

Geneva Convention file

February 27, 1945

MEMORANDUM for the FILES

Re: Relation between the Pact of Paris and the Geneva Convention of 1929 concerning prisoners of war.

The Pact of Paris, in which the contracting parties renounced war as an instrument of national policy, was signed at Paris on August 27, 1928, and became effective July 24, 1929. All of the Great Powers have either ratified or adhered to this Convention.^{1/}

The Geneva Convention relating to the treatment of prisoners of war was signed on July 27, 1929, and became effective with respect to each ratifying or adhering power six months after the respective ratification or adherence. Of the Great Powers, Russia and Japan are the only ones which have not ratified or adhered to the Geneva Convention.^{2/}

The Geneva Convention was thus signed only three days after the Pact of Paris became effective. It seems somewhat strange that a treaty dealing with the treatment of prisoners of war should be concluded only three days after the effective date of a treaty which renounced war. The two can be reconciled, however, on the theory that realism requires that consideration be given to the ever present possibility that even the most solemn treaties may not succeed in preventing nations from ever again resorting to war. In the interest of civilization it would therefore be desirable to set a minimum standard for the treatment of those who could no longer have any strategic value to the enemy.

The Geneva Convention was the last step in a series of agreements which codified the standards of humane conduct toward prisoners of war. A conference was held in Geneva in 1864 which produced the Convention of Geneva for the Amelioration of the Condition of Wounded Soldiers in the Field. The rules laid down in this Convention were revised in 1906, and the Hague Convention of 1907, Annex concerning the Laws and Customs of Land Warfare, reenacted the rules and extended them to include maritime warfare.^{3/}

There is thus a very close relationship between the Hague rules of land warfare and the conventions with respect to prisoners of war.

^{1/} Malloy, Treaties, Conventions, etc., Vol. IV, pp. 5130-5154.

^{2/} State Department, Treaty Information, Cumulative Index, October 1929 - June 1935, p. 98; July 1935 - June 1939, p. 68.

^{3/} Flory, Prisoners of War, pp. 19-22.

The Geneva Convention of 1864 made this relationship even closer by specific reference to portions of the Hague rules. Thus the Convention is made to apply "to all persons mentioned in Articles 1, 2 and 3 of the Regulations Annexed to the Hague Convention respecting the laws and customs of war on land, of October 18, 1907, and captured by the enemy."⁴ The articles referred to specify those nationals of belligerent parties with respect to whom "the laws, rights, and duties of war apply," including not only the armed forces but also militia, volunteer corps, non-combatants, and inhabitants of a territory who take up arms on the approach of the enemy.⁵

Since the Hague Convention contained provisions concerning the treatment of prisoners of war, it is stated in the Geneva Convention that with respect to these provisions the Geneva Convention shall "complete," i.e. supplement, them with respect to those Powers bound by both conventions.⁶ However, the Geneva Convention contains practically all of the substantive provisions which are in the Hague Regulations with respect to prisoners of war, plus a great many more.

There is one fundamental difference between the Hague Regulations and the Geneva Convention. The former, including those provisions relating to prisoners of war, was applicable only between the contracting Powers "and then only if all the belligerents are parties to the Convention."⁷ On the other hand, Article 82 of the Geneva Convention provides that "the provisions of the present convention must be respected by the High Contracting Parties under all circumstances. In case, in time of war, one of the belligerents is not a party to the convention, its provisions shall nevertheless remain in force as between the belligerents who are parties thereto."⁸ (Underscoring supplied)

The provisions of the Geneva Convention are incorporated, in toto, in the Rules of Land Warfare, 1940, issued by the United States War Department to the troops as a Basic Field Manual.⁹

The State Department has on several occasions during the present war, placed this Government on record that it will live up to the provisions of the Geneva Convention with respect to nationals of the

⁴ Malloy, Geneva Convention, Article 1, op. cit., p. 5229.

⁵ Scott, Hague Conventions, etc., Article 1 of the Annex, p. 107.

⁶ Malloy, Geneva Convention, Article 89, op. cit., p. 5245.

⁷ Scott, The Hague Conventions and Declarations of 1864 and 1907, Article 2 of the Annex to the Convention of 1907, p. 102.

⁸ The Geneva Convention, op. cit., Article 82.

⁹ U. S. War Department, Basic Field Manual - Rules of Land Warfare, 1940, Chapter 4, Section 70 - 172.

enemy. In a press release of May 23, 1942, the State Department announced that:

"Upon the outbreak of war in Europe the Government of the United States, actuated by humanitarian motives, expressed the earnest hope to the British, French, and German Governments that they could give thought to avoiding harsh treatment of enemy aliens. It was pointed out that there had grown gradually among civilized states the conviction that there should be no retaliation against prisoners of war for acts of their governments. This conviction received international sanction in the Prisoners of War Convention which was signed at Geneva in 1929. It was suggested that the same reasoning should apply to civilian enemy aliens. . . . These ideas were in general accepted and applied by the three belligerents to whom the American Government addressed its communication.

"Upon the entry of the United States into the war the Government of the United States with reference to its declaration to the British, French, and German Governments informed the German, Italian, and Japanese Governments that it intended on its part to apply the principles set forth in its declaration and in line therewith to apply to civilian enemy aliens as liberal a regime as was consistent with the safety of the United States. This Government declared that enemy aliens whom it might be found necessary to intern would be treated at least as favorably as prisoners of war."
(Underscoring supplied)

The press release goes on to give a history of the negotiations with the German, Italian, and Japanese governments and ends with the following statement:

"This Government is endeavoring to fulfill its undertakings with regard to the Geneva Conference and at the same time is insisting that the full benefits of the Convention be reciprocally granted by the enemy countries to American citizens in their hands."^{10/}

After Japan had announced the execution of American aviators, the United States called upon it "to carry out its agreement to observe the provisions of the Convention by communicating to the Swiss Minister at Tokyo the charges and sentences imposed upon the American aviators,

^{10/} The Department of State, Bulletin, May 23, 1942, pp. 445 - 447.

by permitting the Swiss representatives to visit those now held in prison, by restoring to those aviators the full rights to which they are entitled, under the Prisoners of War Convention, and by informing the Minister of the names and disposition or place of burial of the bodies of any of the aviators against whom sentence of death has been carried out."^{11/}

In a recent comprehensive memorandum concerning the principles of International Law applicable to the occupation of Germany, the Treasury Department took the position that Germany is not entitled to belligerent rights under international law.^{12/} It is stated therein that since Germany has violated the Pact of Paris, the Hague Conventions, and all fundamental principles of humanity and decency, she has lost all "legal" rights as a belligerent, although she is still subject to all the legal duties and obligations which are owing to the Allied Nations as lawful belligerents. Specifically, the memorandum states that Germany has, by her conduct, lost all of the rights and privileges prescribed in the Hague Conventions for the treatment of occupied territories.

The Geneva Convention of 1929, and the recent public statements of the United States Government indicating that we intend to abide by the provisions thereof, do not in any way affect the position taken in that memorandum. The Geneva Convention does not purport to establish "legal" rights and privileges. It is therefore not inconsistent with the position taken in the Treasury memorandum to the effect that the Germans do not have any of the legal rights of a "belligerent."

It should be noted that the obligation to treat prisoners of war in accordance with the Geneva Convention does not arise by virtue of a contract between the belligerents. Those who signed the Convention undertook a standard of conduct which they promised to observe "under all circumstances." This language seems broad enough to cover countries which have lost "belligerent" status as a result of having violated the Pact of Paris or the Geneva Convention. It is a unilateral obligation to maintain a minimum standard of conduct consistent with civilized behavior and this does not in any way depend upon the mutual obligation or standard of conduct of the opposing country.

Viewed in this light it is not strange that the Geneva Convention although following immediately after the Pact of Paris does not so much as even refer to it. Nor is it strange that the Geneva Convention is limited to prisoners of war and does not include standards of behavior in the actual conduct of the war. Manifestly if one side

^{11/} The New York Times, April 22, 1943, p. 4.

^{12/} Memorandum from Mr. O'Connell, General Counsel of the Treasury Department, to the Secretary of the Treasury, Jan. 30, 1945, pp. 15 et. seq.

were bound to avoid bombing cities containing military installations and the other side were not so bound, the former side would be seriously handicapped in its ability to wage war on equal terms. This would not apply to treatment of prisoners of war. The kindly or harsh treatment given to prisoners of war has very little strategic value except that the nation offering the best treatment might find its enemies less unwilling to surrender to it.

Under these circumstances, the United States, by committing itself to observe the provisions of the Geneva Convention, cannot be said to have prejudiced its position that Germany has lost its rights and privileges as a belligerent under the Pact of Paris which it has clearly violated.^{13/}

^{13/} It should be noted that Germany has publicly reaffirmed its adherence to the terms of the Geneva Convention, and that its conduct has probably conformed to these principles in most cases.