives of the belligerents may be marked with searchlights, balloons, and other devices to insure that it will not be attacked.

Section IV. CARTELS

469. Cartels

In its narrower sense, a cartel is an agreement entered into by belligerents for the exchange of prisoners of war. In its broader sense, it is any convention concluded between belligerents for the purpose of arranging or regulating certain kinds of nonhostile intercourse otherwise prohibited by reason of the existence of the war. Both parties to a cartel are in honor bound to observe its provisions with the most scrupulous care, but it is voidable by either party upon definite proof that it has been intentionally violated in an important particular by the other party. (See par. 197.)

Section V. CAPITULATIONS

470. Capitulation Defined

A capitulation is an agreement entered into between commanders of belligerent forces for the surrender of a body of troops, a fortress, or other defended locality, or of a district of the theater of operations. A surrender may be effected without resort to a capitulation.

471. Military Honor in Capitulations

Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties. *(HR, art. 35.)*

472. Powers of Commanders

Subject to the limitations hereinafter indicated, the commander of a body of troops is presumed to be duly authorized to enter into

capitulations. In the case of a commander of a military force of the United States, if continued battle has become impossible and he cannot communicate with his superiors, these facts will constitute proper authority to surrender. If a commander of military forces of the United States surrenders unnecessarily and shamefully or in violation of orders from higher authority, he is liable to trial and punishment (see *UCMJ, Art. 99 (2)).* The fact that any commander surrenders in violation of orders or the law of his own State does not impair the validity of the surrender. A commanding officer's powers do not extend beyond the forces and territory under his command. Unless so authorized by his government, he does not possess power to bind his government to a permanent cession of the place or places under his command, or to any surrender of sovereignty over territory, or to any cessation of hostilities in a district beyond his command, or to agree to terms of a political nature or such as will take effect after the termination of hostilities.

473. Surrenders Concluded by Political Authorities

The surrender of a place or force may also be arranged by the political authorities of the belligerents without the intervention of the military authorities. In this case the capitulation may contain other than military stipulations.

474. Form of Capitulations

There is no specified form for capitulation. They may be concluded either orally or in writing, but in order to avoid disputes, they should be reduced to writing. The agreement should contain in precise terms every condition to be observed on either side, excepting such conditions as are clearly imposed by the laws of war. Details of time and procedure should be prescribed in the most exact and unequivocal language. Even in case of an unconditional surrender, when the terms are dictated by the victor, they should nevertheless be embodied in a written capitulation as soon as practicable.

475. Subjects Usually Regulated

In the capitulation (the instrument of surrender), the following subjects are usually dealt with, insofar as they are relevent to the circumstance of the particular surrender:

a. The force or territory which is surrendered and the exact time at which the surrender is to take effect.

b. Disposition of the enemy forces. A stipulation is normally included concerning the movements and administration of the surrendered force after the surrender. The provisions of the capitulation may, for example, require that the troops assemble at designated points or that they remain in their present positions It is normally understood that the surrendered forces are to become prisoners of war. In the event both belligerents are parties to *GPW*, little or noth-

ing more on that subject need be included in the capitulation. However, special circumstances, such as inability of the victor to guard, evacuate, and maintain large numbers of prisoners of war or to occupy the area in which enemy military forces are present, may justify the victorious commander in allowing the defeated force to remain in its present positions, to withdraw, or to disperse after having been disarmed and having given their paroles, provided that the giving of paroles is not forbidden by the laws of their own country and that they are willing to give their paroles (see par, 185).

c. If a place or area is surrendered, provisions relative to the withdrawal of the defenders and the entering into possession of the victorious troops. These matters should be fixed in advance with precision.

d. Disposition of medical personnel and the wounded and sick.

e. Disposition of prisoners of war, civilian internees, and other persons held in the custody of the surrendered troops.

f. Disarmament. Normally provisions are included to govern the disposition of enemy arms, equipment, and other property in the hands of the force which has surrendered. Officers are sometimes allowed to retain their side arms in addition to the articles they are allowed to keep under Article 18, *GPW* (par. 94).

g. Prohibition of destruction by the surrendered forces of their materiel or installations, or communications, transportation facilities, and other public utilities in the area concerned.

h. The provision of facilities and of information on such matters as minefield and other defense measures.

i. The civil administration of the area concerned, if a place or area is surrendered.

j. Orders given by the victor. It is normally stipulated that the orders of the victorious commander will be scrupulously carried out by the surrendered forces and that those who fail to comply with such orders or with the terms of the surrender itself will be severely punished.

476. Damage or Destruction of Property Prohibited After Surrender

From the moment of surrender the party surrendering has no right to demolish, destroy, or injure facilities, installations, or materiel under his control, unless otherwise stipulated in the capitulation. Nothing, however, prevents a commander who intends to surrender from carrying out such destruction, provided he does so before signing the capitulation.

477. Violation of Terms of a Capitulation

Violation of the terms of a capitulation by individuals is punishable as a war crime. If the violation is directed by the commander who capitulated or by higher authority, the other belligerent may denounce

the capitulation and resume hostilities. Like action may also be taken if the capitulation was obtained through a breach of faith.

478. Unconditional Surrender

An unconditional surrender is one in which a body of troops gives itself up to its enemy without condition. It need not be effected on the basis of an instrument signed by both parties. Subject to the restrictions of the law of war, the surrendered troops are governed by the directions of the State to which they surrender.

Section VI. ARMISTICES

479. Definition

An armistice (or truce, as it is sometimes called) is the cessation of active hostilities for a period agreed upon by the belligerents. It is not a partial or temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

480. Effect of Armistice

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice. *(HR, art. 36.)*

481. Armistice No Excuse for Lack of Vigilance

The existence of an armistice does not warrant relaxation of vigilance in the service of security and protection, or in the preparedness of troops for action, or exposing positions to the enemy.

482. Kinds of Armistice

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius. *(HR, art. 37.)*

483. General Armistices

General armistices are usually of a combined political and military character. They usually precede the negotiations for peace, but may be concluded for other purposes. Due to its political importance, a general armistice is normally concluded by senior military officers or by diplomatic representatives or other high civilian officials. If an armistice contains political terms, it must be made under authorizaion from the governments concerned or subject to approval by them.

484. Local Armistices

A local armistice suspends operations between certain portions of the belligerent forces or within a designated district of the theater of operations. A local armistice may be concluded by the military

forces only, or by the naval forces only, or between a less number than all of the belligerents at war. Commanders of the forces concerned are presumed to be competent to conclude local armistices, and ratification upon the part of their governments is not required unless specially stipulated in the armistice agreement.

It is always a condition of a local armistice that a considerable part of the forces and the region of war must be included and that the cause for which it is concluded is not merely some pressing local interest, as in the case of a suspension of arms (see next paragraph), but one of a more general character, such as a general exhaustion of the opposing belligerent in one part of the theater of war.

485. Suspension of Arms

A suspension of arms is a form of armistice concluded between commanders of military forces for some local military purpose, such as to bury the dead, to collect the wounded, to arrange for exchange of prisoners, or to enable a commander to communicate with his government or superior officer.

486. Form of Armistice

No special form for an armistice is prescribed. It should, if possible, be reduced to writing, in order to avoid misunderstandings and for the purpose of reference should differences of opinion arise. It should be drafted with the greatest precision and with absolute clearness.

487. What Stipulations an Armistice Should Contain

Stipulations covering the following matters should be incorporated in an armistice:

a. Precise Date, Day, and Hour of Commencement of the Armistice. The precise date, day, and hour for the suspension of hostilities should also be stipulated. The effective times maybe different in different geographical areas. An armistice commences, in the absence of express mention to the contrary, at the moment it is signed.

b. Duration of the Armistice. The duration may be for a definite or indefinite period. In case it is indefinite, a belligerent may resume operations at any time after notice. The terms and manner of giving such notice should be specified. If a term is fixed and no agreement has been made for prolonging it, hostilities may be resumed without notice at the expiration of the term in the absence of positive agreement to the contrary.

c. Principal Lines and All Other Marks or Signs Necessary To Determine the Locations of the Belligerent Troops. For this purpose maps with the lines indicated thereon may be attached to and made part of the armistice. Provision may be included for a neutral zone between the two armies. It is usually agreed that these lines are not to be crossed or the neutral zone entered except by parlementaires or

other parties by special agreement for specified purposes, such as to bury the dead and collect the wounded.

d. Relation of the Armies With the Local Inhabitants. If it is desired to make any change during the armistice in the relations between the opposing forces and the peaceable inhabitants, this must be accomplished by express provision. Otherwise these relations remain unchanged, each belligerent continuing to exercise the same rights as before, including the right to prevent or control all intercourse between the inhabitants within his lines and persons within the enemy lines.

e. Acts To Be Prohibited During the Armistice. In the absence of stipulations to the contrary, each belligerent is authorized to make movements of troops within his own lines, to receive reinforcements, to construct new fortifications, installations, and bases, to build and repair transportation and communications facilities, to seek information about the enemy, to bring up supplies and equipment, and, in general, to take advantage of the time and means at his disposal to prepare for resuming hostilities.

f. Disposition of Prisoners of War. If it is desired that prisoners of war and civilian internees should be released or exchanged, specific provisions in this regard should be made. (See *GPW, art. 118;* par. 198 herein.)

g. *Consultative Machinery.* It is generally desirable to provide for the establishment of a commission, composed of representatives of the opposing forces, to supervise the implementation of the armistice agreement. Additional commissions, composed of representatives of the belligerents or of neutral powers or both, may be constituted to deal with such matters as the repatriation of prisoners of war.

488. Political and Military Stipulations in General Armistices

In addition to the provisions set forth in the preceding paragraph, general armistices normally contain a number of political and military stipulations concerning such matters as the evacuation of territory; disposition of aircraft and shipping; cooperation in the punishment of war crimes; restitution of captured or looted property; communications facilities and public utilities;. civil administration; displaced persons; and the dissolution of organizations which may subvert public order.

489. Intercourse in Theater of Operations

a. Treaty Provision.

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the inhabitants and between the inhabitants of one be]. ligerent State and those of the other. *(HR, art. 39.)*

b. Rule in Absence of Stipulation. If nothing is stipulated, the intercourse remains suspended, as during actual hostilities.

490. Notification of Armistice

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed. *(HR, art. 38.)*

491. When Binding

An armistice is binding upon the belligerents from the time of the agreed commencement, but the officers of the armies are responsible only from the time when they receive official information of its existence.

492. Denunciation of Armistice

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.*(HR, art. 40.)*

493. Denunciation Must Not Involve Perfidy

An armistice, like other formal agreements between belligerents, engages the honor of both parties for the exact and complete fulfillment of every obligation thereby imposed. It would be an outrageous act of perfidy for either party, without warning, to resume hostilities during the period of an armistice, with or without a formal denunciation thereof, except in case of urgency and upon convincing proof of intentional and serious violation of its terms by the other party. Nevertheless, under the article last above quoted, upon definite proof of such a violation of the armistice, if the delay incident to formal denunciation and warning seems likely to give the violator a substantial advantage of any kind, the other party is free to resume hostilities without warning and with or without a formal denunciation.

494. Violations of Armistice by Individuals

a. Treaty Provision.

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders or, if necessary, compensation for the losses sustained. *(HR, art. 41.)*

b. Private Individuals Defined. A private individual, in the sense of the foregoing article, refers to any person, including a member of the armed forces, who acts on his own responsibility.

c. Effect of Violation of Armistice by Individuals. Violation of the terms of an armistice by individuals is punishable as a war crime. Such violations by individual soldiers or subordinate officers do not justify denunciation of the armistice unless they are proved to have been committed with the knowledge and actual or tacit consent of their own government or commander. Consent may be inferred in the event of a persistent failure to punish such offenders.

CHAPTER 8

REMEDIES FOR VIOLATION OF INTERNATIONAL LAW; WAR CRIMES

Section I. REMEDIES AND REPRISALS

495. Remedies of Injured Belligerent

In the event of violation of the law of war, the injured party may legally resort to remedial action of the following types:

a. Publication of the facts, with a view to influencing public opinion against the offending belligerent.

b. Protest and demand for compensation and/or punishment of the individual offenders. Such communications may be sent through the protecting power, a humanitarian organization performing the duties of a protecting power, or a neutral state, or by parlementaire direct to the commander of the offending forces. Article 3, *H. IV*, provides in this respect:

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

c. Solicitation of the good offices, mediation, or intervention of neutral States for the purpose of making the enemy observe the law of war. See Articles 11, *GWS;* 11, *GWS Sea;* 11, *GPW;* 12, *GC* (par. 19), concerning conciliation procedure through the protecting powers.

d. Punishment of captured offenders as war criminals.

e. Reprisals.

496. Inquiry Concerning Violations of Geneva Conventions of 1949

GWS, GWS Sea, GPW, and *GC* contain a common provision that—

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay. *(GWS, art. 52; GWS Sea, art. 53; GPW, art. 132; GC, art. 149.)*

497. Reprisals

a. Definition. Reprisals are acts of retaliation in the form of conduct which would otherwise be unlawful, resorted to by one belligerent against enemy personnel or property for acts of warfare committed by the other belligerent in violation of the law of war, for the purpose of enforcing future compliance with the recognized rules of civilized warfare. For example, the employment by a belligerent of a weapon the use of which is normally precluded by the law of war would constitute a lawful reprisal for intentional mistreatment of prisoners of war held by the enemy.

b. Priority of Other Remedies. Other means of securing compliance with the law of war should normally be exhausted before resort is had to reprisals. This course should be pursued unless the safety of the troops requires immediate drastic action and the persons who actually committed the offenses cannot be secured. Even when appeal to the enemy for redress has failed, it may be a matter of policy to consider, before resorting to reprisals, whether the opposing forces are not more likely to be influenced by a steady adherence to the law of war on the part of their adversary.

c. Against Whom Permitted. Reprisals against the persons or property of prisoners of war, including the wounded and sick, and protected civilians are forbidden *(GPW, art. 13; GC, art. 33).* Collective penalties and punishment of prisoners of war and protected civilians are likewise prohibited *(GPW, art.* 87; *GC, art. 99).* However, reprisals may still be visited on enemy troops who have not yet fallen into the hands of the forces making the reprisals.

d. When and How Employed. Reprisals are never adopted merely for revenge, but only as an unavoidable last resort to induce the enemy to desist from unlawful practices. They should never be employed by individual soldiers except by direct orders of a commander, and the latter should give such orders only after careful inquiry into the alleged offense. The highest accessible military authority should be consulted unless immediate action is demanded, in which event a subordinate commander may order appropriate reprisals upon his own initiative. Ill-considered action may subsequently be found to have been wholly unjustified and will subject the responsible officer himself to punishment for a violation of the law of war. On the other hand, commanding officers must assume responsibility for retaliative measures when an unscrupulous enemy leaves no other recourse against the repetition of unlawful acts.

e. Form of Reprisal. The acts resorted to by way of reprisal need not conform to those complained of by the injured party, but should not be excessive or exceed the degree of violence committed by the enemy.

f. Procedure. The rule requiring careful inquiry into the real occurrence will always be followed unless the safety of the troops requires immediate drastic action and the persons who actually committed the offense cannot be ascertained.

g. Hostages. The taking of hostages is forbidden *(GC, art. 34).* The taking of prisoners by way of reprisal for acts previously committed (so-called "reprisal prisoners") is likewise forbidden. (See *GC, art. 33.)*

Section II. CRIMES UNDER INTERNATIONAL LAW

498. Crimes Under International Law

Any person, whether a member of the armed forces or a civilian, who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment. Such offenses in connection with war comprise:

a. Crimes against peace.

b. Crimes against humanity.

c. War crimes.

Although this manual recognizes the criminal responsibility of individuals for those offenses which may comprise any of the foregoing types of crimes, members of the armed forces will normally be concerned, only with those offenses constituting "war crimes."

499. War Crimes

The term "war crime" is the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime.

500. Conspiracy, Incitement, Attempts, and Complicity

Conspiracy, direct incitement, and attempts to commit, as well as complicity in the commission of, crimes against peace, crimes against humanity, and war crimes are punishable.

501. Responsibility for Acts of Subordinates

In some cases, military commanders may be responsible for war crimes committed by subordinate members of the armed forces, or other persons subject to their control. Thus, for instance, when troops commit massacres and atrocities against the civilian population of occupied territory or against prisoners of war, the responsibility may rest not only with the actual perpetrators but also with the commander. Such a responsibility arises directly when the acts in question have been committed in pursuance of an order of the commander concerned. The commander is also responsible if he has actual knowledge, or should have knowledge, through reports received by him or through other means, that troops or other persons subject to his control are about to commit or have committed a war crime and he fails

to take the necessary and reasonable steps to insure compliance with the law of war or to punish violators thereof.

502. Grave Breaches of the Geneva Conventions of 1949 as War Crimes

The Geneva Conventions of 1949 define the following acts as "grave breaches," if committed against persons or property protected by the Conventions:

a. GWS and GWS Sea.

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. *(GWS, art. 50; GWS Sea, art. 51.)*

b. GPW.

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention. *(GPW, art. 130.)*

c. GC.

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. *(GC, art. 147.)*

503. Responsibilities of the Contracting Parties

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches

referred to in the preceding Article. *(GWS, art. 51; GWS Sea, art. 52; GPW, art. 131; GC, art. 148.)*

504. Other Types of War Crimes

In addition to the "grave breaches" of the Geneva Conventions of 1949, the following acts are representative of violations of the law of war ("war crimes"):

a. Making use of poisoned or otherwise forbidden arms or ammunition.

b. Treacherous request for quarter.

c. Maltreatment of dead bodies.

d. Firing on localities which are undefended and without military significance.

e. Abuse of or firing on the flag of truce.

f. Misuse of the Red Cross emblem.

g. Use of civilian clothing by troops to conceal their military character during battle.

h. Improper use of privileged buildings for military purposes.

i. Poisoning of wells or streams.

j. Pillage or purposeless destruction.

k. Compelling prisoners of war to perform prohibited labor.

l. Killing without trial spies or other persons who have committed hostile acts.

m. Compelling civilians to perform prohibited labor.

n. Violation of surrender terms.

Section III. PUNISHMENT OF WAR CRIMES

505. Trials

a. Nature of Proceeding. Any person charged with a war crime has the right to a fair trial on the facts and law.

b. Rights of Accused. Persons accused of "grave breaches" of the Geneva Conventions of 1949 are to be tried under conditions no less favorable than those provided by Article 105 and those following (par. 181 and following) of *GPW (GWS, art. 49; GWS Sea, art. 50; GPW, art. 129;* GC, *art. 146, 4th par.* only; par. 506 herein.)

c. *Rights of Prisoners of War.* Pursuant to Article 85, *GPW* (par. 161), prisoners of war accused of war crimes benefit from the provisions of *GPW*, especially Articles 82-108 (pars. 158-184).

d. How Jurisdiction Exercised. War crimes are within the jurisdiction of general courts-martial *(UCMJ, Art. 18),* military commissions, provost courts, military government courts, and other military tribunals (UCMJ, *Art. 21)* of the United States, as well as of international tribunals.

e. *Law Applied.* As the international law of war is part of the law of the land in the United States, enemy personnel charged with war

crimes are tried directly under international law without recourse to the statutes of the United States. However, directives declaratory of international law may be promulgated to assist such tribunals in the performance of their function. (See pars. 506 and 507.)

506. Suppression of War Crimes

a. Geneva Conventions of 1949. The Geneva Conventions of 1949 contain the following common undertakings:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favorable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949. *(GWS, art. 49; GWS Sea, art. 50; GPW, art. 129; GC, art. 146.)*

b. Declaratory Character of Above Priciples. The principles quoted in a, above, are declaratory of the obligations of belligerents under customary international law to take measures for the punishment of war crimes committed by all persons, including members of a belligerent's own armed forces.

c. Grave Breaches. "Grave breaches" of the Geneva Conventions of 1949 and other war crimes which are committed by enemy personnel or persons associated with the enemy are tried and punished by United States tribunals as violations of international law.

If committed by persons subject to United States military law, these "grave breaches" constitute acts punishable under the Uniform Code of Military Justice. Moreover, most of the acts designated as "grave breaches" are, if committed within the United States, violations of domestic law over which the civil courts can exercise jurisdiction.

507. Universality of Jurisdiction

a. Victims of War Crimes. The jurisdiction of United States military tribunals in connection with war crimes is not limited to offenses committed against nationals of the United States but extends also to all offenses of this nature committed against nationals of allies and of cobelligerents and stateless persons.

b. Persons Charged With War Crimes. The United States normally punishes war crimes as such only if they are committed by enemy nationals or by persons serving the interests of the enemy State. Violations of the law of war committed by persons subject to the military law of the United States will usually constitute violations of the Uniform Code of Military Justice and, if so, will be prosecuted under that Code. Violations of the law of war committed within the United States by other persons will usually constitute violations of federal or state criminal law and preferably will be prosecuted under such law (see pars. 505 and 506). Commanding officers of United States troops must insure that war crimes committed by members of their forces against enemy personnel are promptly and adequately punished.

508. Penal Sanctions

The punishment imposed for a violation of the law of war must be proportionate to the gravity of the offense. The death penalty may be imposed for grave breaches of the law. Corporal punishment is excluded. Punishments should be deterrent, and in imposing a sentence of imprisonment it is not necessary to take into consideration the end of the war, which does not of itself limit the imprisonment to be imposed.

Section IV. DEFENSES NOT AVAILABLE

509. Defense of Superior Orders

a. The fact that the law of war has been violated pursuant to an order of a superior authority, whether military or civil, does not deprive the act in question of its character of a war crime, nor does it constitute a defense in the trial of an accused individual, unless he did not know and could not reasonably have been expected to know that the act ordered was unlawful. In all cases where the order is held not to constitute a defense to an allegation of war crime, the fact that the individual was acting pursuant to orders maybe considered in mitigation of punishment.

b. In considering the question whether a superior order constitutes a valid defense, the court shall take into consideration the fact that obedience to lawful military orders is the duty of every member of the armed forces; that the latter cannot be expected, in conditions of war discipline, to weigh scrupulously the legal merits of the orders received; that certain rules of warfare may be controversial; or that an act otherwise amounting to a war crime may be done in obedience

to orders conceived as a measure of reprisal. At the same time it must be borne in mind that members of the armed forces are bound to obey only lawful orders (e. g., *UCMJ, Art. 92).*

510. Government Officials

The fact that a person who committed an act which constitutes a war crime acted as the head of a State or as a responsible government official does not relieve him from responsibility for his act.

511. Acts Not Punished in Domestic Law

The fact that domestic law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

CHAPTER 9
NEUTRALITY

Section I. GENERAL

512. Definition

Traditionally, neutrality on the part of a State not a party to the war has consisted in refraining from all participation in the war, and in preventing, tolerating, and regulating certain acts on its own part, by its nationals, and by the belligerents. It is the duty of belligerents to respect the territory and rights of neutral States.

513. Neutrality Under the Charter of the United Nations

In the event of any threat to the peace, breach of the peace, or act of aggression, the Security Council of the United Nations is authorized, under Articles 39 through 42 of the Charter, to make recommendations, to call for the employment of measures short of force, or to take forcible measures to maintain or restore international peace and security. Measures short of force or force itself may also be employed in pursuance of a recommendation of the General Assembly of the United Nations. Although these provisions of the Charter have not made it impossible for a State to remain neutral, the obligations which the Charter imposes have to a certain extent qualified the righte of States in this respect. For example, if a State is called upon, under Articles 42 and 43 of the Charter, to take militiary action against an aggressor, that State loses its *right* to remain neutral but actually loses its neutrality only to the extent that it complies with the direction of the Security Council.

A military commander in the field is obliged to respect the neutrality of third States which "are not allied with the United States in the conduct of hostilities and are not violating their duty of neutrality toward this country, except to the extent that the State concerned has expressly qualified its neutrality.

514. Notification of State of War to Neutrals

a. Treaty Provisions. See Articles 2 and 3, *H. III* (pars. 21 and 22).

b. Proclamations of Neutrality. When war occurs, neutral States usually issue proclamations of neutrality, in which they state their determination to observe the duties of neutrality and warn their nationals of the penalties they incur for joining or assisting a belligerent.

515. Inviolability of Territory

a. Treaty Provisions.

The territory of neutral Powers is inviolable. (H. V, art. 1.)

b. Application of Role. The foregoing rule prohibits any unauthorized entry into the territory of a neutral State, its territorial waters, or the airspace over such areas by hoops or instrumentalities of war. If harm is caused in a neutral State by the unauthorized entry of a belligerent, the offending State may be required, according to the circumstances, to respond in damages.

516. Movements of Troops and Convoys of Supplies

Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power. *(H. V, art. 2.)*

517. Convoys of Munitions and Supplies

A distinction must be drawn between the official acts of the belligerent State in convoying or shipping munitions and supplies through neutral territory as part of an expedition and the shipment of such supplies by private persons. The former is forbidden while the latter is not.

518. Neutral State Must Prohibit Acts On Its Own Territory

A neutral Power must not allow any of the acts referred to in Articles II to IV to occur on its territory.

It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory. *(H. V, art. 5.)*

519. Resistance to Violations of Neutrality

a. Treaty Provision.

The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act. *(H. V, art. 10.)*

b. Patrolling the Frontier. In order to protect its neutrality, a State whose territory is adjacent to a theater of war normally mobilizes a portion of its forces to prevent troops of either belligerent from entering its territory, to intern such as maybe permitted to enter, and generally to carry out its duties of neutrality.

520. Effect of Failure to Prevent Violation of Neutrality by Belligerent Troops

Should the neutral State be unable, or fail for any reason, to prevent violations of its neutrality by the troops of one belligerent entering or passing through its territory, the other belligerent may be justified in attacking the enemy forces on this territory.

521. Offenses Against Neutrality Defined by Statute

Supplementing the rules of international law, there are certain statutes of the United States that define offenses against neutrality and prescribe penalties therefor, some of which are effective only during a war in which the United States is neutral, and others of which are effective at all times (see *18 U. S. C. 956-968, 22 U. S. C. 441-457, 461-465).* The enforcement of these statutes devolves primarily upon the civil authorities, but under certain circumstances land or naval forces may be employed for that purpose (see, *e. g., 22 U. S. C.46l).*

Section II. RECRUITING IN NEUTRAL TERRITORY

522. Forming Corps of Combatants and Recruiting Forbidden

a. Treaty Provision.

Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents. *(H. V, art. 4.)*

b. Application of Rule. The establishment of recruiting agencies, the enlistment of men; the formation and organization of hostile expeditions on neutral territory, and the passage across its frontiers of organized bodies of men intending to enlist are prohibited.

c. Personnel of Voluntary Aid Societies. This prohibition does not extend to medical personnel and units of a voluntary aid society duly authorized to join one of the belligerents. (See *GWS, art. 27;* par. 229 herein.)

523. Responsibility as to Individuals

The responsibility of a neutral Power is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents. *(H. V, art. 6.)*

524. Single Persons and Organized Bodies

a. Individual Persons Crossing the Frontier. The prohibition in Article 4, *H. V* (par. 522), is directed against organized bodies which only require to be armed to become an immediate fighting force. Neutral States are not required to enact legislation forbidding their nationals to join the armed forces of the belligerents. Individuals crossing the frontier singly or in small bands that are unorganized similarly create no obligation on the neutral State. The foregoing rules do not, however, permit a State professing to be neutral to send regularly constituted military units across the frontier in the guise of "volunteers" or small unorganized bands.

b. Nationals of Belligerent Not Included. Nationals of a belligerent State are permitted freely to leave neutral territory to join the armies of their country.

Section III. SUPPLIES AND SERVICES FROM NEUTRAL TERRITORY

525. Neutral Not Bound to Prevent Shipment of Supplies

A neutral Power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet. *(H. V, art. 7.)*

526. Obligations of Neutral State as to Supplies

Although a neutral State is not required to prohibit the shipment by private persons of supplies or munitions of war, the neutral State, as such, is prohibited from furnishing such supplies or munitions and from making loans to a belligerent. It is also forbidden to permit the use of its territory for the fitting out of hostile expeditions.

527. Commercial Transactions Not Prohibited

Commercial transactions with belligerents by neutral corporations, companies, citizens, or persons resident in neutral territory are not prohibited. A belligerent may purchase from such persons supplies, munitions, or anything that may be of use to an army or fleet, which can be exported or transported without involving the neutral State.

528. Use of Neutral Territory for Establishment of Radio and Other Communications Facilities

Belligerents are likewise forbidden:

***a.* To erect on the territory of a neutral Power a wireless telegraphy station or any apparatus for the purpose of communicating with belligerent forces on land or sea;**

***b.* To use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages.** *(H. V, art. 3.)*

529. Means of Communication

A neutral Power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to Companies or private individuals. *(H. V, art. 8.)*

530. Impartiality in Allowing Use of Communication Facilities

The liberty of a neutral State, if it so desires, to transmit messages by means of its telegraph, telephone, cable, radio, or other telecommunications facilities does not imply the power so to use them or to permit their use as to lend assistance to the belligerents on one side only.

531. Impartiality

Every measure of restriction or prohibition taken by a neutral Power in regard to the matters referred to in Articles VII and VIII must be impartially applied by it to both belligerents.

A neutral Power must see to the same obligation being observed by Companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus. (H. V, art. 9.)

Section IV. INTERNMENT OF BELLIGERENT FORCES AND TENDING OF WOUNDED AND SICK IN NEUTRAL TERRITORY

532. Internment

A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission. *(H. V, art. 11.)*

533. Duty of Neutral State

A neutral is not bound to permit belligerent troops to enter its territory. On the other hand, it may permit them to do so without violating its neutrality, but the troops must be interned or confined in places designated by the neutral. They must be disarmed and appropriate measures must be taken to prevent their leaving the neutral country. In those cases in which the States concerned are parties to *GPW*, Article 4, paragraph B(2), thereof requires that such persons, provided they are otherwise entitled to be treated as prisoners of war, are, as a minimum but subject to certain exceptions, to receive the benefit of treatment as prisoners of war under *GPW* (see par. 61).

534. Neutral Can Impose Terms

If troops or soldiers of a belligerent are permitted to seek refuge in neutral territory, the neutral is authorized to impose the terms upon which they may do so. In case of large bodies of troops seeking refuge in neutral territory, these conditions will usually be stipulated in a convention drawn up by the representatives of the neutral power and the senior officer of the troops.

535. Parole by Neutral

Officers and men interned in a neutral State may in the discretion of that State be released on their parole under conditions to be prescribed by the neutral State. If such persons leave the neutral State in violation of their parole, the State in whose armed forces they serve is obliged to return them to the neutral State at its request.

536. Disposition of Arms, Vehicles, Equipment, etc.

The munitions, arms, vehicles, equipment, and other supplies which the interned troops are allowed to bring with them into neutral territory are likewise detained by the neutral State. They are restored to the State whose property they are at the termination of the war.

537. Maintenance

In the absence of a special Convention the neutral Power shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good. *(H. V, art. 12.)*

538. Prisoners of War

A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power. *(H. V, art. 13.)*

539. Passage of Sick and Wounded

A neutral Power may authorize the passage over its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing fhem shall carry neither personnel or material of war. In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.

The wounded or sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral Power so as to ensure their not taking part again in the operations of the war. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care. *(H. V, art. 14.)*

540. Passage and Landing of Medical Aircraft

Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land on it in case of necessity, or use it as a port of call. They shall give the neutral Powers previous notice of their passage over the said territory and obey all summons to alight, on land or water. They will be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their terri-

tory. Such possible conditions or restrictions shall be applied equally to all Parties to the conflict.

Unless agreed otherwise between the neutral Power and the Parties to the conflict, the wounded and sick who are disembarked, with the consent of the local authorities, on neutral territory by medical aircraft, shall be detained by the neutral Power, where so required by international law, in such a manner that they cannot again take part in operations of war. The most of their accommodation and internment shall be borne by the Power on which they depend. *(GWS, art. 37.)*

541. Obligations of Neutral State

The neutral power is under no obligation to permit the passage of a convoy of sick and wounded through its territory, but when such a convoy is permitted to pass, the neutral must exercise control, must see that neither personnel nor material other than that necessary for the care of the sick and wounded is carried, and generally must accord impartiality of treatment to the belligerents.

542. Internment of Sick and Wounded Passing Through Neutral State

The sick and wounded of a belligerent maybe carried through neutral territory to the territory of the belligerent State. If, however, they are left in the neutral's territory, they must be interned so as to insure their not taking part again in the war.

543. Sick and Wounded Prisoners of War Brought Into Neutral State by Captor

Sick and wounded prisoners of war brought into neutral territory by the Detaining Power as part of a convoy of evacuation granted right of passage through neutral territory may not be transported to their own country or liberated, as are prisoners of war escaping into, or brought by troops seeking asylum in neutral territory, but must be detained by the neutral power, subject to the provisions contained in paragraphs 188 through 196.

544. Wounded, Sick, or Shipwrecked Persons in Maritime Warfare

a. Placed on a Neutral Warship or Aircraft.

If wounded, sick or shipwrecked persons are taken on board a neutral warship or a neutral military aircraft, it shall be ensured, where so required by international law, that they can take no further part in operations of war. *(GWS sea, art. 15.)*

b. Landed in Neutral Ports.

Wounded, sick or shipwrecked persons who are landed in neutral ports with the consent of the local authorities, shall, failing arrangements to the contrary between the neutral and the bel-

ligerent Powers, be so guarded by the neutral Power, where so required by international law, that the said persons cannot again take part in operations of war.

The costs of hospital accommodation and internment shall be borne by the Power on whom the wounded, sick or shipwrecked persons depend. *(GWS sea, art. 17.)*

545. Medical Personnel

The medical personnel and chaplains (as defined in *GWS*, art. 24; par. 67 herein) belonging to belligerent forces who have sought asylum under Article 11, *H. V* (par. 532), may be retained and are required to be released as prescribed in Articles 28 and 80, *GWS* (pars. 230 and 231). Medical personnel and materials necessary for the care of the sick and wounded of a convoy of evacuation, permitted to pass through neutral territory under Article 14, *H. V* (par. 539), may be permitted to accompany the convoy. Subject to the provistions of Articles 28 and 80, *GWS*, the neutral State may retain the necessary medical personnel and materiel for the care of the sick and wounded left in its care. Failing this, it must furnish such personnel and materiel, and the expense thereof must be refunded by the belligerent concerned not later than at the termination of the war.

546. Accommodation in Neutral Territoty of the Wounded, Sick, and Prisoners of War Who Have Been Long In Captivity

Articles 109 through 117, *GPW*, authorize parties to the conflict to conclude arrangements with neutral States for the accommodation of the seriously wounded and sick and persons who have undergone a long period of captivity. See paragraphs 188 through 196 for provisions in this regard, including direct repatriation of certain wounded and sick from the neutral country.

Sestion V. NEUTRAL PERSONS

547. Neutral Persons

The nationals of a State which is not taking part in the war are considered as neutrals. *(H. V, art. 16.)*

548. Neutral Persons Resident in Occupied Territory

Neutral persons resident in occupied territory are not entitled to claim different treatment, in general, from that accorded the other inhabitants. They must refrain from all participation in the war, from all hostile acts, and observe strictly the rules of the occupant. All nationals of neutral powers, whether resident or temporarily visiting an occupied territory, may be punished for offenses committed by them to the same extent and in the same manner as enemy nationals. (See *GC, art. 4;* par. 247 herein, regarding the protection of neutral persons.)

549. Diplomatic Agents and Consuis in Occupied Territory

Diplomatic agents of neutral States must be treated with all courtesy and must be permitted such freedom of action as it is possible to allow, with due regard to the necessities of the war. The same is true of consular personnel of neutral States, except those who are enemy nationals.

550. Forfeiture of Rights by Neutral Nationals

a. Treaty Provision.

A neutral cannot avail himself of his neutrality:

***a.* If he commits hostile acts against a belligerent.**

***b.* If he commits acts in favour of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.**

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent State could be for the same act. *(H. V, art. 17.)*

b. Offenses in Occupied Territory. Nationals of neutral States, whether resident in or visiting occupied territory, may be punished for offenses in the same manner as enemy nationals. They may be deported or expelled for just cause. In the event that such a person is arrested, suspicions must be verified by a serious inquiry, and the arrested neutral person must be given an opportunity to defend himself, and to communicate with the consul of his country if he requests it.

551. Acts Not Favorable to One Belligerent

The following acts shall not be considered as committed in favour of one belligerent in the sense of Article XVII, letter *b*:

***a.* Supplies furnished or loans made to one of the belligerents, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from these territories;**

***b.* Services rendered in matters of police or civil administration.** *(H. V, art. 18.)*

Section VI. RAILWAY MATERIAL

552. Railway Material

Railway material coming from the territory of neutral Powers, whether it be the property of the said Powers or of Companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral Power may likewise, in case of necessity, retain and utilize to an equal extent material coming from the territory of the belligerent Power.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage. *(H. V,* (art. 19.)

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By Order of *Wilber M. Brucker*, Secretary of the Army:

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