

THESIS

GENEVA CONVENTION OF 1949 RELATIVE TO  
PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR

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## INTRODUCTION

### CHAPTER I

This document is designed to cover the effect of the "Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War" upon the conduct of Military Government and the jurisdiction of Military Government Courts. A brief analysis will be made of the overall requirements of this convention which concern governmental operations in general. The emphasis, however, will be upon the specific limitations placed upon judicial tribunals of the Military Government. This convention is entirely new and its application remains highly speculative since there have been no wars fought during which it was legally effective, no court decisions construing its provisions, and no military governments bound by its provisions. No attempt will be made to cover the other Geneva Conventions of 1949 all of which are revisions of prior international conventions i.e.

- I. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
- II. Geneva Convention for the Amelioration of the Condition of Wounded Sick and Shipwrecked Members of Armed Forces at Sea.
- III. Geneva Convention Relative to the Treatment of Prisoners of War.

Particular attention is felt justified for those provisions which may necessitate changes in the policies of the United States Government, and which were contested at the diplomatic conference.

## HISTORY

### CHAPTER II

The Red Cross has for many years made great efforts to revise and expand the international law for the protection of war victims of all categories. The first draft of a treaty for the protection of civilians was submitted to the IV International Red Cross Conference at Tokyo, Japan. The Swiss government intended to convoke a diplomatic conference at Geneva in 1940 but this was prevented by the outbreak of World War II. On 5 February 1945 the International Red Cross sent a memorandum to the national Red Cross societies and to the governments of the world. A preliminary conference was held by the national Red Cross societies in Geneva in July and August 1946 followed by a conference of governmental experts in April 1947. At the XVII International Red Cross Conference, held at Stockholm in August 1948, four new draft conventions were approved. The Swiss government convoked a diplomatic conference at Geneva which met 21 April 1949 to 12 August 1949 and starting with the Stockholm draft finally produced four new conventions of which the fourth is the "Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War."<sup>1</sup> The four conventions have been signed by 61 states and as of 1953 had been ratified by twenty-four states but not including the Union of Soviet Socialist Republics, the United Kingdom and the United States.<sup>2</sup>

1. Kunz, "The Geneva Conventions of August 12, 1949" from Laws and Politics of the World Community, 279-280.
2. Albrecht, War Reprisals in the War Crimes Trials and in the Geneva Conventions of 1949, 47 American Journal of International Law 590

In some degree the new civilians convention is a codification of earlier international rules and practices governing the treatment of the inhabitants of territory under military occupation. The principal body of earlier rules relating to occupied territory are contained in Section II and III of the Regulations annexed to the Hague Conventions<sup>1</sup> and 1907<sup>2</sup> which respecting the Laws and Customs of War on Land of 1899 and 1907 which are binding upon the United States and of which the following are the most important to military government operations concerning individual civilians:

Article 23. "It is especially forbidden --- to declare abolished suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party."

Article 42. "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."

Article 43. "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

Article 44. "A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defense."

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1. 32 Stat 1803
  2. 36 Stat 2277

Article 45. "It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power."

Article 46. "Family honour and rights, the lives and persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated."

Article 47. "Pillage is formally forbidden."

Article 50. "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible."

It is noted that the present convention does not replace but is merely supplementary to Sections II and III of the Regulations annexed to the Hague Conventions respecting the Laws and Customs of War on Land of 1899 and 1907.

At the invitation of the International Committee of the Red Cross a meeting was held on 6 April 1954 at Geneva, Switzerland, attended by military, medical and legal experts from ten nations to study the means available under international law of protecting civilians in wartime against new weapons perfected since the adoption of the 1949 Geneva Conventions. The nations represented are the United States, Britain, Belgium, France, Italy, West Germany, Japan, the Netherlands, Finland, and Norway. The results of this conference have not yet been announced.

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1. Art 154, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, hereafter referred to as "Civilian Convention"
  2. The New York Times, 7 April 1954

## GENERAL PROVISIONS

### CHAPTER III

The present convention applies to all declared wars or any other armed conflicts between signatory powers and to any other power if the latter agrees to abide by its provisions.<sup>1</sup>

Even in armed conflicts not of an international nature the parties are bound to apply a minimum standard to the civilian population requiring humane treatment without distinction based on race, color, religion, sex, birth or wealth and prohibiting violence to life and person, mutilation, cruel treatment and torture, the taking of hostages, humiliating and degrading treatment, and "the passing of sentence and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."<sup>2</sup> There was considerable discussion at the diplomatic conference as to the propriety of attempting to control internal conflicts although none of the nations made reservations as to these provisions at the time of signing. In the future a military government may use this as a basis for trying and punishing nationals of occupied territory for offenses committed against their fellow nationals during a previous internal conflict.

Protected persons are defined "as those who, at a given moment and in any manner whatsoever, find themselves in case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power

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1. Art 2, Civilian Convention
  2. Art 3, Ibid

of which they are not nationals. Nationals of a state which is not bound by the convention are not protected by it."<sup>1</sup>

The convention applies at the beginning of any conflict and ceases in the territory of the parties on the general close of military operations and one year later in occupied territory except for the provisions relating to the exercise of the functions of government in such territory.<sup>2</sup>

The Protecting Powers shall lend their good offices with a view to settling any disagreement between the Parties to the conflict as to the application and interpretation of this convention.<sup>3</sup>

An attempt is made to give general protection to populations against certain consequences of war encouraging the establishment of hospital and safety zones, measures for care of wounded and sick and medical facilities and personnel, allowing transportation of medical supplies, food and clothing, measures relating to child welfare, and transmission of family news.<sup>4</sup>

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1. Art 4, Civilian Convention
  2. Art 6, Ibid
  3. Art 12, Ibid
  4. Art 13-26, Ibid.

Protected persons are entitled to respect for their persons, their honour, their family rights, their religious convictions, and their manners and customs. Women are especially protected against rape, enforced prostitution, or any form of indecent assault. No adverse distinction may be based on race, religion or political opinion.<sup>1</sup> The Party is responsible for treatment accorded protected persons by its agents irrespective of any individual responsibility which may be incurred.<sup>2</sup> Protected persons shall have every facility for making application to the Protecting Power, the Red Cross, or other organization which might assist them.<sup>3</sup> No physical or moral coercion may be exercised against them.<sup>4</sup> Measures to cause physical suffering or extermination specifically including murder, torture, corporal punishment, mutilation, and medical and scientific experiments and acts of brutality are forbidden.<sup>5</sup> Collective penalties, pillage, reprisals, and the taking of hostages are forbidden.<sup>6</sup>

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1. Art 27, Civilian Convention
  2. Art 29, Ibid
  3. Art 30, Ibid
  4. Art 31, Ibid
  5. Art 32, Ibid
  6. Art 33 & 34, Ibid

A definite extension of the substantive provisions of international law appears in Article 31 which provides: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."

The Regulations annexed to the Hague Conventions respecting the Laws and Customs of War on Land of 1899 merely provided in Article 44: "Any compulsion of the population of occupied territory to take part in military operations against its own country is prohibited."

This provision was extended by the Hague Regulations of 1907 as follows: "A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defense."

This prohibition against physical coercion is generally understood and appreciated in civilized nations but the term "moral coercion" appears vague and indefinite and subject to conflicting interpretations representing almost anything which it is desired to condemn. It is further noted that the present convention makes no limitation as to the type of information which is involved. Could this be interpreted as limiting the right of a military government to require protected persons to testify in any judicial proceedings? Should not this limitation apply only during time of actual hostilities to the procurement of military information or other data pertaining in some way to the security of the Power of which the protected person is a national?

General limitations are placed on the treatment of aliens giving them the right to leave unless their departure is contrary to the interests of the State and providing that refusal to leave can be reconsidered by an appropriate court or administrative board designated

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by the Detaining Power. Thus, it will be incumbent upon the government to establish either an administrative or a judicial agency to handle appeals so arising. However, this provisions should not cause any particular difficulty since the Detaining Power is left with such wide latitude as to the solution it elects to provide.

Aliens who have lost their employment must be granted opportunity for employment equal to that of nationals of the Power in whose territory they are. If prevented for reasons of security from finding such employment, the said Party shall ensure his support and that of his dependents.<sup>2</sup> The convention spells out in great detail the other treatment and conditions of employment of such persons.

These provisions will not be further discussed since military government is not normally applicable to the domestic territory of a Party to the Conflict and it is contemplated that these problems will be met by the regular civil government.

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1. Art. 35, Civilian Convention  
2. Art 39, Ibid.

## HOSTAGES

### CHAPTER IV

Winthrop recognizes that there has been a limited use of  
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hostages in American military history as follows:

"A form of indirect retaliation has sometimes been practiced by the seizing of subjects of the enemy as hostages, and holding them in confinement till indemnity is furnished for wrong done, or till offenders are surrendered for trial, etc. Thus, in November, 1863, in view of frequency of raids by the enemy's cavalry upon districts occupied in part by Unionists, and where there were no federal troops, there was issued by Maj. Gen. Grant, then commanding the Division of the Mississippi, an order in which occurs the following -- 'For every act of violence to the person of an unarmed Union Citizen a secessionist will be arrested and held as a hostage for the delivery of the offender.' By an order of Gen. Sullivan, commanding at Harper's Ferry, of January, 1864, it was directed that, upon the conscripting into the confederate army of any inhabitant of Berkeley, Jefferson, Clarke, or Loudoun County, Virginia, 'the nearest and most prominent secessionist should be arrested and imprisoned, and held until the return of such conscript!'"

Present American military authority exists indicating that  
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hostages may be used as follows:

"Hostages have been taken in war for the following purposes:  
To insure proper treatment of wounded and sick when left behind in

1. Winthrop, Military Law and Precedents (2d Ed., 1920 reprint) 797
2. FM 27-10, Rules of Land Warfare, 1 Oct 40, par 359

hostile localities; to protect the lives of prisoners who have fallen into hands of irregular troops or whose lives have been threatened; to protect lines of communication by placing them on engines of trains in occupied territory; and to insure compliance with requisitions, contributions, etc. When a hostage is accepted he is treated as a prisoner of war."

An eminent authority has summarized the prior law concerning the taking of hostages as follows:

"The practice of taking hostages, as a means of securing legitimate warfare, prevailed in former times much more than nowadays. It was frequently resorted to in cases in which belligerent forces depended more or less upon each other's good faith, as, for instance, in the case of capitulation and armistices. To make sure that no perfidy was intended, officers and prominent private individuals were taken as hostages, and could be held responsible with their lives for any perfidy committed by the enemy. This practice has totally disappeared, and is hardly likely to be revived. But it must not be confused with the still existing practice of seizing enemy individuals for the purpose of making them the object of reprisals.

" A new practice of taking hostages was resorted to by the Germans in 1870 during the Franco-German War for the purpose of securing the safety of forces against possible hostile acts by private inhabitants of occupied enemy territory. Well known men were seized and detained,

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1. 2 Oppenheim, International Law (7th ed. Lauterpacht 1952) 590-592

in the expectation that the population would refrain from hostile acts out of regard for the fate of the hostages. Thus when unknown people frequently wrecked the trains transporting troops, the Germans seized prominent enemy civilians, and put them on engines, a device which always proved effective, and soon put a stop to train wrecking. The same practice was resorted to, although for a short time only, by Lord Roberts in 1900 during the South African War. It was condemned by a majority of writers. Others were prepared to condemn it only if hostages were seized, and exposed to danger, for the purpose of preventing legitimate hostilities on the part of the armed forces of the enemy. \* \* \*

During the First World War, Germany adopted a terrible practice of taking hostages in the territories occupied by her armies, and shooting them when she believed that civilians had fired upon German troops. During the Second World War she followed the practice of mass shootings of hostages on such an unprecedented scale as to bring it prominently within the category of war crimes, the punishment of which was declared by the United Nations to constitute a major purpose of the war. As early as October 1941, the President of the United States who at that time were neutral, denounced the German practice of killing hostages by way of reprisals. In Article 6 of the Charter of the International Military Tribunal killing of hostages appeared among the war crimes over which the Tribunal was given jurisdiction. The Tribunal found that the German forces had actually resorted to the practice of keeping hostages in order to prevent or to punish any form of civil disorder and that, in

an order issued in 1941, Keitel, the accused former German Chief of Staff, 'spoke in terms of fifty or a hundred lives from the occupied territories of the Soviet Union for one German life taken'. Subsequently, various war crimes tribunals held the killing of hostages to be a war crime and pronounced sentence accordingly. There ought to be no doubt as to the correctness of these decisions. Modern war -- total and scientific-- inevitably, in its effect, tends to blur the distinctions between combatants and non-combatants. But this is not a sufficient reason for the deliberate killing of innocent persons for the sake of vindictive or preventive terror in violation alike of legal principle and of consideration of hostages."

Under the present convention it is clear that there will be an absolute prohibition against the taking of hostages and there will no longer be any question as to the justification of such action since it is provided "The taking of hostages is prohibited" and no exceptions of any kind are provided.

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1. Art 34, Civilian Convention

## REPRISALS

### CHAPTER V

The prior rules governing the use of reprisals by the United States Army has been set forth in some detail:<sup>1</sup>

"Reprisals. a. Definition. -- Reprisals are acts of retaliation resorted to by one belligerent against the enemy individuals or property for illegal acts of warfare committed by the other belligerent, for the purpose of enforcing future compliance with the recognized rules of civilized warfare.

"b. When and how employed. -- Reprisals are never adopted merely for revenge but only as an unavoidable last resort to induce the enemy to desist from illegitimate practices. They should never be employed by individual soldiers except by direct orders of a commander, and the latter should give such orders only after careful inquiry into the alleged offense. The highest accessible military authority should be consulted unless immediate action is demanded as a matter of military necessity, but in the latter event a subordinate commander may order appropriate reprisals upon his own initiative. Hasty or ill-considered action may subsequently be found to have been wholly unjustified, subject the responsible officer himself to punishment as for a violation of the laws of war, and seriously damage his cause. On the other hand, commanding officers must assume responsibility for retaliative measures when an unscrupulous enemy leaves no other recourse against the repetition of barbarous outrages.

"c. Who may commit acts justifying reprisals. -- Illegal acts of warfare justifying reprisals may be committed by a government, by its military commanders, or by a community or individuals thereof, whom it is impossible to apprehend, try, and punish.

"d. Subjects of reprisals. The offending forces or populations generally may lawfully be subjected to appropriate reprisals. Hostages taken and held for the declared purpose of insuring against unlawful acts by the enemy forces or people may be punished or put to death if the unlawful acts are nevertheless committed. Reprisals against prisoners of war are expressly forbidden by the Geneva convention of 1929.

"e. Form of reprisal. -- The acts resorted to by way of reprisal need not conform to those complained of by the injured party, but should not be excessive or exceed the degree of violence committed by the enemy. Villages or houses, etc., may be burned for acts of hostility committed from them, where the guilty individuals cannot be identified, tried, and punished. Collective punishments may be inflicted either in the form of fines or otherwise.

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1. FM 27-10, Rules of Land Warfare, 1 Oct 40, par 358

"f. Procedure. -- The rule requiring careful inquiry into the real occurrence will always be followed unless the safety of the troops requires immediate drastic action and the persons who actually committed the offense cannot be ascertained."

In discussing reprisals Winthrop pointed out that the United States has had little occasion to resort to reprisals as such in its wars although he mentioned that there were certain contributions or assessments enforced during the Civil War which were more in the nature of reprisal than of contribution proper.<sup>1</sup>

In a recent work the following language is used in describing the authority and scope of reprisals:<sup>2</sup>

"Reprisals in time of war occur when one belligerent retaliates upon another, by means or otherwise illegitimate acts of warfare, in order to compel him and his subjects and members of his forces to abandon illegitimate acts of warfare and to comply in future with the rules of legitimate warfare. Reprisals between belligerents cannot be dispensed with, for the effect of their use and of the fear of their being used cannot be denied. Every belligerent, and every member of his forces, knows for certain that reprisals are to be expected in case they violate the rules of legitimate warfare. But while reprisals are frequently an adequate means for making the enemy comply with these rules, they frequently miss their purpose, and call forth counter-reprisals on the part of the enemy. They have often been used as a convenient cloak for violations of International Law. \* \* \*

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1. Winthrop, Military Law and Precedents (2d Ed., 1920 reprint), 798  
2. 2 Oppenheim, International Law (7th Ed., Lauterpacht 1952), 561-565

"In the face of the arbitrariness with which, according to the present state of International Law, resort can be had to reprisals, the question arises as to the feasibility of an agreement upon some rules governing resort to them in time of war. The events of the First World War illustrate the present state of affairs. The atrocities committed by the German army in Belgium and France, if admitted at all, were always declared by the German Government to be justified as measures of reprisal. Probably Article 50 of the Hague Regulations \*\*\* does not prevent the burning, by way of reprisals, of villages or even towns, for a treacherous attack committed there on enemy soldiers by unknown individuals, and, this being so, a brutal belligerent has his opportunity. \* \* \* There remains the danger, clearly revealed during two World Wars, that reprisals instead of being a means of securing legitimate warfare may become an effective instrument of its wholesale and cynical violation in matters constituting the very basis of the law of war."

The present convention is very specific regarding reprisals  
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stating: "No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. \* \* \*. Reprisals against protected persons and their property are prohibited."

The advisability of these provisions as applied to civilians has been seriously questioned in the following discussion of the convention:

"The effect of the Convention on the Protection of Civilian Persons in Time of War is to outlaw some of the most important forms of reprisal

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1. Art 33, Civilian Convention

which have been used up to this time, including those forms of reprisal for which the rules of control were so laboriously formulated in the war crimes trials. \* \* \* (A protected person) "is legally immunized from reprisals both as to his person and his property."

"The prohibition of reprisals against prisoners of war and wounded, sick and shipwrecked members of the armed forces are desirable because they afford increased legal protection to these classes of war victims without interfering with the general functions of war reprisals. Experience has demonstrated that reprisals against prisoners of war are by no means indispensable and there is no reason to believe that the case is different for wounded, sick, and shipwrecked members of the armed forces. The prohibition of reprisals against protected persons in the Convention on Civilian Persons, however, is of more doubtful merit. In prohibiting almost all reprisals against civilian persons in occupied areas, it could create grave difficulties for an Occupying Power. Under circumstances of widespread and active resistance, an occupant may find the prohibition almost impossible to observe, for reprisals or the threat of reprisals against the local civilian population may be a vital measure in maintaining order among a hostile civilian population. The resort to reprisals against civilians by the British forces during the current war in Malaya, despite Great Britain's signature of the Geneva Convention, affords powerful evidence of the compelling need to use such reprisals at least to a limited degree in certain types of situations. For this reason it is suggested that the blanket abolition of reprisals in the Geneva Convention on Civilian Persons may need to be reconsidered and

1. Albrecht, War Reprisals in the War Crimes Trials and in the Geneva Convention of 1949, 47 American Journal of International Law 611.

that the rules which were developed in the war crimes trials may be useful in establishing a sounder basis for the regulation of war reprisals against civilians.<sup>1</sup>"

In general the war crimes trials established that for a lawful reprisal there must be the following preliminary conditions:

- a. An illegal act giving rise to reprisals.
- b. There must be an attempt to find, try and punish the guilty.
- c. There is a duty to protest and to exhaust all other means of redress short of reprisals.
- d. There must be a judicial hearing to establish that the legal prerequisites of legitimate reprisals had been fulfilled.

In applying reprisals the following must be observed:

- a. Reprisals must be ordered by proper authority (but it was not clear who constituted such).
- b. Reprisals must not be excessive.<sup>2</sup>

Unlike the general limitation prohibiting measures causing physical suffering or extermination, corporal punishment, murder, mutilation, medical experiments, and acts of brutality<sup>3</sup> which appear to be merely a codification of prior existing international law on this subject and were conveniently spelled out to specifically prohibit some of the worst abuses of the type practiced by the axis powers during World War II, the sweeping prohibition of reprisals is highly controversial and may present a major obstacle to the practical operation of military government in the future. It is noted, however, that these provisions apply only to "protected persons" which

1. Albrecht, War Reprisals in the War Crimes Trials and in the Geneva Convention of 1949, 47 American Journal of International Law 614
2. Ibid, 575-607
3. Art 32, Civilian Convention

leaves the possibility that lawful reprisals may be taken in wars against Powers not bound by the convention under the principles developed during the war crimes trials.

## OCCUPIED TERRITORIES

### CHAPTER VI

#### SECTION I - GENERAL

The most important provisions of the present convention which concern Military Government and the jurisdiction of Military Government Courts are found in Articles 47 to 78 which relate to Occupied Territories.

Protected persons cannot be deprived of the benefits of the convention by agreements with the Occupying Power or even by annexation<sup>1</sup> of the occupied territory. As a practical matter it is hard to conceive of a Power which has undertaken to annex territory being willing to admit that it has acquired anything less than complete sovereignty and control over the inhabitants, however, annexations during war are generally regarded as illegal under international law.

Forcible transfers of protected persons to the territory of the Occupying Power are forbidden and likewise the Occupying Power is not allowed to transfer its own civilian population into occupied territory.<sup>2</sup> Temporary total or partial evacuations of any given area are allowed only for security of the population or imperative military reasons and even then under restrictions protecting the persons involved.<sup>3</sup>

The Occupying Power is obliged to take special measures to facilitate identification of children and may not hinder the application of preferential measures adopted prior to the occupation for children

1. Art 47, Civilian Convention
2. Kunz, "The Geneva Conventions of August 12, 1949" from Laws and Politics of the World Community, 296
3. Art 49, Civilian Convention

under fifteen years of age, expectant mothers, and mothers of children  
under seven years.<sup>1</sup> The Occupying Power may neither compel nor use pro-  
poganda to induce protected persons to serve in its armed forces and may  
compel persons over eighteen years of age to do certain necessary work  
not connected with military operations.<sup>2</sup> The Occupying Power may not  
create unemployment or restrict the opportunities of workers to induce  
the workers to work for the Occupying Powers.<sup>3</sup> No property may be  
destroyed unless absolutely necessary for military operations.<sup>4</sup>

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1. Art. 50, Civilian Convention
  2. Art 51, Ibid
  3. Art 52, Ibid
  4. Art 53, Ibid

STATUS OF PUBLIC OFFICIALS AND JUDGES

SECTION 2:

Previously the utilization of public officials was wholly at the discretion of the Occupying Power who could require such officials as are continued in office to take an oath to perform their duties conscientiously, could pay them from the public funds of the invaded territory until military government wholly or partially dispenses with their services, and could remove, make a prisoner of war, or expel from the occupied territory any official considered dangerous to the occupant.<sup>1</sup>

Under the present convention the rights of military government are much more limited. The Occupying Power may remove public officials from their posts but may not alter the status of public officials or judges in the occupied territories and may not punish them if they abstain from fulfilling their functions for reasons of conscience.<sup>2</sup> They may not be deported from the occupied territory.<sup>3</sup> They may not be made prisoners of war and can at most be subjected to assigned residence or to internment for imperative reasons of security.<sup>4</sup>

It is clear that military government can continue to use those public officials who volunteer to serve in the same capacity previously held and to perform the same functions. The convention is silent as to what would constitute altering the status of the public officials and judges of the occupied territory. There is also the problem as to whether military government would have the power to replace those public officials it chose to remove and if so, what legal status the officials would have.

1. FM 27-10, Rules of Land Warfare, 1 Oct 40, pars. 309-311
2. Art 54, Civilian Convention
3. Art 49, Ibid
4. Art 78, Ibid

## PENAL LEGISLATION

### SECTION 3:

The penal laws of the occupied territory shall remain in force except as they may be repealed or suspended by the Occupying Power where they constitute a threat to its security or an obstacle to the application of the present convention and the tribunals of the occupied territory shall continue to function administering such laws subject to security considerations. The Occupying Power may enact provisions essential to enable it to fulfil its obligations under the present convention, to maintain the orderly government of the territory, and to ensure the security of its property and forces.<sup>1</sup> This restates prior limitations on the legislative powers of military government by placing a positive stamp of approval on the prior legislation of the occupied territory and specifying in more detail the circumstances under which such legislation may be altered. Under Article 43 of the Hague Regulations of 1907 the occupant had the broad duty to restore public order and safety "while respecting, unless absolutely prevented, the laws in force in the country." The United States adopted the practice of continuing in force the ordinary civil and criminal laws of the occupied territory which do not conflict with the restoration of public order and safety and leaving to the jurisdiction of the local courts all crimes not of a military nature and which do not affect the safety of the invading army.<sup>2</sup> It was broadly stated that "The military occupant may suspend existing laws and promulgate new ones when the exigencies of the military service demand such action."<sup>3</sup> Again it is stated that the occupant may create new laws for the government of a country and will promulgate such new laws and regulations as military necessity demands,

1. Art 64, Civilian Convention

2. FM 27-10, Rules of Land Warfare, 1 Oct 40, par. 285

3. Ibid, par 286

including laws which establish new crimes and offenses incident to a state of war, and are necessary for the control of the country and the protection of the army.<sup>1</sup> As to the civil law it is recognized as forbidden to declare abolished, suspended, or inadmissible in a court or law the rights of action of the nationals of the hostile party.<sup>2</sup> Although the language of the present convention is more precise it leaves military government with substantially the same power to enact penal legislation which in the final analysis is limited only by military necessity.

The penal provisions enacted by the Occupying Power are not retroactive and are not effective "before they have been published and brought to the knowledge of the inhabitants in their own language."<sup>3</sup> At the diplomatic conference it was indicated by the committee which added the requirement of publication that it would not be sufficient to bring the provisions to the knowledge of the inhabitants verbally by radio or loud speaker announcement.<sup>4</sup> While this appears to be reasonable under ordinary circumstances it would pose a difficult problem to a military government in time of grave emergency where there is neither time nor facilities to publish laws and to bring them to the knowledge of the inhabitants and immediate action is demanded. It is the general practice of civilized nations to disseminate the laws expected to be obeyed in the most effective manner available to bring them to the attention of the population. There may be times, however, when the only means available to communicate to the population in time for the law to serve its purpose will be by loud speaker or radio. Making other publication mandatory in all cases

1. FM 27-10, Rules of Land Warfare, 1 Oct 40, par 238

2. Ibid, par. 289; Art 23, last par., Hague Regulations of 1907

3. Art 65, Civilian Convention

4. Final Record of the Diplomatic Conference of Geneva of 1949, Vol. II, Sec A., p.833

before effect can be given to penal provisions appears unrealistic and may serve to hamper the vital operations of military government at a critical time. This may result in a military government's enacting and promulgating broad and vague penal provisions in general terms prohibiting any action on which may be detrimental to the Occupying Power and allowing its local representatives wide latitude in interpreting such provisions.

With respect to penal provisions it is noted that the original draft prepared at Stockholm provided that "The penal laws of the Occupied Power shall remain in force and the tribunals thereof shall continue to function in respect to all offences covered by said laws."<sup>1</sup> This would have deprived the Occupying Power of any authority to change the laws. The committee working on this provision at the diplomatic conference modified this view by providing that the laws of the occupied country could be suspended or repealed when they constitute a threat to its security or an obstacle to the application of the present convention and such provision<sup>2</sup> was finally adopted at the conference.

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1. Final Record of the Diplomatic Conference of Geneva of 1949, Vol I, p 122, Draft Article 55
  2. Art 64, Civilian Convention

## COURTS IN OCCUPIED TERRITORY

### SECTION 4:

Under prior United States practice and under the present convention it is contemplated that the local courts and the local officials will be used as much as possible in the enforcement of the laws of the occupied territory. <sup>1</sup> For a breach of the penal provisions of the Occupying Power the accused come under the jurisdiction of "its properly constituted, non-political military courts" which must sit in the occupied territory and that courts of appeal shall preferably sit in the occupied country. <sup>2</sup> No such restrictions had previously been placed upon military government courts.

The original draft of this provision gave jurisdiction to "its regular, non-political, military or civil courts". <sup>3</sup> The committee working on this provision felt that the setting up, by an Occupying Power, of civil courts in an occupied territory may lead to an extension to that territory of the Occupying Power and that civil courts would be more likely political in character than military courts. Hence, the reference to civil courts was deleted and the phrase amended to read "properly constituted non-political military courts." <sup>4</sup> This raises the question as to whether it will be possible under the present convention to utilize courts composed of civilians as has been done in the courts of the United States High Commissioner for Germany since 1949. American courts have previously held that in essence these courts remain military courts deriving their power

1. FM 27-10, Rules of Land Warfare, 1 Oct 40, par 285; Art 54 & 64, Civilian Convention
2. Art 66, Civilian Convention
3. Final Record of the Diplomatic Conference of Geneva of 1949, Sec I, p 123, Draft Art 57
4. Ibid, Vol II, Sec A, p 833

from the laws of war even though composed of civilians.<sup>1</sup> The United States Court of Appeals in Germany has stated that it would operate according to the concepts of civilian courts.<sup>2</sup> The purpose and intention of those who drafted the convention appeared to be that such courts operating under the convention should be composed of military personnel.

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1. Madsen v. Kingsella, 343 U.S. 341 (1952); U.S. Military Government v. Ybarbo, 1 Court of Appeals Reports (Germany) 207 (1949)
  2. United States v. Sander, 1 Court of Appeals (Germany) 1

## LIMITATIONS ON PUNISHMENT

### SECTION 5.

The greatest change brought about by the present convention is in the field of authorized punishments. Heretofore it was provided:<sup>1</sup>

"All war crimes are subject to the death penalty, although a lesser penalty may be imposed. The punishment should be deterrent, and in imposing a sentence of imprisonment it is not necessary to take into consideration the end of the war, which does not necessarily limit the imprisonment to be imposed."

Courts under the convention are bound to observe the principle that the penalty shall be proportionate to the offence and consider the fact that the accused is not a national of the Occupying Power.<sup>2</sup> In Article 68 protected persons who commit offences solely intended to harm the Occupying Power, save for the most serious offences, may be sentenced only to imprisonment or internment proportionate to the offence committed. This article overlooks entirely those offences in which intent is immaterial and provides for no punishment other than imprisonment and internment. The original draft was even weaker and limited the punishment imposed upon protected persons for such offences intended to harm the Occupying Power to internment.<sup>3</sup> The committee found this unacceptable since some of the offences in question might seriously harm the Occupying Power and made provision for simple imprisonment to be awarded as an alternative to internment.<sup>4</sup>

1. FM 27-10, Rules of Land Warfare, par 357
2. Art 67, Civilian Convention
3. Final Record of the Diplomatic Conference of Geneva of 1949, Vol I, p. 123, Draft Art. 59
4. Ibid, Vol II, Sec A, p 834

It is not believed that this would preclude appropriate legislation necessary to fulfil the Occupying Power's obligation to maintain orderly government and to provide for its security as authorized under Article 64. The application of this provision will probably be limited to minor offences clearly intended to embarrass the Occupying Power.

Article 68 further provides that the Occupying Power can impose the death penalty for violation of its penal provisions "only in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have caused the death of one or more persons, provided that such offences were punishable by death under the laws of the occupied territory in force before the occupation began." This limitation by reference to the laws of the occupied territory was unacceptable to Canada, the United States, New Zealand, the Netherlands, and Great Britain. The United States accordingly made the following reservation at the time of signing the convention:

"The United States reserves the right to impose the death penalty in accordance with the provisions of Article 68, paragraph 2, without regard to whether the offences referred to therein are punishable by death under the law of the occupied territory at the time of the occupation begins."

The delegates of both the United States and the United Kingdom expressed their opposition to this provision in the strongest terms. A number of delegations opposed this provision.

1. DA Pamphlet 20-150, October 1950, p. 239

2. Final Record of the Diplomatic Conference of Geneva of 1949, Vol II, Sec B, p 425-426

Sir Robert Craigie (United Kingdom Delegate)

"The United Kingdom Delegation have the fullest sympathy with those who object to the penalty of death in time of peace, (it was very nearly abolished a short while ago in the United Kingdom), but we do suggest to the Conference that there is all the difference in the world between the peace time application of this question of the death penalty and its

Footnote 2 continued:

application in time of war and in occupied territory! If we take this text at its face value it really cannot be imposed even for the types of acts mentioned in this paragraph, since it will only be necessary for a country which believes that it is shortly to be occupied, or may be occupied, to pass a law abolishing the death penalty, and the latter cannot then be imposed. One cannot but sympathize \* \* \* with those in an occupied country who feel it is their duty to proceed with the types of act against the Occupying Power which are mentioned in this Article, but we must not let our sympathy with those people blind us to two important facts: the first is that it is the duty of the Occupying Power under international law to maintain law and order in the occupied territory, and the second is that if such acts are not punished adequately at an early stage, widespread disaffection might result which the Occupying Power must repress, with the result that the civilian population as a whole is made to suffer because perhaps one man was not condemned to death"

Mr. Leland Harrison (United States Delegate)

"The United States Delegation shares the view of the United Kingdom Delegation the (Article 68 as adopted) would in practice result in the abolition of the death penalty in occupied territory. \*\*\* under the law as it now stands, the troops of an Occupying Power who apprehend illegal combatants or persons accused of illegal combat activities must hand such persons over to the appropriate military authorities for trial. Men have struggled for a long time to establish these principles but can we expect soldiers in occupied territory to turn over to the authorities for trial persons accused of espionage, sabotage and unlawful homicide unless they know that appropriate punishments will follow trial and conviction? \*\*\* the Occupying Power can at most imprison such persons for the duration of the occupation \*\*\* for a few years at most. \*\*\* Such a situation will result not only in encouraging illegal acts by a hostile population against the soldiers of the Occupying Power, with resultant disorders, but will also inevitably lead to retaliation and revenge-killings by soldiers of the Occupying Power whose safety has been jeopardised or whose comrades have been assassinated. Such summary and uncontrolled actions will undoubtedly also result in the death of innocent persons."

3. Ibid., Vol II, Sec A, p 834

The committee stated: "A number of delegations felt that the restriction of the death penalty under the law of the occupied Power at the outbreak of hostilities was illogical in that the question to be dealt with fell under the laws and customs of war and bore no connection with national legislation." The committee however adopted a text which did so limit the application of the death penalty.

In any event the death penalty cannot be pronounced against a protected person who was under eighteen years of age at the time of the offence and before the death penalty can be pronounced in any case the court's attention must be called to the fact that the accused is not a national of the Occupying Power and not bound by any duty of allegiance to it.<sup>1</sup> A protected person will have any period under arrest awaiting trial or punishment deducted from any imprisonment imposed.<sup>2</sup> Although these provisions are new and do provide substantive limitations on the punishments which may be imposed, they provoked no controversy at the diplomatic conference and were apparently acceptable to all of the nations concerned. It is noted that the crediting of an accused with time in arrest awaiting trial is far more liberal than the rule in American civil jurisdictions where the sentence to confinement does not normally begin to run until it is finally ordered executed. It is even more favorable to an accused than American military courts-martial procedure where the confinement begins to run from the date the sentence is adjudged.<sup>3</sup> This provision should do much to mitigate the injustice caused by extended pre-trial confinement where accused cannot be released on bail and no particular difficulties are foreseen in its application.

Protected persons are not responsible to the Occupying Power for acts committed or opinions expressed before the occupation except for breaches of the laws and customs of war. Nationals of the Occupying Power cannot be prosecuted or deported for offenses committed before the outbreak of hostilities unless extradition in time of peace was authorized under the law of the

1. Art 68, Civilian Convention

2. Art 69, Ibid

3. Manual for Courts-Martial, 1951, par. 1261; Art. 57h, UCMJ

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occupied State. Thus, military occupation does not give the Occupying  
Power any jurisdiction over ordinary crimes previously committed or over  
persons wanted for crimes who had succeeded in escaping to a state which  
did not provide for extradition.

*Unless  
violation of  
Convention*

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1. Art 70, Civilian Convention

## PROCEDURAL RIGHTS

### SECTION 6:

Protected persons have the following rights when tried by competent courts of the Occupying Power in occupied territory:

1. May not be sentenced except after a regular trial.
2. Must be informed of the charges against them in writing in a language which they understand.
3. Shall be brought to trial as rapidly as possible.
4. Protecting Power must be notified three weeks before the date of the first hearing in cases involving the death penalty or imprisonment of two years or more. This is jurisdictional and evidence establishing such must be presented at the first hearing before trial may proceed.

Notice shall include:

- a. description of the accused;
  - b. place of residence or detention;
  - c. specification of the charge or charges (with mention of the penal provisions under which it is brought);
  - d. designation of the court which will hear the case;
  - e. place and date of the first hearing.
5. May present evidence and call witnesses.
  6. Have a right to qualified counsel of their own choice, counsel furnished by the Protecting Power, or counsel furnished by the Occupying Power.
  7. Have a right to assistance by an interpreter and to object to the interpreter and to ask for his replacement.
  8. Have a right to appeal provided for by the laws applied by the

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1. Art 71, Civilian Convention  
2. Art 72, Ibid

court and shall be fully informed of appellate rights. If there is no right of appeal, petition against the findings and sentence may be made to the competent authority of the Occupying Power.<sup>1</sup>

9. Representatives of the Protecting Power may attend trials unless held in camera in the interests of security.

10. Protecting Power must be notified of judgments of death or imprisonment of two years or more and period for appeal doesn't run until such notice is received. Protecting Power can inspect the judgment in all other cases.<sup>2</sup>

11. Persons condemned to death have a right to petition for pardon or reprieve.

12. Death sentences ordinarily cannot be carried out until six months after the Protecting Power has been notified of final judgment confirming such death sentence or of order denying pardon or reprieve. However, this six months suspension may be reduced in cases of grave emergency upon proper notice to the Protecting Power.<sup>3</sup>

13. Must be kept in the occupied country before and after trial, shall be separated from other detainees if possible, shall enjoy conditions at least equal to those obtaining in prisons in the occupied territory, shall have a right to be visited by delegates of the Protecting Power, and shall have a right to receive at least one relief parcel monthly.<sup>4</sup>

14. Must be turned over to the authorities of the liberated territory at the close of the occupation.<sup>5</sup>

1. Art 73, Civilian Convention
2. Art 74, Ibid
3. Art 75, Ibid
4. Art 76, Ibid
5. Art 77, Ibid

15. Safety measures are limited to assigned residence or to internment imposed according to a regular procedure including the right to appeal<sup>1</sup> and a periodic review.

The original draft provided that the Protecting Power be immediately informed of all proceedings instituted against protected persons but this was restricted by the committee working on this article to cases where the charges involve the death penalty or imprisonment for two years or more.<sup>2</sup>

It can be readily seen that the above procedures will delay and complicate the administration of justice in occupied territory but the full effect is hard to evaluate until the convention is actually applied in occupied territory.

In addition all accused persons must be afforded safeguards of proper trial and defence not less favorable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949,<sup>3</sup> which differ from the present convention as follows:

1. If an accused prisoner of war does not choose counsel the Protecting Power will be allowed at least one week to find him counsel. Failing this the Detaining Power shall appoint a competent counsel to conduct the defense. Defense counsel shall have at least two weeks to prepare defense before the opening of the trial. The accused and counsel will be communicated the particulars of the charge or charges on which he is to be arraigned as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power.<sup>4</sup>

1. Art 78, Civilian Convention

2. Final Record of the Diplomatic Conference of Geneva of 1949, Vol. II, Sec A,  
p 834

3. Art 146, Civilian Convention

4. Art 105, Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949

2. Prisoners of war have "in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial."<sup>1</sup>

3. The sentences of convicted prisoners of war shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining power.<sup>2</sup>

A literal interpretation indicates that in cases where an accused civilian does not choose counsel the Protecting Power must be allowed at least one week to find counsel for him and that the defence counsel must be allowed at least two weeks to prepare his defence. A host of difficulties are encountered in interpreting these provisions which were in effect incorporated by reference from the convention dealing with prisoners of war which set as a standard the law governing the armed forces of the Detaining Power. It may be required that accused civilians be furnished at least as much information about the charges and other documents which are generally afforded to persons subject to the Uniform Code of Military Justice even though American civilian courts do not generally require the government to disclose its evidence prior to trial. An even more troublesome provision is the one giving an accused appellate rights at least as favorable as those afforded members of the armed forces of the Detaining Power. Accordingly, an American Military Government may be required to set up appellate procedures affording accused civilians at least as much

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1. Art. 106, Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

2. Art 108, Ibid

protection as is given under the Uniform Code of Military Justice. It is hard to foresee how far this would be applied and for the United States would raise many questions among which are as follows: Must there be an automatic review in all cases? Must the accused be granted at least as much time for appeal as is one subject to military law? Must appellate counsel be furnished without charge? Must there be an intermediate appellate body such as the Board of Review empowered to weigh evidence and to modify the sentence? Must death cases be confirmed by the President of the United States? Must civilians be furnished the same conditions of confinement as are members of the armed forces of the United States?

APPLICABILITY OF THE CONVENTION TO MILITARY GOVERNMENT COURTS

SECTION 7:

The applicability of the present convention insofar as it concerns the provisions which govern the operation of military government courts will continue for the duration of the occupation to the extent that the Occupying Power exercises the functions of government in such territory.<sup>1</sup>

The view has been expressed that the Hague Regulations are not applicable to the occupying force after the cessation of hostilities by reason of capitulation of one belligerent, and the powers and rights of the occupant are limited only by general principles of international morality and by the law and policy of the occupant.<sup>2</sup> It is pointed out that the Hague Regulations were designed to govern the conduct of the military in its relations with the civilian population of an occupied territory during hostilities and do not govern or limit the right of the victor to impose terms when the victory has been achieved and that the Hague Regulations should be used as guides with persuasive but not obligatory effect in appropriate circumstances.<sup>3</sup> It is noted, however, that those principles of the general international law are applicable where they concern the status of occupied personnel and the rights and duties of the occupation forces.<sup>4</sup>

The applicable provisions of the present convention are certainly more precise and will leave the military government of occupied territory much less latitude in the organization and functioning of military government courts than was heretofore possible under general international law.

1. Art 6, Civilian Convention

2. JAGA 1946/10992, 23 Dec 1946

3. Fahy, Legal Problems of German Occupation, 47 Michigan Law Review 11

4. Rheinstejn, The Legal Status of Occupied Germany, 47 Michigan Law Review 23

## TREATMENT OF INTERNEES

### CHAPTER VII

A brief analysis of the provisions will be made since it is clearly contemplated that internment be effected in certain cases by military government in occupied territories.<sup>1</sup> In the past the great majority of the internment cases have occurred in national territory of the power taking the action and thus did not concern the operation of military government.

Should other measures of control of protected persons be deemed inadequate the Detaining Power may take no measure of control more severe than assigned residence or internment.<sup>2</sup> Internment may be ordered only if the security of the Detaining Power makes it absolutely necessary.<sup>3</sup> Protected persons interned or placed in assigned residence may have the action reconsidered by an appropriate court or administrative board of the Detaining Power as soon as possible and thereafter at least twice yearly and the Protecting Power will be notified of these decisions.<sup>4</sup> Internees retain their full civil capacity.<sup>5</sup> Parties to the conflict who intern protected persons must provide free of charge for their maintenance and must provide support for their needy dependents.<sup>6</sup> They must be kept separate from prisoners of war and from persons deprived of liberty for any other reason.<sup>7</sup> Detailed provisions are made for their general welfare, food, clothing, hygiene, medical care, and religious, intellectual and physical activities.<sup>8</sup> Places of internment shall be under the authority of a responsible officer from the regular military forces or regular civil administration of the Detaining Power and the texts of the present convention and special agreements will

1. Art 68 & 78, Civilian Convention  
2. Art 41, Ibid  
3. Art 42, Ibid  
4. Art 43, Ibid

5. Art 80, Ibid  
6. Art 81, Ibid  
7. Art 84, Ibid  
8. Art 85 to 98, Ibid

be made available to the internees.<sup>1</sup> The disciplinary regime in places of internment must be consistent with humanitarian principles and there is specific prohibition against requiring physical exertion dangerous to their health, identification by tattooing, prolonged standing roll calls, punishment drill, military drill and maneuvers, or reduction of food rations.<sup>2</sup> Internees may petition regarding conditions of internment to the authorities in whose power they are without fear of punishment.<sup>3</sup> Internees are represented by a committee elected by them by secret ballot.<sup>4</sup> The internee committee shall act to further the well-being of the internees and its members will be given special consideration as to work, movement and communications to allow them to perform their duties.<sup>5</sup> The relations of internees with the exterior are spelled out in great detail providing for notification of the measures taken to their Protecting Powers and to the Powers to which they owe allegiance, for internment cards to a central agency and to relatives, for regular correspondence, for relief shipments, for execution and transmission of legal documents, for management of property, for handling court cases and for visits.<sup>6</sup>

"The laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment."<sup>7</sup> This is in accord with prior international law and does not preclude military government from enforcing authorized penal provisions enacted by the Occupying Power.

1. Art 99, Civilian Convention
2. Art 100, Ibid
3. Art 101, Ibid
4. Art 102, Ibid Civilian Convention
5. Art 103 & 104, Ibid
6. Art 105 to 116, Ibid
7. 1st par, Art 117, Ibid

"If general laws, regulations or orders declare acts committed by internees to be punishable, whereas the same acts are not punishable when committed by persons who are not internees, such acts shall entail disciplinary punishments only."<sup>1</sup> This does put a clear and definite limitation on the power of the military government by legislation or otherwise to implement any requirements directed against internees as such by more than disciplinary punishments.

"No internee may be punished more than once for the same act or the same count."<sup>2</sup> This appears somewhat weaker than the principle of double jeopardy in that it merely forbids double punishment and says nothing about trying an accused more than once for the same offence. No difficulty is foreseen in applying this provision in occupied territory where military government represents only one sovereign. However, it may provide a limitation on the punishment of an internee in the United States who commits an act punishable by both Federal and State laws.

In cases of internees the courts shall be free to reduce the penalty prescribed for the offence and shall not be obliged to apply the minimum sentence prescribed.<sup>3</sup> Military government is here definitely limited in making any punishments mandatory upon conviction of internees of any offence. This also raises a problem in the event a general court martial or a military commission convicts an internee for spying in violation of Article 106, Uniform Code of Military Justice. Would the court be authorized to ignore the mandatory death penalty provided for this offence? Must legislation be enacted

to amend the code in this respect?

1. 2d par, Art 117, Civilian Convention
2. 3rd par, Art 117, Ibid
3. Art 118, Ibid
4. Art. 119, Ibid

Disciplinary punishments of internees are limited as follows:

1. A fine not exceeding fifty per cent of his wages for no more than thirty days.
2. Discontinuance of privileges.
3. Fatigue duties not exceeding two hours daily.
4. Confinement not exceeding thirty consecutive days.<sup>1</sup>

Pre-trial confinement is limited to fourteen days and will be deducted from any sentence to confinement.<sup>2</sup> Only disciplinary punishment may be imposed for escape or attempting to escape.<sup>3</sup> The internees must be given a hearing before disciplinary punishment may be awarded allowing him to explain his conduct, to defend himself and to call witnesses. An interval of three days must be allowed in the execution of two punishments if the execution of one is more than ten days duration.<sup>4</sup>

Military government will simply have to follow the provisions regarding the treatment of internees as thus codified in the present convention without regard to prior practices.

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1. Art 119, Civilian Convention
2. Art 122, Ibid
3. Art 120, Ibid
4. Art 123, Ibid

## CONCLUSIONS

### CHAPTER VIII

The following conclusions have been reached:

1. The present convention is restrictive in nature limiting but not adding to the power of military government and military government courts.

2. Much of the language and many of the terms used in the text are vague and will require further clarification.

3. The prohibition against taking hostages will not seriously affect the operation of military government since the United States has made little use of hostages.

4. Eliminating the possibility of reprisals may seriously handicap the operation of military government in time of emergency when there is much resistance from the civilian population.

5. Military government will have less power to control judges and public officials.

6. The power of military government to enact penal legislation is more restricted in that publication is required before laws can be effective.

7. Military government courts must be non-political military courts and probably will have to be composed of military personnel.

8. Military government courts will be seriously limited as to the punishments which may be imposed.

9. The procedural rights afforded accused will substantially delay trials by military government courts.

10. Military government is severely limited in its power to deal with internees and military government courts may not be required to apply mandatory punishments to internees.