LANGUAGE RIGHTS IN INTERNATIONAL HUMANITARIAN LAW

by Mala Tabory

War, more than peace, is likely to give rise to circumstances in which soldiers and civilians find themselves against their will in a setting where a foreign language is employed. In addition, they may be forced to have contact on their own territory with people using another tongue. Therefore in the context of war, the protection of basic language rights is perhaps even more crucial than in peacetime in easing the fate of those involved. One of the ways humanitarian law seeks to protect the victims of war is by guaranteeing their right to communicate in a language which they easily understand. The purpose of this study is to analyze linguistic rights in time of war.

Among the general principles of humanitarian law, from which the specific contractual rules derive and which — by virtue of their being rooted in custom — are valid at all times and for all States regardless of whether they are parties to the specific Conventions, Dr. Jean Pictet lists the principle of non-discrimination. In accordance with this common principle, " individuals shall be treated without any distinction based on race, sex, nationality, language, social standing, wealth, political, philosophical or religious opinions, or any other criteria." [1]

1. MILITARY AND RELATED PERSONNEL

1. Language of identification and records

Most of the language provisions in the 1949 Geneva Conventions are of a practical nature, allowing for the basic rights set forth therein

[1] Jean Pictet, *Humanitarian Law and the Protection of War Victims* (Leyden, A. W. Sijthoff — Geneva, Henry Dunant Institute, 1975; transl. from French, 1973), pp. 27-48, on p. 38.

to be substantiated. For example, regarding the identification of medical and religious personnel, the First and Second Geneva Conventions provide that such persons shall carry a special identity card with information proving that the bearer is entitled to the status accorded under the appropriate Convention, and that if he falls into enemy hands, he will be eligible for repatriation. This card must be " worded in the national language " of the armed forces to which he belongs. [2] For practical reasons, an earlier proposal which would have made it obligatory for the items listed on the identity card to appear in English and French as well as in the national language was rejected by the 1949 Geneva Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War. [3] However, as pointed out in the Commentary to the Conventions, this may still be done if desired, and countries with lesser-known languages may prefer to use a second, better-known language in addition to their own. This may also be the case for countries with more than one national language.[4]

According to the Second 1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the parties to a conflict have the right to control and search hospital ships and coastal rescue craft. " As far as possible, the Parties to the conflict shall enter in the log of the hospital ship, in a language he can understand, the orders they have given the captain of the vessel. " [5] The reason behind the provision that, if circumstances permit, the belligerent should enter an order in the ship's log is to avoid any dispute regarding its meaning. Understandably such orders must be recorded in a language which is comprehensible to the vessel's captain, who will be responsible for their execution. [6]

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[2] *1949 First Geneva Convention* (hereinafter GC I), Art. 40, para 2; GC II, Art. 42, para 2.

[3] See *Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, Geneva, 1949, Final Record of the Diplomatic Conference of Geneva of 1949* (hereinafter: *1949 Dipl. Conf. Final Record)*, vol. II, Sec. A (Berne, Federal Political Department), Comm. I, 19th meeting, 18 May 1949, Art. 33, pp. 93-94 (Venezuela).

[4] Jean S. Pictet, gen. ed. *Commentary, Geneva Convention* (Geneva, ICRC, I: by Jean S. Pictet, 1952; II: by Jean S. Pictet *et al.*, 1960; III: by Jean de Preux *et al.*, 1960; IV: by O. M. Uhler and H. Coursier, 1958. (Hereinafter: J. S. Pictet, *Commentary* I, *II, III, IV). Commentary I*, p. 314, *ibid.* II, pp. 237-38.

[5] GC II, Art. 31, para 3.

[6] See J. S. Pictet, *Commentary II*, p. 185.

2. Language of prisoner groups

The Third 1949 Geneva Convention Relative to the Treatment of Prisoners of War lays down various provisions designed to facilitate the conditions of a prisoner of war by enabling him, on the one hand, to be grouped with people who speak his own language, and on the other hand, by ensuring that regulations and interaction with authorities employing a different language are made available to him in a language which he understands. It is necessary to distinguish between a prisoner's mother tongue, his country's official language (i.e. the language language used in his country of origin for official purposes, including official records and legislation), and any other language which he may be able to speak or understand. [7]

The Third Geneva Convention sets forth the general principle that subject to certain special provisions expressly laid down in the Convention, " all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria." [8] As explained in the Commentary, the wording of this provision shows that the list of various criteria therein is not exhaustive and only serves as an example. Among other criteria which might be added are birth, financial circumstances, language, colour and social status. [9] Various provisions in the Convention are designed to avoid discriminatory treatment of prisoners based on the language which they speak and their inability to speak other languages.

During the two World Wars the unified armed forces were often composed of soldiers of diverse background, and this created difficulties both for the persons taken prisoner and for the Detaining Powers. With regard to the internment of prisoners of war, the Convention provides that the detaining Power shall assemble them in camps or compounds " according to their nationality, language and customs." [10] As pointed out in the Commentary, the purpose of this provision is to enable prisoners of war to converse among themselves in their common language;

[7] See J. S. Pictet, *Commentary III*, p. 184.

[8] GC III, Art. 16.

[9] J. S. Pictet, *Commentary III*, p. 154.

[10] GC III, Art. 22, para 3. (This Article further provides that "such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.") See *1949 Dipl. Conf. Final Record*, vol. II, Sec. A, Comm. II, 5th mtg., 29 April 1949, Art. 20 at pp. 253-54 (U.K.); also *ibid.*, 25th mtg., 6 July 1949, p. 353; Art. 20 as adopted by Drafting Committee No. 1.

it is also to facilitate the administration of the camps, or camps' sections, in which the prisoners are assembled, by the use of a single language. [11] The language chosen will therefore be that which is most easily spoken and understood by the prisoners of war, regardless of whether it serves as their official language. The provision of assembling prisoners according to language also applies to a group of prisoners of the same nationality where the population is composed of different language groups (e.g. Canada, Belgium and Switzerland).

Regarding the treatment of prisoners of war with officer rank, who by custom are interned in separate camps or quarters and are usually relieved of personal fatigue duties, the Third Geneva Convention provides that this work be assigned to orderlies who are detailed to the officers. Orderlies servicing officers' camps are to be taken from the " other ranks of the same armed forces who, as far as possible, speak the same language" as the officers. [13]

On the subject of prisoners' representatives — elected by the prisoners of war to represent them before the authorities — the Third 1949 Geneva Convention provides that " In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative..." [13]

It is logical that in order for the prisoners' representatives to perform their representational task adequately, they must know the language of their constituent prisoners and be in close enough contact with them to understand them and plead on their behalf if necessary. [14]

3. Language of communication

Certain regulations of the Third Geneva Convention form part of the general right of a prisoner of war to understand, either directly or through the services of an interpreter, any communications and instructions which affect or may affect him. This is to ensure that he will not be discriminated against due to his inability to understand the language used by those with whom he is in contact.

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[11] J. S. Pictet, *Commentary III*, p. 184.

[12] GC III, Art. 44, para 2; see *Geneva Convention Relative to the Treatment of Prisoners of War, 27 July 1929* (hereinafter GC 1929), Art. 22, para 1.

[13] GC III, Art. 79, para 5.

[14] J. S. Pictet, *Commentary III*, p. 394.

For example, the questioning of prisoners of war by the Detaining Power must, obviously, be carried out " in a language which they understand ". [15] The Commentary points out that provided the prisoner is able to understand the questions put to him, the questioning need not necessarily be carried out in his mother tongue. [16]

According to the Third Geneva Convention, the Convention itself, as well as its Annexes and related applicable agreements, is to be posted " in the prisoners' own language " in places where all may read them. [17] At the 1949 Geneva Diplomatic Conference the primary objection voiced against the compulsory posting of the Convention related to translation difficulties. [18] The stipulation of the 1929 Convention was stricter, requiring that the Convention be posted, " whenever possible, in the native language of the prisoners of war ". [19] According to the Commentary, the prisoners' " own language " means the official language used in that country for official records and the publication of legislation. [20] In cases where the country of origin recognizes more than one official language, e.g. Switzerland or Belgium, the Convention should, if possible, be posted in the language actually used by the prisoners involved.

While, according to the Convention, the detaining State is responsible for translating the texts to be posted, it is recommended in the Commentary that, at the outset of hostilities, the home State of the prisoners should forward to the Detaining Power the text of the Convention in the prisoners' own language, through the good offices of either the Protecting Power or of the ICRC. It is further recommended that as a means of disseminating the Convention rapidly in time of war, such translations be preliminarily prepared in peacetime. [21]

It is almost axiomatic that regulations must be made known to prisoners of war in a manner that they can comprehend, and it is the responsibility of the detaining State to ensure that prisoners understand orders issued. All regulations, orders, notices and publications relating to the conduct of prisoners of war " shall be issued to them in a language

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[15] GC III, Art. 17, para 6; see GC 1929, Art. 20.

[16] J. S. Pictet, *Commentary III*, p. 164.

[17] GC III, Art. 41, para 1.

[18] *1949 Dipl. Conf. Final Record*, vol. II, Sec. A, Comm. II, 8th mtg., 4 May 1949 at p. 265; see *ibid.*, 26th mtg., 6 July 1949, p. 358.

[19] GC 1929, Art. 84, para I.

[20] J. S. Pictet, *Commentary III*, p. 244.

[21] *Ibid.* See discussion on GC III, Art. 128, *infra* at note 82.

which they understand." [23] It is explained in the Commentary that the right to be informed corresponds to the basic principle that no one may be punished pursuant to legislation with which he has not had an opportunity to familiarize himself, and that this right forms the basis of the prisoners' right to lodge complaints. [23] Understanding the language involved is indispensable to the exercise of this right.

Likewise, the Third Geneva Convention requires that every order and command addressed to prisoners of war individually must be given in a language which they understand. [24] The Commentary poses the question whether guards may use their own language instead of the prisoners' — provided the latter understand what is being said — for instance, in short, easily remembered, foreign commands. The answer given is that while this seems permissible if the prisoners actually understand the commands, the guards should learn basic phrases in the prisoners' language and use an interpreter whenever possible. [25]

The Third Geneva Convention provides that representatives or delegates of the Protecting Powers shall be able to visit and interview prisoners and their representatives " either personally or through an interpreter." [26] The Commentary points out that the inspectors should have a good knowledge of the language of the detaining country as well as of the prisoners of war. While the Convention allows for the exceptional circumstances, since prisoners will only be able to express themselves clearly and freely when speaking in their own language, without intermediaries or witnesses. [27]

4. Language of disciplinary and judicial proceedings

The procedure outlined in the Third and Fourth Geneva Conventions for cases of disciplinary offences includes the right of defence. Before the pronouncement of any disciplinary punishment, the accused prisoner of war or internee may defend himself, and, in particular, call witnesses and "have recourse, if necessary, to the services of a qualified inter-

[22] GC III, Art. 41, para 2.

[23] J. S. Pictet, *Commentary III*, p. 243.

[24] GC III, Art. 41, para 2.

[25] J. S. Pictet, *Commentary III*, p. 245.

[26] GC III, Art. 126, para 1; see GC 1929, Art. 86, para 2.

[27] J. S. Pictet, *Commentary III*, pp. 607-608.

preter." [28] The expression "if necessary" seems to imply that the interpreter may be used at any stage of the proceedings where he may be needed by the accused, including receiving precise information regarding the offence, the calling of witnesses and the pronouncement of the decision.

The judicial procedure prescribed for the rights and means of defence of a prisoner of war includes the services of a competent interpreter if the prisoner deems it necessary. [29] Unlike the 1929 Geneva Convention, the present provision specifies that it is the prisoner himself who determines whether an interpreter is necessary. [30] The Commentary notes that "if he deems necessary" follows automatically from the rights of defence if the language used in the detaining country is unfamiliar to the prisoner of war.

The Commentary definies a "competent" interpreter as one who not only knows both the language of the prisoner and that of the Detaining Power, but is also familiar with legal terminology and accustomed to interpreting in judicial proceedings. Normally the Detaining Power is obligated to supply the interpreter. However, if the prisoner of war prefers, he may use the services of one of his fellow-prisoners, if the latter is qualified and enjoys the confidence of the court. [31]

In the Commentary the distinction is made between a "qualified" interpreter provided for disciplinary proceedings and a "competent" interpreter provided as part of the rights and means of defence of a prisoner of war. [32] These adjectives, which differ slightly in intensity, seem to have been chosen deliberately in each case. "Competent" indicates the interpreter's capability of making a correct appraisal, while the stronger term "qualified" shows his work to be on a high standard. In the light of these definitions the Commentary finds the distinction in the Convention to be illogical, for errors by the defence in disciplinary matters may at worst result in a punishment of thirty days in confinement [33], while in judicial proceedings a prisoner of war may be liable

[28] GC III, Art. 96, para 4; GC IV, Art. 123, para 2. The 1929 GC did not include procedural guarantees for the defence of prisoners of war in disciplinary proceedings.

[29] GC III, Art. 105, para 1.

[30] J. S. Pictet, *Commentary III*, p. 487. See GC 1929, Art. 62, para 1, giving the prisoner of war the right "if necessary, to have recourse to the offices of a competent interpreter", leaving it unclear who decides if an interpreter is necessary.

[31] J. S. Pictet, *Commentary III*, p. 487.

[32] J. S. Pictet, *Commentary III*, pp. 460-61.

[33] GC III, Art. 90.

to a death sentence. [34] The conclusion, therefore, is that the best possible conditions for his defence must be ensured.

The distinction between a qualified and competent interpreter for prisoners of war, depending on the given procedure, appears also in the authentic French text (*qualifié-compétent*). However, with regard to detained civilians, the Fourth Geneva Convention provides for the right to the services of a " qualified " interpreter in disciplinary procedures [35] and for the right to " be aided by an interpreter " in penal procedures. Judging from the unclear choice of adjectives in the case of prisoners of war and from the absence of any adjective for the interpreter assisting a detained civilian in penal procedures, the qualifications with regard to interpreters do not seem to imply distinct degrees of competence in the different cases.

The rules for judicial proceedings require that particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as documents usually received by the accused according to the laws in force in the armed forces of the Detaining Power, " shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial ". [36]

With regard to any judgement and sentence pronounced upon a prisoner of war, the Third Geneva Convention provides that a summary communication thereof — including the wording of the judgment and indicating possible right of appeal — must be sent by the Detaining Power to the Protecting Power, to the prisoners' representative, and to the accused prisoner of war " in a language he understands, if the sentence was not pronounced in his presence ". [37] This provision, inserted at the 1949 Diplomatic Conference, follows the wording of Article 106 of the Convention which states that " every prisoner of war shall have... the right of appeal or petition from any sentence pronounced upon him". Whereas the wording of the French text of Articles 106 and 107 is identical (*le droit de recourir en appel, en cassation ou en révision*), the English text of Article 107 omits the word " or petition ". The Commentary points out that this is probably due to an oversight. [38]

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[34] GC III, Art. 100.

[35] GC IV, Art. 123, para 2.

[36] GC III, Art. 105, para 4. There was no such provision in the 1929 GC; for its introduction, see *Report on the Work of the Conference of Government Experts for the Study of the Conventions for the Protection of War Victims (Geneva, 14-26 April 1947)* ICRC, Geneva, 1947, (hereinafter *Report on... Gov. Experts*), p. 225, (2) (b).

[37] GC III, Art. 107, para 1.

[38] J. S. Pictet, *Commentary III*, p. 497.

5. Language of prisoner correspondence and other forms

Annexed to the Third Geneva Convention are several model documents, which should be made out in two or three languages. These forms include among other things:

(1) An identity card intended for persons who accompany the armed forces without actually being members thereof (e.g. war correspondents) and thus entitled to be treated as prisoners of war. [39] This card, which serves as proof of the authorization accorded to the bearer to accompany the forces, should be made out preferably in two or three languages, one of which is widely used internationally.

(2) A capture card to be completed by each prisoner of war immediately after being taken prisoner, or not more than a week after arrival at any camp, and each time his address is changed (by reason of transfer to a hospital or to another camp). This card, which must be sent both to the prisoner's family and to the Central Prisoners of War Agency[39bis], is essential for the work of the latter. It should be made out in two or three languages, particularly in the prisoner's own language and that of the Detaining Power. [40]

(3) A correspondence card or letter, to be written by the prisoner of war and to be conveyed to his family by the most rapid method at the disposal of the Detaining Power. This form, which corresponds in size to the usual format for postal communications, should be made out in two or three languages, particularly in the prisoner's own language and that of the Detaining Power. [41] Prisoner of war correspondence, the Third Geneva Convention provides, should generally be " written in their native language ". [42] As pointed out in the Commentary, in order for the right to correspond to be fulfilled, it is necessary for prisoners of war and their correspondents to be permitted to use a language which is familiar to them. The parties to the conflict cannot oblige prisoners of war to correspond in any language other than their mother tongue. [43]

Although prisoners' cards and letters will usually be written in their native language, prisoners may have occasion to correspond with persons unfamiliar with that language. In such a case the Convention provides

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[39] GC III, Art. 4, sub-para A(4) and Annex IV-A.

[39bis] Now Central Tracing Agency.

[40] GC III, Art. 70; see Art. 123, para 2 and Annex IV-B.

[41] GC III, Annex IV-C (1 and 2).

[42] GC III, Art. 71, para 3. This provision is identical with Art. 36, para 3 of the 1929 GC.

[43] J. S. Pictet, *Commentary III*, pp. 349-50.

that the " Parties to the conflict may allow correspondence in other languages ". [44] Such permission may be granted at the request of the prisoner of war. It is suggested in the Commentary that the prisoners' representatives seem best placed to forward such requests, both to the authorities of the Detaining Power and to the Protecting Power. [45]

According to the Third Geneva Convention each prisoner of war must be allowed to send a minimum of two letters and four cards monthly. As an exceptional measure, " further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. " [46] This provision takes into account the security of the Detaining Power and the practical considerations involved in censorship. In particular, problems may arise with regard to languages which are not known in the country of detention and for which it may therefore be hard to find enough translators. For example, during World War II there were difficulties with correspondence of prisoners of war in the Far East, where censorship authorities were totally ignorant of the European languages spoken by the prisoners. If necessary the Protecting Power may be asked, presumably by the Detaining Power or the ICRC, to appoint extra censors. [47] As pointed out in the Commentary, while there may be problems in finding sufficient translators to deal with censorship in a conflict of general scope such as World War II, this is not the case when the conflict is limited and the number of prisoners relatively small. [48]

(4) A death certificate, of which a model was prepared by the Central Prisoners of War Agency on the basis of its experience. This is to be used by the belligerent to forward to the information Bureau regarding

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[44] GC III, Art. 71, para 3.

[45] J. S. Pictet, *Commentary III*, p. 350; see GC III, Arts. 79-81.

[46] GC III, Art. 71, para 1.

[47] J. S. Pictet, *Commentary III*, p. 375 and n. 1; p. 350 and n. 1. The provision on censorship appears in GC III, Art. 76. For a proposal to provide facilities for the censorship of correspondence written in little known languages and to make it possible for the belligerent powers to obtain additional qualified censors either from the ICRC of from neutral countries, see *1949 Dipl. Conf. Final Records*, vol. II, Sec. A, Comm. II, 13th mtg., 16 May 1949, Art. 66, p. 288 (India). On difficulties of the ICRC in translating letters sent by prisoners of war during World War II, and reports on camp visits by ICRC delegates translated for communication to the Detaining Power, see XVIIth International Red Cross Conference, Stockholm, Aug. 1948, *Report of the ICRC on its Activities during the Second World War, (Sept. 1, 1939-June 30, 1947)*, vol. I: *General Activities*, (Geneva, May 1948), p. 135.

[48] J. S. Pictet, *Commentary III*, p. 346.

all prisoners of war who die during captivity. [49] This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power, and its format should be used as a model for lists of deceased prisoners serving as collective death certificates.

2. PROTECTED CIVILIANS

1. Language of internee groups

Many of the regulations applicable to civilian internees in occupied territories correspond *mutatis mutandis* to those relating to prisoners of war. Article 82 of the Fourth Geneva Convention Relative to Protection of Civilian Persons in Time of War provides that " 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. "

As pointed out in the Commentary, since conflicts may last for years there is a humanitarian duty to maintain the morale of internees and to try to alleviate the spiritual effect of internment. [50] The above-cited article corresponds to Article 22 (3) of the 1949 Geneva Prisoners of War Convention (Third Convention). However, the language of Article 82 of the Fourth Convention is less mandatory than Article 22 (3) of the Third Convention, for the qualifying phrase " as far as possible " is included only with regard to civilian internees. The explanation is that while prisoners of war naturally fall into groups of the same nationality when captured together and can automatically be grouped as such, the grouping of civilians who are often taken into custody separately and sometimes originate from places distant from one another results in practical difficulties. Therefore in some of the latter cases it is preferable to leave the internees near their families rather than to send them to a further place to be reunited with persons of the same language and nationality.

The order of priorities in the first paragraph of Article 82 makes it clear that although an effort should be made to group internees according to common features, including language, internees who are nationals of the same country but who speak different languages should not be sepa-

[49] GC III, Annex IV-D; Art. 120, para 2.

[50] J. S. Pictet, *Commentary IV*, pp. 379-80.

rated merely on that ground. Thus the " moral solidarity which unites the citizens of a particular country takes precedence over the differences which may exist between them, particularly as regards language." [51]

2. Language of child welfare and education

The Fourth Geneva Convention lays down child welfare measures, including the obligation on the parties to the conflict to facilitate in all circumstances the maintenance of children under the age of fifteen who are orphaned or separated from their families as a result of the war, and the exercise of their religion and their education. The latter task is to be entrusted, as far as possible, " to persons of a similar cultural tradition." [52] In case the local authorities have not carried out their duties in this respect, the Occupying Power " shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion ", of such homeless children. [53]

3. Language of penal procedures

According to the Fourth Geneva Convention " the penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language." [54] Although it may appear surprising that an entire article is devoted to a seemingly obvious principle, the Commentary points out that the experience of the two World Wars shows that this principle is not always observed and the purpose of this provision is to ensure its future observance. It is not sufficient to broadcast the information, which the Occupying Power is required to publish in full in a manner not specified in the Convention. [55] The language used must be the official language of the occupied country concerned, " that is to

[51] *Ibid.*, p. 380. Some delegations to the 1949 Diplomatic Conference even proposed that the grouping together of all internees from a given country be obligatory.

[52] GC IV, Art. 24, para 1.

[53] GC IV, Art. 50, para 3. At the 1949 Diplomatic Conference, when the representative of Belgium suggested the insertion of the word "language" in this provision so as to ensure that children were taught in their mother tongue, he pointed out that this was particularly important for countries like Belgium which had more than one national language. (*Final Record*, vol. II, Sec. A, Comm. III (Civilians), 16th mtg., 16 May 1949, Art. 46, p. 664; see Report of Comm. III to the Plenary Assembly, *ibid.*, p. 828).

[54] GC IV, Art. 65.

[55] J. S. Pictet, *Commentary IV*, p. 338. Publication might be in the local press, in an "Official Gazette", in notices posted in public places, or by all these methods.

say the language in which the laws of the State are published ". [56] In countries which have more than one official language, the Occupying Power shall follow local practice and publish the penal provision it enacts in one or more languages, in accordance with that country's pre-occupation practice concerning the publication of legislation.

According to the penal procedure to be followed in occupied territories, no sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial. The Occupying Power must promptly inform accused persons to be prosecuted of the particulars of the charges against them " in writing, in a language which they understand". [57] " Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have at any time the right to object to the interpreter and to ask for his replacement " if due to lack of professional skill or objectivity he is no longer trustworthy. [58] As pointed out in the Commentary, the penal procedure confirms the principle applicable to penal legislation by the Occupying Power, requiring its publication in the language of the occupied territory.

4. Language of publications

The provisions on places of internment for civilian persons in times of war require that internees understand the regulations which concern them. The officer in charge of the place of internment is obligated to know the exact wording of the Fourth Geneva Convention, and therefore the Convention provides that he must have a copy in the official language of the Detaining Power he represents (or in one of the official languages if there is more than one). [59] It is not sufficient for the commandant to have a general knowledge of the Convention. Furthermore, the internees themselves must know the exact extent of their rights and duties. In addition to the general undertaking by the High Contracting Parties to disseminate the text even in peacetime, detailed provisions are enumerated with regard to the internees specifically. The persons interned must have access to the Convention, and to related special agreements, translated into a language which they understand (either to be posted or in the possession of the Internee Committee). [60] The Commentary explains that the language will usually be that of the country where

[56] *Ibid.* and n. 3.

[57] GC IV, Art. 71, para 2.

[58] GC IV, Art. 72, para 3 and J. S. Pictet, *Commentary IV*, pp. 357-58.

[59] GC IV, Art. 99, para 1.

[60] *Ibid.*, para 2.

the internees are detained, since they were presumably working and living there beforehand, but if necessary a foreign language version must be posted. Where the multiplicity of languages makes it difficult to post all the versions required, a possible solution is to give the Internee Committee a copy of the Convention or of any relevant agreements for the use of the internees and to supply required details. [61]

It is pointed out in the Commentary that while the Detaining Power is responsible for preparing the texts to be posted, it is desirable for the Power to which the internees owe allegiance to send the Internee Committee a copy of the Convention in the mother tongue of those detained, especially if the country has more than one official language. This should be sent through the good offices of the Protecting Power or the ICRC at the start of hostilities. [62]

In addition to the Convention, regulations, orders, notices and publications of every kind shall be communicated to the internees and posted inside the camp " in a language which they understand ". Every order and command addressed to the internees individually must, likewise, be given " in a language which they understand. " [63]

5. Language of correspondence and visits

Regarding civilian internee mail, the Fourth Geneva Convention provides—as in the case of correspondence by prisoners of war—that as a rule the letters and cards sent by the internees " shall be written in their own language. The parties to the conflict may authorize correspondence in other languages." [64] As with prisoners of war, use of the internees' mother tongue is in their own best interest, and in no case may the parties to the conflict require the use of any other language by internees for purposes of correspondence. However, the use of a different language may be necessary to overcome practical difficulties of censorship as well as to correspond with persons unfamiliar with the internees' own language. In both these instances it would seem, where practicable, to be generally in the internees' best interest to be allowed to correspond in other languages.

Like the Third Geneva Convention the Fourth gives representatives or delegates of the Protecting Powers permission to have access to

[61] J.S. Pictet, *Commentary IV*, pp. 430-31.

[62] *Ibid.*, p. 431.

[63] GC IV, Art. 99, para 3, 4. See *1949 Diplomatic Conference, Final Record*, vol. II, Sec. A, Comm. III, 21st mtg., 23 May 1949, Art. 88, p. 681; *ibid.*, 32nd mtg., 17 June 1949, Art. 88, p. 726.

[64] GC IV, Art. 107, para 3; see J. S. Pictet, *Commentary IV*, p. 452.

protected persons (e.g. those who 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), particulary in places of internment, detention and work, and to interview them without witnesses, personally or through an interpreter. [65] According to the Commentary, if the use of an interpreter cannot be avoided, the Detaining Power must, on request, supply the delegates with the necessary interpreters. [66]

3. THE 1977 PROTOCOLS

The humanitarian law provisions set forth in the 1949 Geneva Conventions have been extended by the two Protocols of 1977 relating to the Protection of Victims of International Armed Conflicts (Protocol I) and of Non-International Armed Conflicts (Protocol II), to widen the traditional concept of international conflicts [67] and to protect non-combatants in armed conflicts. The benefits of both Protocols are to apply " without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria." [68]

For all persons who are in the power of a party to an international conflict, Protocol I sets forth minimum fundamental guarantees to be enjoyed without any adverse distinction based upon the same criteria, including language. These guarantees are generally applicable to the nationals of a party to the conflict as well as to those belonging to the adversary, in its own as well as in occupied territory.

One of these guarantees is that in time of war " any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken." [69]

This important stipulation corresponds to similar provisions applicable under normal circumstances according to the 1950 European Convention on Human Rights [70] and the 1966 International Covenant on Civil and Political Rights. [71]

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[65] GC IV, Art. 143, para 2. See Art. 4.

[66] J. S. Pictet, *Commentary IV*, p. 576.

[67] Protocol I, Art. 1, para 4.

[68] Protocol I, Art. 9, para 1; Protocol II, Art. 2, para 1.

[69] Protocol I, Art. 75, para 1 and 3.

[70] Art. 5, para 2 and Art. 6, para 3(a).

[71] Art. 14, para 3(a). This instrument, upon which the provision in Protocol I seems to be based, entered into force on 23 March 1976, just prior to the adoption of the Protocols.

Of lesser import, the matter of language arises in Protocol I in a technical sense in relation to various documents. For example, the information on the card sent to the ICRC Central Tracing Agency for each evacuated child should include, *inter alia*, the child's native language, or any other languages he speaks. [72] Annex I to Protocol I contains a single-language model of identity cards for permanent civilian medical and religious personnel. If a different model is used, presumably including a multilingual model, the parties to the conflict are required, at the outbreak of hostilities, to transmit to each other a specimen of the model used. [73] The same applies to identity cards of civil defence personnel. [74] On the other hand, the model identity card for journalists on dangerous professional missions annexed to Protocol I is quinquilingual (English, Arabic, Spanish, French and Russian). [75] The explanation for the preparation *ab initio* of a multilingual card is presumably that the nature of journalistic work may require the reporter to visit a variety of places employing different languages.

To the extent that the 1977 Protocols have widened the scope of humanitarian law, particularly with regard to fundamental guarantees, the minimum preservation of language rights in armed conflict has been ensured.

While admittedly the " right to language " might *prima facie* be viewed as a minor issue in wartime, an analysis of the relevant provisions in this study shows it to be a basic element in the consideration of human dignity and just treatment of people in times of armed conflict. Preoccupation with the military aspects in time of war which might lead to the violation of various rights of those involved, has necessitated a detailed formulation of the required guarantees in time of peace.

4. ADDENDUM

The following, though unrelated to language rights, deals with the actual languages of the Geneva Conventions and the implications thereof.

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[72] Art. 78, para 3(i).

[73] Protocol I, Annex I, Art. 1, para 2 and Fig. 1.

[74] *Ibid.*, Art. 14, para 1.

[75] Protocol I, Art. 79, para 3 and Annex II.

All four 1949 Geneva Conventions were drawn up and are equally authentic in English and French. [76] The 1929 Geneva Convention had been concluded only in French, the leading diplomatic language at that time. [77] Throughout the preparatory work and the Diplomatic Conference of 1949 French and English were recognized as " official working languages " and two versions of each Convention were drawn up simultaneously. The legal implication of the equal authenticity of the two texts is that the parties are bound by both, and that they are both valid for purposes of interpretation. The practical consequence is that on the one hand each text may help to clarify the other, but on the other hand divergences between them may lead to interpretative problems. [78] The ICRC drafts proposed that in case of divergence the French text should prevail, but this was rejected by the Diplomatic Conference. In case of divergence, Pictet states in the Commentary that "those responsible for applying the Convention will have to find out what is known in municipal law as the intention of the legislator; in the case in point, this will be the joint will of the parties represented at the Conference. The method adopted will therefore be that of legal interpretation with the help of the Final Record of the Conference and the preliminary texts." [79]

Pictet adds that this procedure is generally followed in countries such as Switzerland, where national legislation is promulgated in several equally valid languages. Although multilingual interpretation is not within the scope of the present study, it must be noted that the interpretative solution embodied in Articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties, which does not follow Pictet's approach of 1952, provides guidelines which are at present valid, both as a contractual undertaking with regard to the thirty-five States which have ratified or acceded to it, and as reflection of what has come to be accepted as customary law with regard to the community of States.

In addition to the authentic texts, the 1949 Geneva Conventions provide that the Swiss Federal Council shall arrange for official translations of the Conventions to be made in the Russian and Spanish languages. As defined by the International Law Commission, an " official translation " is one prepared by the parties or an individual government

[76] GC I, Art. 55; GC II, Art. 54; GC III, Art. 133; GC IV, Art. 150.

[77] No equivalent final provisions in GC 1929; J. S. Pictet, *Commentary I*, pp. 400-402. See Mala Tabory, *Multilingualism in International Law and Institutions* (Alphen aan den Rijn: Sijthoff & Noordhoff, 1980), Ch. I.

[78] For example, the meaning conveyed by the French and English texts of GC IV, Art. 5, is not the same; see J. S. Pictet, *Commentary IV*, pp. 54-57; also in Whiteman, *Digest*, vol. X, pp. 165-67.

[79] J. S. Pictet, *Commentary I*, p. 401 and n. 1.

or by an organ of an international organization. [80] According to the Commentary, the official character of these translations derives from the fact that their source is specified in the Conventions themselves. [81] Despite the official character of these translations, legally only the authentic texts are regarded as valid and correct in case of interpretation difficulties. The 1929 Geneva Convention did not provide for official translations, and the practical advantage of this innovation in the 1949 Conventions is that it avoids the production of various translations, for example, in the different Spanish-speaking countries. In addition to preparing the Russian and Spanish translations with which it was entrusted by the Convention, the Swiss Federal Council also translated the Conventions into German under obligation of Swiss law.

According to the Geneva Conventions, the High Contracting Parties shall communicate to each other through the Swiss Federal Council, and during hostilities through the Protecting Powers, the official translations of the Conventions, as well as any laws and regulations which they may adopt to ensure their application. [82] Unlike the official translations into Russian and Spanish specifically mentioned in the Conventions, the official translations referred to in this provision are defined in the Commentary as " those drawn up by the executive authorities in a country under the terms of their own law." [83] Therefore, in countries recognizing more than one national language there may be several translations to communicate. Due to their respective special status referred to above, the English, French, Russian and Spanish versions would not be included in this expression.

In line with contemporary international practice, the two 1977 Protocols additional to the Geneva Conventions are authentic in Arabic, Chinese, English, French, Russian and Spanish. [84]

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[80] *Y.B.I.L.C.* (1966-II), p. 224, para 1.

[81] J. S. Pictet, *Commentary I*, pp. 401-402 and n. 2.

[82] GC I, Art. 48; GC II, Art. 49; GC III, Art. 128; GC IV, Art. 145.

[83] J. S. Pictet, *Commentary IV*, p. 582.

[84] Protocol I, Art. 102; Protocol II, Art. 28.

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