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## Rights and Privileges of the Prisoner of War

This is part II of a two-part paper on the Geneva Conventions. (Part I dealt with the application of the PW Convention in Vietnam.) It is based on the article, "International Law Protects PWs", by Colonel George F. Westerman (U.S. Army Judge Advocate General Corps) in the February 1967 "Army Digest".

### WHY EVERY SERVICEMAN SHOULD BE FAMILIAR WITH THE CONVENTION

The Convention is important to the individual American fighting man for several reasons. First, because it is the law and he is charged with the duty of living up to its requirements. During hostilities when U. S. forces capture enemy personnel, they must know the standards of treatment to which their prisoners are entitled, in order to abide by the terms of the Convention and thus uphold the dignity and honor of the United States.

Secondly, any soldier may become a prisoner of war, and should know his rights under the Convention; he also should know exactly what rules he is required to follow during his imprisonment by the enemy. This knowledge could have a lot to do with his own well-being and the security of his organization.

In this pamphlet we will consider highlights of the Convention's chief provisions, taking them for what they are—a set of rules that United States military men are required by the Convention to observe, and a measure of their rights and obligations as prisoners of war.

### RIGHTS CANNOT BE WAIVED

One of the most significant provisions of the Convention is stated at the outset: "Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention. . ."

A PW may not be requested, induced, or forced to give up any of his rights. Even if he wanted to do so he cannot waive any of these rights. Furthermore, a party to the Convention may not lawfully deprive its personnel or the personnel of any other party to the Convention, by special agreement or otherwise, of the rights and privileges to which they are entitled under the Convention.

The Geneva Convention protects a prisoner of war from the very moment of his capture until his final release and repatriation. However, not every person falling into the hands of opposing armed forces can meet the qualifications for a prisoner of war set forth in Article 4 of the Convention.

In past wars this was not a significant problem since most captives wore uniforms and were plainly identifiable as members of the enemy armed forces. But this is not

the case in Vietnam. Troops are likely to take a variety of captives, men, women and children, most of whom are dressed in the black pajama-like garb of the Vietnamese peasant and defy all attempts at easy classification.

These people can fall into several categories. They might be prisoners of war or innocent civilians, or returnees under the Chieu Hoi program (these are persons who voluntarily return to South Vietnamese control after having actively supported the Viet Cong in some form of political or military activities).

Or they could be "civil defendants," civilians suspected of being spies, saboteurs, terrorists or common criminals and therefore not entitled under Article 4 of the Convention to treatment as prisoners of war.

A soldier in battle can hardly be expected to determine the precise status of his captives; the heat and confusion of battle make the chances of error too great. It is for this reason that, in accordance with Article 5 of the Convention, U. S. forces in Vietnam have been ordered to accord prisoner of war treatment to all captives, irrespective of their suspected status, until such time as their actual status is determined by the interrogating officer or a competent tribunal.

#### **FOLLOW INSTRUCTIONS ON MACV PW CARD**

The MACV instruction card on treatment of captives is issued to every member of the U. S. armed forces in Vietnam. Similar cards have been issued to the Vietnamese and to the other Free World Forces. While a card obviously cannot cover all of the Convention, it gives the average combat soldier adequate and realistic guidelines for the treatment of prisoners.

The instructions apply equally to all captives without reference to whether they are actually entitled to PW treatment. Actual entitlement to full protection under the Convention will be determined later by properly designated interrogators and tribunals.

The MACV card tells a soldier what he can and cannot do. Captives must be disarmed, thoroughly searched, and carefully

guarded. Under all circumstances, they are to be treated humanely, without distinction founded on race, color, religious belief or similar criteria.

Prisoners may not be murdered, mutilated, tortured, humiliated or degraded in any way. They are to be protected against all acts of violence, insults, public curiosity, and reprisals. Women captives (not at all uncommon in Vietnam) are to have the benefit of treatment at least as favorable as that granted to male prisoners, and must be treated with all regard due their sex.

Captured documents reveal that the Viet Cong have issued instructions to their forces concerning the treatment of prisoners which are similar to instructions given to U. S. Forces.

#### **NAME, RANK, SERVICE NUMBER AND DATE OF BIRTH**

During the Crusades the rule evolved that a captive knight was permitted to divulge his name and rank—admissions necessitated by the game of ransom. Almost the same rule holds good today. Upon capture, a prisoner is required by the Convention to give only his full name, rank, date of birth and service number. That is all. He is obliged to give this information, however, and failure to do so may result in a loss of privileges due him by reason of rank or status.

No physical or mental torture, or any other form of coercion, may be inflicted on prisoners to obtain any kind of information from them; and no unpleasant treatment or withdrawal of privileges may be meted out for a refusal to answer. All prisoners of war must be questioned in a language they understand.

A prisoner should have with him a Geneva Convention identity card issued by his government. He must show this card on demand by his captor, but in no case may it be taken from him.

Personal effects which the prisoner of war may retain include clothing, mess equipment (knives and forks excluded), badges of rank and nationality, decorations, identification

card or tags and articles that are of personal use or which have a sentimental value to the prisoner.

Metal helmets, gas masks and like articles issued for personal protection will be stored in a secure facility where they will be readily available for issue when required. Only officers may order the removal of money or valuables from prisoners, and receipts must be given.

## **EVACUATION**

The horrors of the Bataan Death March and other fearful transfers were still fresh in the minds of the authors of the 1949 Convention and there was a solemn determination to outlaw any such inhumanity in the future. Articles 46-48, covering transfers and evacuation, are designed for that purpose.

Evacuation of prisoners from the battle area must be carried out as swiftly, safely and humanely as possible. While they await movement out of the fighting zone, prisoners must not be unnecessarily exposed to danger.

Whenever prisoners are transferred from one camp to another, they are to be permitted to take their personal effects with them and are to be supplied with necessary food, potable water, clothing, and medical attention during the transfer. All transit or screening camps through which PWs pass on their way to permanent accommodations must meet the same general requirements as those for a permanent internment camp.

## **INTERNMENT CAMPS**

In the days of the Roman Empire, enslaved warriors rowed Caesar's naval galleys to North Africa and Britain, and were killed when they could no longer pull an oar. During the Revolutionary War, many American prisoners died aboard filthy and disease-ridden British prison ships.

It's little wonder that the Convention now prescribes that PWs "may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness."

The Convention emphatically declares that no PW may be kept "in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune to military operations." The detaining power must let the other side know the location of PW camps. They are to be marked, when military considerations permit, with letters large enough to be seen clearly from the air.

PWs are to be assembled in camps or compounds according to nationality, language and customs, but they are not to be separated from other PWs from the forces with which they were serving at the time of their capture, except with their consent. Nor may the detaining power simply herd prisoners into a packed enclosure and forget about them.

## **QUARTERS**

The Convention says, "Prisoners of war shall be quartered under conditions as favorable as those for the forces of the detaining Power who are billeted in the same area." It adds that allowance is to be made for habits and customs of the prisoners. In no case may camp conditions be dangerous to prisoner's health.

## **FOOD**

Starvation of prisoners is forbidden. The old standard of the 1929 Convention was that prisoners had to be fed the same rations as troops at the base camps of the detaining power. Because of the difficulty American and British PWs in the Far East had with fish-head and rice diets during World War II, it is written into the 1949 Convention that the food be "sufficient in quantity and variety" to keep the prisoners in good health without loss of weight. In addition, the detaining power is required to take account of the habitual diet of prisoners.

Captured Viet Cong instructions on the feeding of American and other foreign prisoners reflect a particular awareness of this new requirement.

PWs must be provided with adequate mess halls and kitchens where they may assist in the preparation of their own food. The captor must also furnish prisoners with sufficient safe drinking water and allow them to use tobacco if they wish. Limitation of rations as a form of mess punishment is forbidden.

### **CLOTHING**

The Convention instructs the detaining power to provide clothing, underwear and footwear, and regular replacement and repair of these articles. If possible, this clothing should be taken from stocks captured from the PW's own forces. The captor also has to provide work clothing.

### **CANTEENS**

Every PW camp is required to set up a "canteen" for prisoners to buy "foodstuffs, soap and tobacco, and ordinary articles in daily use" at prices no higher than those charged civilians in the area. Any profits are to be used for the benefit of the prisoners.

### **HEALTH AND MEDICAL CARE**

Detailed provisions are made for the prisoners' health and medical needs. These are designed to assure at least a minimum standard of health. Camps, for example, must include adequate latrines, showers, and laundry facilities. The captors "shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics."

### **MEDICAL TREATMENT**

"Every camp," says the Convention, "shall have an adequate infirmary" where ailing prisoners may be treated, preferably by captured medical personnel of their own forces. The costs of treatment are to be borne by the captors. Also there must be regular medical inspections, at least once a month. These are to include periodic X-rays for tuberculosis and other means of detecting contagious diseases, especially malaria

and venereal disease.

### **RELIGIOUS, RECREATIONAL, AND INTELLECTUAL ACTIVITIES**

Prisoners are to enjoy the right to practice their own religion, including attendance at services of their faith. The Convention says that provisions must be made for physical exercise, including outdoor sports and games.

It also requires the encouragement of intellectual and educational activities. In the UN's prisoner of war camps in South Korea regular periods of classroom instruction were held for prisoners who wanted to attend them. They may not, however, be compelled by the detaining power to participate in any of these activities.

Captured medics and chaplains, who are referred to in the Convention as "retained persons," are not considered prisoners and are to be allowed to carry on their normal work for the benefit of PWs. They are to be free to visit PWs inside or outside enclosures and are to receive certain of the same privileges as corresponding personnel in the captor's armies.

While they remain subject to the discipline of the camp, medics and chaplains cannot be required to perform any work other than the usual duties of their professions. Chaplains, particularly, are guaranteed maximum freedom to minister to the religious needs of prisoners.

### **MAIL**

Recognizing that letters are the only link between the PW and his family, the Convention makes extensive provisions for the exchange of mail.

As soon as possible after his capture, and in no case later than a week after he reaches camp, each prisoner must be allowed to send out at least a standard "capture card" informing his family of his whereabouts and his state of health.

A copy of this card is also sent to the Central Prisoners of War Information Agency in Geneva, operated by the International

Red Cross. This agency serves as a clearing house for such information. A similar notice is mailed if the prisoner is transferred to another camp or placed in a hospital.

Aside from routine notifications, the prisoner is entitled to free exchange of mail. He is to be permitted to write letters as frequently as his captor's censorship and postal facilities will allow, and to receive letters and relief packages as often as they are forwarded.

Thus far, neither the Hanoi Government nor the Viet Cong has provided the Central Prisoners of War Information Agency with capture cards or lists of prisoners they have taken. Nonetheless, the ICRC regularly transmits to North Vietnam the names of U. S. Servicemen missing and believed captured, along with mail from their next-of-kin.

The names and mail are sent to the ICRC by the American Red Cross. No acknowledgement of these communications has been received from North Vietnam, but officials believe that some of the mail is being delivered to U. S. prisoners.

## **DISCIPLINE**

Military discipline continues in a prisoner of war camp. Each enlisted prisoner must salute officers of the detaining power and show the same external marks of respect required in his own forces. Officer prisoners must salute all officers of the detaining power of higher rank, and the camp commander regardless of his rank. Prisoners may wear their insignia of rank, and decorations.

Each camp is required to have a copy of the Convention posted, in the prisoners' own language, where the prisoners may read it. All camp notices, regulations, and orders, including orders to an individual prisoner, must be in a language the prisoners understand.

## **PENAL AND DISCIPLINARY SANCTIONS**

Prisoners of war are subject to the laws and regulations of the armed forces of the

detaining power, and may be punished for violations thereof. But the Convention urges that the lightest possible punishment be applied against war prisoners.

If a PW commits an offense serious enough to require a trial, the trial must be held in the same court and according to the same procedures as those required for trial of a member of the armed forces of the detaining power.

Additional safeguards provided by the Convention include the right to counsel and to services of a competent interpreter, time for preparation of defense, advance knowledge of the charges, and the right of appeal. Advance notice of the trial must be given to the protecting power, which is entitled to have a representative present.

No prisoner may be punished more than once for the same act or on the same charge. Also, the prisoner may not be given a sentence more severe than that a member of the detaining forces would get for the same offense.

## **ESCAPES**

The Convention specifies that the prisoner who makes good his escape must not be punished for having done so if he is again captured, in a different operation.

Generally, as an additional safeguard, U. S. armed forces try to transfer an escapee out of the theater to remove the possibility of his recapture by the enemy.

If the prisoner commits some act during an escape attempt for which his captors may take disciplinary action, the fact that he was trying to escape at the time is not to be considered reason for punishment more severe than usual.

If he endangers anyone's life or limb, of course, he may be subject to trial and severe punishment.

Even if he has made previous attempts to escape, a prisoner who is re-taken before he makes good his escape from enemy territory can be subjected only to "disciplinary punishment." Similarly, prisoners who help others escape are liable only to disciplinary punishment.

## DISCIPLINARY PUNISHMENT

The Convention lists the forms of punishment to be considered "disciplinary" and suitable for minor offenses. They include (1) fines up to half the prisoner's pay for no more than 30 days; (2) withdrawal of any privileges granted beyond the minimum required by the Convention (none of those may be withdrawn); (3) two hours of fatigue duty a day; and (4) simple confinement. Prisoners shall not be locked-up "in premises without daylight."

In general, the Convention limits any disciplinary punishment to 30 days, even if the prisoner is found guilty of several offenses at the same time. If he is sentenced to another 30 days, there must be at least three days between punishments.

Under the Convention, no one except the camp commander or a camp officer named by him can sentence a prisoner to disciplinary punishment. In no circumstances can this power be given to another PW, no matter what his grade may be.

The prisoner must be informed of the offense and given an opportunity to defend himself. He may also call witnesses to testify on his behalf. The camp commander is required to keep a record of all punishments handed out. That record must be available for inspection by representatives of the protecting power.

Even while he is undergoing punishment, the PW must be given medical attention when he requests it. He must also be allowed at least two hours of open-air exercise each day, and time to read and write if he wants to.

## CONVENTION PROTECTS PW WORKERS

Most PWs can be put to work by the detaining power, but within limitations laid down by the PW Convention.

Officers and "persons of equivalent status" may not be compelled to work. Non-commissioned officers "shall only be required to do supervisory work." Members of either group may request suitable work if they

choose. In all cases they must be paid for their services.

Above all, the work must not be injurious to the prisoner's health, and it cannot have any "military character or purpose."

The prisoner may not be required to perform any kind of humiliating work, or to remove mines or booby traps. He may not be compelled to work a full day without at least an hour's break at noon. PW labor is limited to a maximum six days a week.

Enlisted PWs can be compelled to do various kinds of work. These are listed in the Convention as: administration, maintenance, and installation at the PW camps; agriculture; industries connected with raw materials and manufacturing (but not metallurgical, chemical, or machinery industries); public works, and construction which has no military character or purpose.

Also, transport and handling of stores that are not military in character or purpose; public utility services having no military character or purpose; commercial business, and arts and crafts; and domestic service.

The Convention applies to PW labor the standard yardstick it uses throughout: The prisoner must be employed under conditions at least as good as those allowed the detaining forces. In addition, he is to receive the benefits of such national legislation as the detaining power may have, if any, for the safety and protection of labor.

## PAY

A PW's pay continues while he is in captivity, although he sees very little of it until after his release. The detaining power is required to grant him, as a "monthly advance of pay," a stated sum that varies according to his rank.

## PRISONERS MAY COMPLAIN

The Convention sets up basic procedures under which violations of its rules are to be reported to the International Committee of the Red Cross or to the protecting power.

In all places except those with officers, the prisoners themselves choose one of their

group to be their "spokesman." He is elected by secret ballot every six months. In camps for officers only, or in those where officers and enlisted men are imprisoned together, the senior officer must be recognized as the camp's representative.

The spokesman's job, says the Convention, is to "further the physical, spiritual, and intellectual well-being of his fellow PWs." As sort of "head man" among the prisoners he can, for example, preside at their meetings and gripe sessions. But he does not have authority to run the prisoners' affairs.

He cannot be required to work if that would interfere with his duties as spokesman, since he must be free to visit and talk with prisoners. He also can appoint assistants to help him carry out his job. He rates access to telegraph and mail facilities for communication with the ICRC or any protecting power.

An elected prisoner's representative holds his job at the pleasure of the detaining power, which can dismiss him as spokesman. If it does, notice must be filed with the protecting power.

The spokesman's main job is to carry complaints to the camp authorities—all the way to the camp commander if necessary. If he fails to get satisfaction there, he is to be allowed to register the complaint with the protecting power. As a safeguard to this system, the Convention forbids the punishment of PWs who file complaints, even though the complaints may prove to be unfounded.

### **IMPORTANCE OF MAKING THE CONVENTION WORK**

Like any other international agreement, the PW Convention depends for its effectiveness on the willingness of governments and their citizens to abide by its provisions, and on the strength of world opinion as an influence on those who violate it.

The United States and its allies follow the Convention closely because it sets forth generally accepted international law and because of its humanitarian principles. The

U. S. government welcomes judgment on the basis of its deeds, hoping the world will judge the communists the same way. Careful observance of the Convention therefore contributes ammunition in the continuing war of truth against communist ideology.

In spite of the communists' continued refusal to acknowledge applicability of the Convention to the Vietnam conflict, there are strong indications that their current policy is to insure proper treatment of American prisoners. Clearly, it is in the best interest of U. S. forces to do everything possible to carry out every provision of the Convention.

When news of meticulous U. S. compliance with the Convention filters down to the other side, it should give added motivation to the communists to provide better care for U. S. soldiers who are taken captive.

Compliance with the Convention is not always easy, especially amid the heat and pressures of armed conflict. It requires vigorous leadership and a genuine attempt on the part of all Servicemen to understand fully the practical as well as the humanitarian significance of the Convention.

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### **REFERENCES**

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