

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 February 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 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 favourable 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 directly 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 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, 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 III. 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 departure 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 a-hail be determined on an equitable basis 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 accidents 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 accounts 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 officer in charge of the place of internment must have in his possession a copy of the present Convention in the official language, or one of the official 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 provided 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 exceed 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 Offences

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 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 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 officially 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 be 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 Bureaus 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 necessary, 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 may be 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 imperative 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 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 Principles.* 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.