



# SUPPLEMENT

VOL. III

REVUE INTERNATIONALE  
DE LA CROIX-ROUGE  
ET  
BULLETIN INTERNATIONAL  
DES SOCIÉTÉS  
DE LA CROIX-ROUGE

SUPPLEMENT

*Vol. III, 1950*

GENÈVE

1950

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February 1950

Vol. III, No. 2

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Published by  
Comité international de la Croix-Rouge, Genève  
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## *THE NEW GENEVA CONVENTIONS*

### *RETENTION OF MEMBERS OF THE ARMY MEDICAL SERVICES WHO HAVE FALLEN INTO THE HANDS OF THE ENEMY*

(Continued)<sup>1</sup>

#### *D. — Provisions of the Prisoners of War Convention which are applicable to Retained Personnel.*

This seems a suitable place to collate the provisions of the 1949 Prisoners of War Convention which are applicable to retained personnel—a course that is essential if we are to know what conditions are prescribed for them. As this somewhat complex problem has not been studied hitherto the reader should consider the following remarks as being no more than a provisional summary. We must hope that the Powers will, by means of agreements, themselves clarify the points which are still obscure.

We have seen above that retained personnel “shall at least benefit by all the provisions of the Geneva Convention of 1949 relative to the Treatment of the Prisoners of War”, which means, as stated specifically in the Convention, that they shall “receive as a minimum the benefits and protection of the present Convention”.

The idea of “benefits” must be considered here as affecting not prisoners of war, but medical and religious personnel who are not prisoners. In other words, we must try to determine now what “benefits” accrue from the application of prisoner of war status to the said category, namely, medical and religious personnel who are not prisoners of war.

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<sup>1</sup> See *Revue internationale de la Croix-Rouge*, English Supplement, Vol. II, No. 12, Dec. 1949, pp. 487-501; Vol. III, No. 1, Jan. 1950, pp. 2-17.

The idea of "benefits" is not the only point to be considered. The special status of retained medical personnel has other aspects which must be examined and can be summarized as follows :

(1) — In matters to which special provisions relating to retained personnel and similar provisions relating to prisoners of war both apply, the first-named always take precedence.

(2) — In matters regulated only by provisions designed for prisoners of war, it is necessary to take into consideration certain consequences of the special position and duties of retained personnel. They may be stated as follows :

(a) — The effective carrying out of the medical and spiritual duties for the benefit of prisoners should be the determining factor. In case of doubt, the solution chosen should be the one which will most favour it.

(b) — The retained personnel is in fact, within inevitable limits, at liberty ;<sup>1</sup>

(c) — The retained personnel is subject to military discipline in camp.

This much being said, the fact that the provisions of the Prisoners of War Convention are in their great majority immediately applicable to retained medical and religious personnel makes it necessary to study only such clauses as are not entirely applicable, or whose application needs particular study. Articles not included below may be deemed to apply automatically to retained personnel.

*Article 12, Paragraphs 2 and 3.* — These lay down the safeguards required, when prisoners of war are transferred by the Detaining Power to another Power which is party to the Convention and in a position to observe its requirements. The problem does not arise directly out of this provision, because it is clear that in the event of transfer, the retained personnel should have the same safeguards.

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<sup>1</sup> See *Revue*, English Supplement, Vol. III, No. 1, Jan. 1950, pp. 9-10.

But can transfer, recognised implicitly as being possible in the case of prisoners of war, be taken to include retained personnel also? As the advantages and disadvantages of transfer are a matter of appreciation, which will vary from one case to another, it is difficult to decide without taking a further element into consideration, namely, the prisoners' right to medical care. This would incline us to the opinion that transfer of medical personnel should be permissible, in so far as the needs of prisoners demand it in the country where they will be detained anew.

On the other hand, no Detaining Power is justified in transferring medical personnel to another Power where there is no accompanying transfer of prisoners of war. The retention of medical personnel is provided for in the First Convention only for the benefit of the Power into whose hands they have fallen, and for the purpose of assisting prisoners in the same hands.

*Article 14, Paragraph 3.* — The clause provides that the Detaining Power may not limit prisoners in the exercise of their civil rights, except in so far as captivity requires. As retained personnel are not, from a legal point of view, in captivity, the Detaining Power cannot limit the exercise of their civil rights. It is nevertheless clear that circumstances resulting from their retention on enemy territory may, on occasion, limit such exercise.

*Article 18, Paragraphs 4 and 5; Articles 58 and 59.* — These clauses state the safeguards that must attend the impounding of sums of money and articles of value from prisoners of war. Here again, as in Article 12, the difficulty does not arise from the enumeration of these safeguards, which could only be of benefit to the medical personnel. But can impounding, recognised implicitly in the case of prisoners, be applied also to retained personnel? In principle, the answer is: No. Nevertheless, adequate security reasons may, exceptionally, justify the Detaining Power in taking certain measures of this sort in specific cases.

*Article 21, Paragraph 1.* — The essential provision here is that prisoners of war may be interned. Even if this Article does not legally apply to medical and religious personnel (who are not prisoners of war), it is none the less true that, as a result, their liberty will be restricted. This has already been referred to above <sup>1</sup>.

Paragraph 2 provides that “prisoners of war may be partially or wholly released on parole or promise”. It seems that, by analogy, this could apply also to medical personnel; in return for their promise not to attempt escape they would be authorised to move about freely without escort. It is a measure which appears wholly desirable.

*Article 26, Paragraph 4.* — Prisoners of war shall be associated with the preparation of their meals and may be employed for that purpose in the kitchens. As retained personnel can be obliged to do only work directly connected with their specific duties, they can not be compelled to work in the kitchens; should they do so, it would be in a voluntary capacity only.

*Article 46.* — This deals with transfers of prisoners inside the territory of the Detaining Power, and could apply to retained personnel, who would naturally follow the prisoners to whom they are attached, if medical needs in the new place of detention so require.

*Articles 49 to 57.* — These refer to the labour of prisoners of war. As a general rule, the procedure laid down in the Articles referring to the work to which prisoners may be assigned (Articles 49, 50, 52, 56 and 57), does not apply to retained personnel.

Other provisions dealing with working conditions, rest, exemptions and accidents should be considered as applying, in so far as they are compatible with the carrying out of medical or spiritual duties and the exigencies these normally imply <sup>2</sup>.

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<sup>1</sup> See *Revue*, English Supplement, Vol. III, No. 1, p. 9.

<sup>2</sup> Thus, for example, medical orderlies will not cease work if there are patients in urgent need of attention.

*Article 62* provides that prisoners of war who work shall receive "working pay" (formerly referred to as "wages"), which shall not be less than one-fourth of one Swiss franc a day.

This pay has a direct connection with the fact that prisoners are obliged to do work which is not of their choice; it may therefore be asked if retained personnel, whose work for prisoners of war is that which they do normally in their own forces, should be entitled to pay.

We are inclined to think so, because it is obviously to their advantage; they also are compelled to work—even if it is to do the work which is normally theirs—and further, *Article 62*, paragraph 2 grants working pay to prisoners of war<sup>1</sup> who are required to lend medical or spiritual assistance to their comrades. A difference of treatment would therefore appear to be inequitable. It is, however, desirable that belligerents should define exactly, by agreement, what is meant at this point.

*Article 76* refers to censorship by the Detaining Power of prisoners' mail. If *Article 35* lays it down that the correspondence of chaplains shall be subject to censorship, there is no such special provision for medical personnel, any more than there is for the prisoners' representative. As the Detaining Power has an obvious right to ensure its own security, it seems reasonable that the correspondence of the medical personnel may also be subject to censorship, but censorship should not be allowed to hinder them in the performance of their duties.

*Article 79* deals with the election of the prisoners' representative. It does not apply—see what has been said above, under (C).

*Articles 82 to 108* deal with safeguards for prisoners prosecuted for offences with which they are charged. As these safeguards could only be to the advantage of retained personnel, they may be considered as being applicable.

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<sup>1</sup> The persons referred to are those who in civil life have a medical profession or religious vocation, but have served in a combat unit and not in the medical service or as chaplains; therefore, on capture they become prisoners of war. The mention could also include auxiliary medical personnel, whom we shall speak of later.

*Article 92* provides that unsuccessful attempts to escape shall render prisoners liable only to disciplinary punishment. As medical personnel are not prisoners, one could not properly speak of escape in their case, but rather of abandoning their posts. It has sometimes been held that such acts should be regarded with more severity than the escape of a prisoner of war, as they involve to a certain extent a breach of professional duty. This is a matter which can best be left to the judgment of the country of origin, which, if it so wishes, can give suitable instructions to its medical personnel and itself provide for penalties in cases of flight. Even when in enemy hands, the medical personnel remains, as do also the prisoners of war, in the service of their home country. It is easy to visualise therefore, the conclusion of an agreement between the interested Powers, to prevent abandon of duty.

The Convention alone does not entitle the Detaining Power to consider abandon of duty by prisoners of war as more than a breach of camp discipline, and under the Convention it is an offence punishable by disciplinary measures only.

*Articles 109 to 117*, dealing with the repatriation of seriously ill and wounded prisoners, should be made to apply to retained personnel. As the International Committee constantly demanded during the recent War, retained personnel should have every opportunity for presenting themselves before the Mixed Medical Commissions.

It is not easy to see how, except in special circumstances, the provisions for the accommodation in neutral countries of sick and wounded prisoners of war (to allow them to regain their health without being returned to their home country) could refer to medical and religious personnel; both categories have a right to be returned to their home country as soon as their presence in the camps is no longer indispensable, and they remain, so to speak, perpetual candidates for repatriation. Therefore, illness which would entitle a prisoner to accommodation in a neutral country should automatically lead to repatriation in the case of retained personnel. Indeed, from the moment their state of health prevents them from performing medical

duties, there is no longer any justification for retaining them in the camps and they should be allowed to return home.

E. — *Conclusions.*

It may be useful at the end of this study of Art. 28, paragraph 2, to summarise the various elements which to go to make up the special status of medical and religious personnel fallen into enemy hands and retained to care for their countrymen who are prisoners :

(1) — They are not prisoners of war, but enjoy an immunity which attaches to their status ;

(2) — Because of their position as “ retained persons ”, their enemy nationality and the necessity for the Detaining Power to ensure its security, their liberty is, in fact, restricted ;

(3) — In the performance of their duties they are subject to the laws and regulations of the Detaining Power, and to its responsible services ;

(4) — Even apart from the question of their duties, they are subject to camp discipline ;

(5) — Their work is done in harmony with their professional ethics ;

(6) — They may not be compelled to do any work foreign to their proper sphere of duty ;

(7) — They may visit labour detachments and hospitals ;

(8) — The “ responsible medical officer ” and the chaplains have direct access to the authorities and have special facilities for correspondence ;

(9) — They shall have *as a minimum* the benefit of the protection and advantages of the Prisoners of War Convention, in so far as that Convention concerns matters not already dealt with in a special manner for them (see Nos. 3 to 8 above).

*Paragraph 3.* — Relieving of medical personnel.

During the recent war, certain belligerents contemplated the relief of doctors held by the enemy, by personnel from the

home country, the former being then repatriated. A beginning was made in the case of some Yugoslav doctors and of a larger number of French medical officers held in Germany.

The Diplomatic Conference (1949) did not consider it possible to introduce a binding arrangement on these lines, but confined itself to leaving belligerents free to conclude an agreement. Security considerations would of course create difficulties, and it is worth pointing out that when relief on a partial scale was found possible during the recent War, it was when the home country of the medical officers concerned was itself occupied by the Detaining Power.

The Conference, nevertheless, in its Third Resolution invited the International Committee to draw up a model agreement for use in such cases.

*Paragraph 4.* — General obligations of the Detaining Power.

The Article ends by stating that none of its provisions shall relieve the Detaining Power of the obligations imposed on it with regard to the medical and spiritual welfare of prisoners of war.

Under the Prisoners of War Convention, the Detaining Power is bound to provide, free of charge, whatever medical attention the prisoners' state of health may require, to take any necessary public health measures, to set up and operate suitable hospitals, and so forth. It is also bound to allow prisoners to practise their religion, and to provide suitable premises for that purpose.

A Detaining Power may not avail itself of the fact that medical and religious personnel are retained, as an excuse to avoid obligations or as justification for a dereliction on its part; it may not, for example, find in the retention of medical personnel a reason for not making available, from amongst its own men, the additional numbers which may be necessary.

Retention, as the new Convention regards it, should remain a supplementary measure taken for the good of the prisoners themselves and to assist the Detaining Power, which, however, will continue to be fully responsible for prisoners of war in its hands.

*(To be concluded.)*

## THE ICRC IN INDIA AND PAKISTAN

### THE KASHMIRI REFUGEES<sup>1</sup>

In 1947, British India was partitioned and became the two independent States of India and Pakistan. There followed what was probably the greatest movement of population in history. Over ten million persons, sometimes with, sometimes without their belongings, crossed from one to the other of the new States. This mass migration involved the new Governments of India and Pakistan in problems which—it is easy to understand why—are still far from settled.

Moreover, while most of the Indian States attached themselves pacifically to India or Pakistan, an armed conflict broke out in Kashmir and became more and more bloody during 1948. Bands from the North East Frontier province, later followed by units of the Pakistan Army, rapidly joined the armed forces from Western Kashmir. These troops advanced to the limits of Srinagar and then fell back before the army of Maharajah Abdullah and the Indian troops he had called to his assistance.

At the cease-fire on December 31, 1948, over two million people—half the population of Kashmir—had fled into the mountains, where paths are few and dangerous and where many died of hunger and exhaustion while trying to cross the snow-bound passes.

Since January 1, 1949, the antagonists stand face to face, dividing Kashmir in two parts: "Azad Kashmir" to the West and North, protected by Pakistan, and the "Jammu and Kashmir State" in the centre and East, defended by the Indian Union.

Several hundred thousand refugees now returned home and resumed their former occupations, but nearly one million are still homeless and live in camps, with friends, or in small groups which the Government finds great difficulty in feeding.

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<sup>1</sup> Extract from a report submitted to the I.C.R.C. by its delegates to India and Pakistan. See *Revue*, May 1949, p. 332.

It is scarcely possible in their case to draw any distinction between "refugees" and "displaced persons", since the latter, on their return home, found only ruins and devastation.

Kashmir has no railroad; civil and military aircraft can land only in two airfields to the extreme North of Azad, or on two others in Jammu and Kashmir State. Even the typical winding roads, many of them blasted in the sides of precipices, serve only the principal valleys, and transport is by mule-pack or more often by portage. Much of the land is no longer cultivated; the rice fields lie waste, and to cap all, were flooded in 1948. Distress is so general that its multiple problems cannot be solved without outside help. Azad and Jammu-Kashmir appealed respectively to Pakistan and the Indian Union. Both countries were already burdened with the responsibility for the millions of people who had taken shelter with them during the 1947 partition, and were thus unable to give more than palliative relief.

Conditions for refugees, either in Azad Kashmir (Pakistan) or Jammu-Kashmir (India), vary greatly according as they live in camps, or outside.

#### AZAD KASHMIR

About five thousand refugees are lodged either in transit camps, or in so-called "summer" camps, situated near destroyed and depopulated villages, the reconstruction of which is now being attempted. These people live under canvas and receive practically the same food and medical attention as the refugees in the West Punjab camps.

About 150,000 refugees are to be found outside the camps, including some 50,000 children under 12 years of age. The adults are agricultural workers, who live from hand to mouth. The Government found itself obliged to issue rations free to the wholly destitute, and to sell food at reduced rates to the other inhabitants, who have been impoverished through the failure of the crops in 1948 and the very poor first harvest of 1949. Rations cannot be further reduced; the daily figures are 340 grams wheat flour, mixed with maize, for adults, and

170 grams for children. This starvation diet is slightly increased in the case of the poorest.

The refugees' clothing is wretched. Health services are practically non-existent. The authorities are, it is true, endeavouring to provide better hospital accommodation, but have not the money to do so. Malnutrition has seriously reduced the physical stamina of the refugees, who are a much readier prey to disease, so that slight infections often become serious. Diseases most commonly occurring are: pellagra, hunger oedema, recurrent fever, smallpox, exanthematic typhus, typhoid fever, bacillary dysentery, tuberculosis, venereal, skin and eye diseases, and hookworm. The insufficient number of medical officers and staff, and the shortage of medicaments make the treatment and care of patients a matter of great difficulty.

In short, although the general situation of the refugees in this area is better since the beginning of 1949, no marked improvement is likely until food production goes up.

#### WEST PUNJAB (PAKISTAN)

Here also, we must distinguish between refugees living in camps and those outside, where conditions are very dissimilar.

About 100,000 refugees are accommodated in five large camps stretching along the Lahore and Peshawar road, near the border of Afghanistan. These great crowds, whose state of destitution at first beggared description, were not easy to govern, and the Pakistan authorities had to call upon the Army, which was quickly able to redress the situation.

The Army Medical Service did admirable work; local epidemics of exanthematic typhus were promptly stamped out; sanitary regulations were strictly enforced and an incredible chaos of men, women, children, animals and household goods was reduced to order. Camps became clean and the inmates disciplined. In spite of these changes, however, health conditions are still far from satisfactory. The harm done by past hardships of every sort cannot be repaired in a few months. In addition, an aimless existence, relieved of all personal

responsibility, can only end by sapping the morale and the energy of the refugees.

As they cannot settle in Azad Kashmir, the refugees will remain in the camps for many months, maybe for years. The Pakistan Government is apparently disinclined to make any decision about their case before its differences with the Indian Union are settled.

The actual number of refugees living outside camp is not known; the figure has been put at some 280,000, but the Government, which is now taking a census, believes that there are some 450,000 dispersed in villages and small towns throughout the country. Most of them come from the Western area of Jammu Province; they are small farmers and artisans who sought refuge in Pakistan when fighting began in the Autumn of 1947. Their living conditions, at first of the meanest, have much improved as the result of strict supervision imposed by the responsible department of the Ministry for Kashmiri Affairs. Rations are now regularly and equitably issued. The official rations are, it is true, no greater than in Azad Province, but these refugees can do paid work as agricultural labourers, and thus buy extra food. This is an incentive to their seeking employment. As a rule, however, they are worse off than the inhabitants; their clothing is as miserable as that of the other refugees, and their health is no better than that of the population, amongst whom sanitation and hygiene are practically unknown.

#### JAMMU AND KASHMIR STATE

With the exception of the refugees in camps, those who sought safety in Jammu-Kashmir are the most unfortunate, since they are widely dispersed in a mountainous country, where communications are extraordinarily difficult. In Azad and Western Punjab, the refugees are really "refugees", but in Jammu-Kashmir they are rather "displaced persons", whose holdings were ravaged; they include few refugees in the strict sense of the term.

There are five camps, all situated in the town of Jammu or its immediate neighbourhood. The camps are managed

and supplied by the Indian Government and contain nearly 30,000 people. Food, hygiene and medical care are fully up to requirements. As a result, the general death-rate, and infantile mortality in particular, are lower than amongst the population—a fact partly due to the excellent refugee hospital in Jammu.

As the numbers in camp are relatively small, the Government is arranging for the removal and settlement of the inmates in groups of a few hundred each, in the most productive districts, thus leading, it is hoped, to the final closing down of the camps. This, however, is still a distant prospect. The many destitute who cluster round the camps fill the gaps as soon as they occur.

The people living outside the camps are the worst off ; they include displaced persons as well as refugees. Their number cannot be accurately gauged, but the writer himself ascertained that at least 150,000 persons are in an unbelievable state of poverty. Some are gathered in groups of varying sizes, whilst others are dispersed all over the territory. The Government is unable to provide for their needs, but issues relief in the shape of meagre food rations to the poorest, the widows and orphans, and the disabled.

These people are in direst need of clothing, food and medical attention. In these scarcely accessible valleys we discovered what must be one of the most pitiful sights on earth : emaciated human beings, crouching in the shadow of ruined buildings which serve them for shelter ; the adults worn to a shadow, whilst their children, with bodies incredibly swollen through malaria, are covered with vermin and sores, their eyes closed with the exudations of conjunctivitis and hidden by swarming flies.

What must be done ?

Relief, adequate and comprehensive, is required *at once* : food ; clothing ; preventive sanitation ; medical officers and staff ; disinfection squads ; vaccination ; skin and eye specialists ; restoration of district hospitals ; medical stores and mobile dispensaries ; and transport facilities.

That, in broad outline, is a minimum programme, which should be followed by large-scale relief measures.

D<sup>r</sup> R. Marti.

## *DISPLACED GREEK CHILDREN*

The International Committee of the Red Cross and the League of Red Cross Societies have issued invitations to the National Red Cross Societies of the States directly interested in the return home of Greek children from countries in Central and South-West Europe, to meet in Geneva, on March 9 and 10.

The purpose of this meeting is to find a practical solution of the problem. Both International Red Cross organisations, acting at the request of the Secretary-General to the United Nations, have made several attempts to discover such a solution. It is hoped that this meeting may find means of giving effect to the two resolutions unanimously adopted by the United Nations General Assembly on November 27, 1948, and November 18, 1949.

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## *REUNION OF DISPERSED FAMILIES*

Following prolonged negotiations by the International Committee of the Red Cross, an agreement has been concluded between the American Occupation Authorities in Germany and the Czechoslovak Ministry of the Interior, for the transfer from Czechoslovakia to Germany during the next few months of 20,000 persons of German stock who wish to join near relatives already living in Germany.

The agreement states as its object the reunion of families broken up by the war and during the post-war years. Transfer to Germany is not under compulsion, but on the free choice of persons who fulfil the required conditions, i.e. who have relatives in Germany. About 400 persons are expected to travel weekly, and the first party is due to leave in mid-February.

The Prague Delegation of the International Committee of the Red Cross has been requested to help, in particular, by aiding emigrants to get the personal documents they may require and which are stipulated in the agreement. Delegates of the International Committee of the Red Cross will also escort the emigrant trains.

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*SIGNATURE  
OF THE FOUR GENEVA CONVENTIONS  
OF AUGUST 12, 1949*

The six months period, beginning August 12, 1949, allowed for the signature of the four Geneva Conventions expired on February 12, 1950. On that date, 61 States had signed the Conventions. They are :

Afghanistan — Albania — Argentina — Australia — Austria — Belgium — Bielorussia — Bolivia — Brazil — Bulgaria — Canada — Ceylon <sup>1</sup> — Chili — China — Colombia — Cuba — Czechoslovakia — Denmark — Ecuador — Egypt — Ethiopia — Finland — France — Greece — Guatemala — Holy See — Hungary — India — Iran — Ireland (Republic of) — Israel — Italy — Jugoslavia — Lebanon — Liechtenstein — Luxemburg — Mexico — Monaco — Netherlands — New Zealand — Nicaragua — Norway — Pakistan — Paraguay — Peru — Philippines — Poland — Portugal — Rumania — Salvador — Spain — Sweden — Switzerland — Syria — Turkey — Ukraine — United Kingdom — United States of America — Uruguay — U.S.S.R. — Venezuela.

Analysis of the above list shows that of 59 nations with plenipotentiary representations at the Conference, all have signed except Burma, Costa Rica and Siam.

Of four States which had observers, two, Poland and Jugoslavia, have signed, while the Dominican Republic and the Republic of San Marino have not.

Finally, three States not represented at the Diplomatic Conference have signed : the Philippines, Paraguay and Ceylon.

The results are very encouraging ; they make it reasonable to hope that ratification of the Conventions will take place in the near future, and that their entry into force will therefore not long be delayed.

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<sup>1</sup> Except the Fourth Convention.