

Synopsis V

Capture

by J. de Preux

I. BASIC RULES

- A person is *hors de combat* if:
- a) he is in the power of an adverse Party;
 - b) he clearly expresses an intention to surrender; or
 - c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself
provided that in any of these cases he abstains from any hostile act and does not attempt to escape (Protocol I, Art. 41).

Prohibition to refuse to give quarter

It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis (Protocol I, Art. 40; The Hague Regulations, Art. 23 d).

Safeguard

- A person who is recognized or who, in the circumstances, should be recognized to be *hors de combat* shall not be made the

object of attack (Protocol I, Art. 41; The Hague Regulations, Art. 23c) as this would be regarded as a grave breach (Protocol I, Art. 85). In case of doubt whether a person is a civilian, that person shall be considered to be a civilian (Protocol I, Art. 50).

- A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war. He shall be treated as a prisoner of war even if there is any doubt as to his status as a combatant or if he is suspected of being a spy or a mercenary (Protocol I, Art. 45).

Responsibility

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them (Third Convention, Art. 12).

Fundamental guarantees

Prisoners of war and civilians must at all times be humanely treated (Third Convention, Art. 13; Fourth Convention, Art. 27).

The following acts are prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

- a) violence to the life, health, or physical or mental well-being of persons, in particular:
 - murder,
 - torture of all kinds, whether physical or mental,
 - corporal punishment, and
 - mutilation;
- b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
- c) the taking of hostages;
- d) collective punishment; and
- e) threats to commit any of the foregoing acts (Protocol I, Art. 75).

Prohibition of reprisals

Measures of reprisal against prisoners of war and against civilians are prohibited (Third Convention, Art. 13; Fourth Convention, Art. 33; Protocol I, Art. 51).

II. CONDUCT AND TREATMENT AT THE PLACE OF CAPTURE

Duty of commanders

Military commanders must ensure that the members of the armed forces under their command are aware of their obligations and must prevent them from committing a breach, even if such breaches result from a failure to act when under a duty to do so (Protocol I, Art. 86 and 87).

Wounded, sick and shipwrecked

The wounded, sick and shipwrecked must be collected, protected against pillage and ill-treatment and given the medical care and attention required by their condition (First Convention, Art. 12 and 15; Second Convention, Art. 12 and 18; Protocol I, Art. 10). The civilian population is permitted to assist in this (First Convention, Art. 18; Protocol I, Art. 17). At sea, neutral vessels may be appealed to (Second Convention, Art. 21). Aid societies, such as Red Cross and Red Crescent Societies, are also permitted to collect and care for the wounded, sick and shipwrecked, even on their own initiative (Protocol I, Art. 81 and 17) (also see "Identification").

The ICRC's right of initiative

The provisions of the Conventions constitute no obstacle to the humanitarian activities which the ICRC may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and civilians, and for their relief (Conventions I-IV, Art. 9, 9, 9, 10; Protocol I, Art. 81).

The dead

The exact location and markings of the graves together with particulars of the dead interred therein must be registered. The dead must be honourably interred, the graves grouped if possible according to the nationality of the deceased and marked so that they may always be found (First Convention, Art. 17) (see "Identification").

Members of the armed forces

All members of the armed forces, whether wounded or not, who fall into the power of an adverse Party are prisoners of war (First Convention, Art. 14; Third Convention, Art. 4; Protocol I, Art. 44), even if they are serving within civil defence organizations (Protocol I, Art. 67).

Persons authorized to accompany the armed forces

If such persons fall into the power of the adverse Party, they are prisoners of war (see "Identification") (Third Convention, Art. 4).

Occupants of aircraft in distress

No person parachuting from an aircraft in distress may be made the object of attack during his descent. Upon reaching the ground, he must be given an opportunity to surrender before being made the object of attack, unless it is apparent that he is engaging in a hostile act (Protocol I, Art. 42).

Spoils of war

Weapons, vehicles, horses, military equipment and military documents are spoils of war (Third Convention, Art. 18).

Property of prisoners

Effects and articles of personal use, including those used for clothing, for personal protection (helmets, gas masks, etc.) and for feeding, and badges, decorations and articles having above all a personal or sentimental value, may not be taken from prisoners of war (Third Convention, Art. 18).

Sums of money

Sums of money carried by prisoners of war may only be taken away from them in exchange for a receipt (Third Convention, Art. 18).

Questioning

No form of coercion may be exercised against captured persons to secure from them information of any kind whatsoever (Third Convention, Art. 17; Fourth Convention, Art. 31) (also see "Identification").

Shelter

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone (Third Convention, Art. 19). The presence of civilians may not be used to shield, favour or impede military operations (Fourth Convention, Art. 28; Protocol I, Art. 51).

Evacuation

Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger. Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone (Third Convention, Art. 19).

Conditions of evacuation

The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the captor in their changes of station. Prisoners of war who are being evacuated shall be supplied with sufficient food and potable water, and with the necessary clothing and medical attention. They must at all times be protected, also against public curiosity (Third Convention, Art. 13 and 20). In the event of an evacuation of civilians, proper accommodation must be provided to receive them, and the removal must be effected in satisfactory conditions of hygiene, health, safety and nutrition and in such a way that members of the same family are not separated. Civilians shall be transferred back to their homes as soon as hostilities in the area in question have ceased (Fourth Convention, Art. 49).

Immediate release

When persons entitled to protection as prisoners of war cannot be evacuated as provided for, they must be released immediately and all feasible precautions must be taken to ensure their safety (Protocol I, Art. 41).

As a rule, civilians who fall into the power of the adverse Party without having taken part in the hostilities are released immediately.

Retained civilians

Civilians who have taken no part in the hostilities but are retained after falling into the power of the adverse Party, are entitled to the same protection as civilians (Fourth Convention, Art. 27) which may not be inferior, at the place of capture, to that of prisoners of war.

III. MEDICAL UNITS

1. Medical personnel

Medical and religious personnel belonging or attached to the armed forces

Medical and religious personnel belonging or attached to the armed forces, including the staff of duly recognized and authorized National Red Cross and Red Crescent Societies, who fall into the hands of the adverse Party, shall be retained only in so far as the state of health, the spiritual needs and the number of prisoners of war require. They shall not be deemed prisoners of war, but shall nevertheless at least benefit by all the provisions relative to the treatment of prisoners of war. They shall continue to carry out their medical and spiritual duties (First Convention, Art. 24, 26, 28).

Medical personnel belonging to aid societies of neutral countries

If such persons fall into the hands of the adverse Party, they may not be detained. They shall have permission to return to their country, or to the territory of the Party to the conflict in whose service they were, as soon as a route for their return is open and military considerations permit. Pending their release, they shall continue to carry out their medical duties (First Convention, Art. 27 and 32).

Auxiliary medical personnel

Auxiliary medical personnel who have fallen into the hands of the adverse Party shall be prisoners of war, but shall be employed on their medical duties in so far as the need arises (First Convention, Art. 25, 29).

Return of medical personnel

Medical personnel whose retention is not indispensable shall be returned to the Party to whom they belong, as soon as a road is open for their return and military requirements permit (First Convention, Art. 30).

Medical and religious personnel of hospital ships

The medical and religious personnel of hospital ships may not be captured (Second Convention, Art. 36; Protocol I, Art. 22).

Medical and religious personnel of other ships and craft

The medical and religious personnel of other ships and craft which have fallen into the hands of the enemy shall continue to carry out their duties as long as this is necessary for the care of the wounded and sick. They shall afterwards be sent back as soon as the Commander-in-Chief considers it practicable (Second Convention, Art. 37; Protocol I, Art. 22, 23).

Medical personnel of medical aircraft

The medical personnel of a medical aircraft which has landed or alighted on water, whether ordered to do so or for any other reasons, and provided it is not committing an offence, may not be detained (Protocol I, Art. 30).

Civilian medical personnel

Civilian medical personnel may not be captured. However, the Occupying Power may, subject to certain conditions, requisition their services (Fourth Convention, Art. 57; Protocol I, Art. 14) (see below for the particular conditions).

Civilian medical personnel who have fallen into the hands of the adverse Party are covered by the provisions of the Fourth Convention.

Civilian medical personnel of international aid organizations

The provisions applicable to the medical personnel of aid societies of neutral countries also apply to the civilian medical personnel of international aid organizations (Protocol I, Art. 9).

2. Medical transports

a) Overland medical transport

Military medical vehicles

Military medical vehicles (ambulances) may be captured and may be used in any way deemed fit, on condition that the distinctive signs are removed and that the Party which captures them ensures the care of the wounded and sick they contain (Convention I, Art. 35).

Medical vehicles of aid societies

The medical vehicles of aid societies may not be captured. In exceptional cases and under certain conditions, they may, however, be subject to the right of requisition, in exchange for a receipt and subsequent payment of fair compensation (First Convention, Art. 34; The Hague Regulations, Art. 52). Should they be seized, they must be returned as soon as possible (The Hague Regulations, Art. 53).

Civilian medical vehicles

Other civilian medical vehicles may not be captured, but are subject to the right of requisition or seizure. The prerequisites for such requisition or seizure are:

- medical necessity;
- care of the wounded and sick concerned must be ensured;
- authorization by the commander in the locality occupied;

- a receipt must be given;
- return of the vehicles or payment of fair compensation (The Hague Regulations, Art. 52, 53).

Medical vehicles belonging to aid societies of neutral countries

The means of transport belonging to aid societies of neutral countries shall, if possible, be returned when the personnel of such societies is released (First Convention, Art. 32).

b) Medical transport by sea

Hospital ships

Hospital ships, their lifeboats and small craft, and the persons on board may not be captured (Second Convention, Art. 22, 24, 25; Protocol I, Art. 22). However, military personnel may be captured (Second Convention, Art. 14).

Medical transports

Ships chartered for the conveyance of medical equipment may not be captured (Second Convention, Art. 38).

Coastal rescue craft

Coastal rescue craft may not be captured (Second Convention, Art. 27).

Other medical ships and craft

Other medical ships and craft may not be captured so long as they are needed for the wounded, sick and shipwrecked on board (Protocol I, Art. 23).

c) *Medical transport by air*

Medical aircraft

A medical aircraft landing or alighting on water, whether ordered to do so or for other reasons, may not be seized, and neither may its occupants, provided it is not in breach of any prescriptions or agreements.

If it is in violation of any prescriptions or agreements, it may be seized and its occupants shall be treated in conformity with the relevant provisions of the Conventions and Protocol I.

Any aircraft seized which had been assigned as a permanent medical aircraft may be used thereafter only as a medical aircraft (Protocol I, Art. 30).

3. Hospitals and medical material

Military hospitals and similar buildings

The buildings of fixed medical establishments of the armed forces may not be destroyed. They may, however, be used for any other purpose, provided that previous arrangements are made for the welfare of the wounded and sick who are nursed in them (The Hague Regulations, Art. 23g; First Convention, Art. 33).

Material and stores of fixed medical establishments of the armed forces

Such material and stores are subject to the laws pertaining to the spoils of war, provided they are no longer required for the care of wounded and sick (First Convention, Art. 33; The Hague Regulations, Art. 53).

Mobile medical units of the armed forces

Such units and their material may be seized, and although there is no obligation to restore them, they must be reserved for the care of wounded and sick (First Convention, Art. 33).

Real and personal property of aid societies

The real and personal property of recognized aid societies, even if attached to the armed forces, shall be regarded as private property and cannot be confiscated (First Convention, Art. 34; The Hague Regulations, Art. 46).

The right of requisition is subject to the same conditions as those applicable to medical vehicles of aid societies (First Convention, Art. 34; The Hague Regulations, Art. 52, 53).

Property of authorized aid societies of neutral countries

Such property remains private property and cannot be confiscated (First Convention, Art. 34; the Hague Regulations, Art. 46).

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