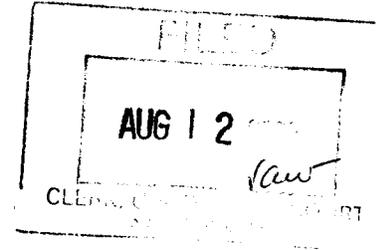


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



YASER ESAM HAMDI,
ESAM FOUAD HAMDI, As Next
Friend of Yaser Esam Hamdi,
Petitioners,

v.

CASE NO. 2:02CV439

DONALD RUMSFELD
Secretary of Defense
COMMANDER W.R. PAULETTE,
Norfolk Naval Brig
Respondents.

PETITIONER'S NOTICE OF SUPPLEMENTAL MATERIALS

In light of the Court's Order setting this matter for a hearing on August 13, 2002, on the sufficiency of the Declaration of Michael Mobbs, and in accordance with the Court of Appeals for the Fourth Circuit's Order dated August 8, 2002, counsel for Petitioner submits the attached materials which may be referred to during oral argument.

1. Letter dated August 5, 2002, from Esam F. Hamdi to Sen. Patrick Leahy; ✓
2. ABA Task Force on Treatment of Enemy Combatants, Preliminary Report, August 8, 2002; ✓
3. May 20, 2002, Transcript, Hamdi v. Rumsfeld, Case No. 2:02cv348 (E. D. Va.) (Miller, Mag. J.);
4. May 29, 2002, Transcript, Hamdi v. Rumsfeld, Case No. 2:02cv348 (E.D. Va.) (Doumar, J.);
5. Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135;

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6. Declaration of Frank W. Dunham, and attachment;
7. Matthew Dolan, *U.S.-Born Taliban Held in Norfolk*, *Virginian-Pilot*, Apr. 6, 2002, at A1;
8. Jess Bravin, *White House Seeks to Expand Indefinite Detentions in Military Brigs, Even for U.S. Citizens*, *Wall St. Jrnl.*, Aug. 8, 2002, at A4;
9. *Why Mr. Hamdi Matters*, *Wash. Post*, Aug. 12, 2002, at B6.

Respectfully submitted,

FRANK W. DUNHAM
Federal Public Defender

By:



Jeremy C. Kamens
Assistant Federal Public Defender
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Office of the Federal Public Defender
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Norfolk, Virginia 23510
(757) 457-0800

CERTIFICATE OF SERVICE

I certify that on this 12th day of August, 2002, a copy of the foregoing was hand-delivered to Lawrence R. Leonard, Managing Assistant United States Attorney, at the Office of the United States Attorney, Eastern District of Virginia, Norfolk Division, World Trade Center, 101 W. Main, Suite 8000, Norfolk, VA 23510.


Jeremy C. Kamens
Assistant Federal Public Defender

August 5, 2002

To: SENATOR PATRICK J. LEAHY - CHAIRMAN
433 Russell Senate Office Bldg
(at Constitution and Delaware)
United States Senate
Washington, DC 20510

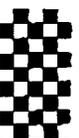
From: ESAM F. HAMDY
P.O. Box 240
Jubail
Saudi Arabia 31951

Dear Senator Leahy,

I am the father of an American citizen being held as an "enemy combatant" in Virginia. I am writing to you because he needs your help. Although he is an American citizen, my son has been termed an "enemy combatant". He has not been charged with any crime, nor has he been able to learn what evidence, if any, is being used against him. Furthermore, without legal counsel or judicial proceedings, my son has not been given the opportunity to defend himself or face his accusers - rights he should be granted under the Constitution.

His story is quite straightforward. My son is Yaser Hamdi, born in Baton Rouge, Louisiana, when I was working with Exxon Chemical in the United States. He was caught up in a local dragnet of non-Afghans in Mazar-e-Sharif in Afghanistan in November 2001. He was moved to Guantanamo Bay, Cuba, and then to Norfolk, Virginia when it was decided to search for his birth certificate.

Yaser left our home in Saudi Arabia for Pakistan and then Afghanistan on July 15, 2001 to do relief work in those countries. This was the first time he traveled on his own. Because of his lack of experience, he was trapped in Afghanistan once the military campaign began, although he was able to call



his mother before September 11, 2001 to inform her that he would be returning soon to Saudi Arabia. As you can see from the dates, he was in the area of Pakistan and Afghanistan less than two months prior to September 11th, which is not enough time to receive any military training, so how can he be considered an enemy combatant?

Yaser was caught at the same time Mr. John Walker Lindh was caught, but unfortunately his rights were not treated the same way. He was kept in Afghanistan jail for 2-3 months prior to being moved to Guantanamo Bay where he stayed for 2 months before they confirmed that he is an American citizen, then they moved him to the Norfolk jail.

Moreover, his lawyer is not allowed to see him, and we can not talk to him, whereas Mr. John Lindh moved directly from Afghanistan to the USA not going through Cuba and not staying for a long time in a jail in Afghanistan.

I am writing to you seeking your assistance as an American Senator to help in getting the proper treatment for my son's case and that he is treated fairly as an American citizen, regardless of the background of his parents or the country where he grew up.

Your assistance is highly appreciated.

Best regards,



ESAM F. HAMDI

AMERICAN BAR ASSOCIATION
TASK FORCE ON TREATMENT OF ENEMY COMBATANTS

PRELIMINARY REPORT*

August 8, 2002

TASK FORCE

Neal R. Sonnett, Chair

John S. Cooke

Eugene R. Fidell

Albert J. Krieger

Stephen A. Saltzburg

Suzanne E. Spaulding

***The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.**

**PRELIMINARY REPORT OF THE
AMERICAN BAR ASSOCIATION
TASK FORCE ON TREATMENT OF ENEMY COMBATANTS**

August 8, 2002

I. INTRODUCTION

The September 11, 2001 attack on the United States not only shocked the nation but identified a new type of enemy: a group of individuals of varying nationalities operating with relative freedom in various countries throughout the world who are committed to murdering innocent men, women, and children found in or associated with the United States; destroying both government and private property in the United States, and creating a climate of fear among Americans at home and abroad. The United States reacted, as any nation would and must, with the support of the international community, to protect its people from future attack.

The unprecedented attack resulted in unprecedented responses by the government. Unable to know when and where another attack might occur, the government understandably felt the need to respond quickly and comprehensively to perceived dangers. In the process, the government confronted some United States citizens who carried arms with forces against whom the United States was engaged in battle and others who appeared to be allied with the enemy responsible for September 11th and committed to future assaults on the United States. This confrontation raised an enormously important and difficult constitutional question: what rights does a United States citizen detained by his or her government have when the citizen is alleged to be allied with an enemy group?

As a nation we have struggled for more than 200 years to establish the proper balance under our Constitution between protection of liberty and individual rights. In time of war or threat of war, the balance may shift – appropriately – toward security, but from past experience we know that such a shift carries with it a danger of government overreaction and undue trespass on individual rights.

The recent cases of Yaser Hamdi¹ and Jose Padilla,² United States citizens detained as "enemy combatants," bring this potential danger into sharp relief and raise troublesome and profound issues. The government has taken the position that "with no meaningful judicial review, any American citizen alleged to be an enemy combatant could be detained indefinitely without charges or counsel on the government's say-so."³

¹ Yaser Hamdi was captured during the hostilities in Afghanistan, and was initially transferred to Camp X-Ray at the Naval Base in Guantanamo Bay, Cuba in January 2002. When it was discovered that he was born in the United States and may not have renounced his citizenship, he was brought to the Naval Station Brig in Norfolk, Virginia in April 2002. He has been continuously detained there as an "enemy combatant."

² Jose Padilla, a.k.a. Abdullah al Muhajir, was arrested in Chicago on May 8, 2002 pursuant to a material witness warrant issued in the Southern District of New York. He was detained in New York City until June 9, 2002, when he was declared to be an "enemy combatant" and transferred to the control of the United States military. The United States District Judge, at the request of the Department of Justice, vacated the material witness warrant, and Padilla was transported to the Consolidated Naval Brig in Charleston, South Carolina for detention as an enemy combatant. *See* Government's Motion to Dismiss Amended Petition for Writ of Habeas Corpus in *Padilla v. Bush, et. al.*, Case No. 02-Civ-4445-MBM (S.D.N.Y.).

³ *See Hamdi v. Rumsfeld*, _____ F.3d _____, 2002 WL 148390802 at *5 (4th Cir. July 12, 2002). We note that both the Hamdi and Padilla cases are in litigation, and facts and arguments may emerge that have not been made public. It is not our purpose to address these cases specifically, but rather to discuss the implications of them and the principles we believe should be considered as our nation confronts the broader questions they raise.

The implications of these detentions are much broader than these two cases. Sadly, in what promises to be a long, complex, and difficult struggle with a worldwide terrorist network, this is not likely to be the last instance in which a U.S. citizen is believed to be or accused of acting in concert with such terrorists.

When a nation is at war, measures may seem reasonable that would never be acceptable in a time of peace. This is as true in the United States as in other countries. War, then, poses the challenge of how to protect a nation so that it may survive and prosper without damaging in the process the very liberty and freedoms for which the nation stands. As a distinguished Justice of the United States Supreme Court warned more than fifty years ago:

....we must be on constant guard against an excessive use of any power, military or otherwise, that results in the needless destruction of our rights and liberties. There must be a careful balancing of interests. And we must ever keep in mind that 'The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.' *Ex parte Milligan*, supra, 4 Wall. at pages 120, 121.

Justice Frank Murphy, concurring in *Duncan v. Kahanamoku*, 327 U.S. 304, 335 (1946).

This is the challenge we faced before, it is the challenge we now face, and sadly it is a challenge unlikely to disappear in the future. How we deal with citizens suspected of terroristic activity will say much about us as a society committed to the rule of law. While we must have the means to prevent more attacks like those of September 11th, we must also insure that there are sufficient safeguards to protect the innocent and prevent possible abuses of power.

In light of the importance of these issues, the ABA Board of Governors, at the request of

President Robert Hirshon, created a Task Force on Treatment of Enemy Combatants to examine these issues.

The task force is chaired by Neal R. Sonnett, a past chair of the ABA Criminal Justice Section, and its members are: retired Brigadier General John S. Cooke, chair of the ABA Standing Committee on Armed Forces Law; Eugene R. Fidell, president of the National Institute of Military Justice; Albert J. Krieger, chair-elect of the ABA Criminal Justice Section; Stephen A. Saltzburg, a member of the ABA Task Force on Terrorism and the Law; and Suzanne E. Spaulding, chair of the ABA Standing Committee on Law & National Security.

The charge of the Task Force was to examine the framework surrounding the detention of United States citizens declared to be "enemy combatants" and the challenging and complex questions of statutory, constitutional, and international law and policy raised by such detentions.

We have not attempted to address the detention of foreign nationals in immigration proceedings,⁴ or individuals held as material witnesses.⁵ Nor have we considered – at least at this time – the issue of foreign nationals held as “enemy combatants” at the United States Naval

⁴ The government recently disclosed that, since September 11th, it detained a total of 751 individuals on immigration violations, and 74 people were still being held in INS custody as of June 13, 2002. See *Center for National Security Studies, et. al. v. United States Department of Justice*, Case No. 01-2500 (Slip. Op. at p.7)

⁵ Two United States District Judges in the Southern District of New York have analyzed the government's use of the material witness statute, 18 U.S.C. §3144 in post 9/11 cases and have reached very different results. Compare *United States v. Awadallah*, 202 F.Supp.2d 55 (S.D.N.Y. 2002) and *United States v. Awadallah*, 202 F.Supp.2d 82 (S.D.N.Y. 2002), both decided on April 30, 2002 with *In re The Application of the United States For a Material Witness Warrant*, ___ F.Supp.2d___, 2002 WL 1592739 (S.D.N.Y. 2002). It is worth noting, however, that material witnesses have the right to appointed counsel. See *In re Class Action Application for Habeas Corpus*

Base at Guantanamo Bay, Cuba.⁶ Rather, our initial concern is whether the government can –or should – be able to detain American citizens indefinitely without charges and hold them incommunicado without a hearing and without access to counsel.⁷

This Report sets forth broad principles which the Task Force believes should govern such detentions. We hope and trust that our analysis, conclusions, and principles will generate discussion and debate on an issue which affects the very fabric of our democracy..

II. BACKGROUND

In the days following the horrific and evil acts of terrorism on September 11, 2001, our nation responded swiftly, aggressively, and with widespread national and international support. Congress did not officially declare war, but it enacted a Joint Resolution authorizing the President "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons."⁸ The United

on Behalf of All Material Witnesses in Western Dist. of Texas, 612 F.Supp. 940 (W.D.Tex.1985).

⁶ Two United States District Courts have recently dismissed habeas corpus claims on behalf of Guantanamo detainees on jurisdictional grounds because the detainees were not within the territorial jurisdiction of the courts. See *Coalition of Clergy v. Bush*, 189 F.Supp.2d 1036 (C.D.Cal. 2002); *Rasul v. Bush*, 2002 WL 1760825 (D.D.C. 2002).

⁷ As we discuss further *infra*, we fully recognize the necessity under some circumstances to detain persons in order to prevent them from engaging in future terrorist attacks. But the power to detain has obvious implications for individual rights and liberty and therefore merits serious and careful examination.

⁸ Public Law 107-40, 115 Stat. 224. The Preamble to the resolution states that the acts of September 11 were attacks against the United States that "render it both necessary and appropriate that

Nations Security Council approved a resolution recognizing the United States' right to self-defense,⁹ and NATO's North Atlantic Council stated that it regarded the attack as an action implicating Article V of the Washington Treaty that "an armed attack against one or more of the Allies in Europe or North America shall be considered an attack against all."

The September 11 attacks were viewed as both crimes and acts of war, and the United States has responded with both military operations and law enforcement actions. Under the circumstances, legal doctrines and principles from both domestic criminal procedure and international law, including the law of war, have been applied. Because of the unique nature of the attacks and our responses to it, it is not surprising that these doctrines and principles have been applied in new ways and have, to some extent, overlapped.

III. ANALYSIS AND LEGAL PRINCIPLES

A. Detention of "Enemy Combatants"

The government maintains that individuals declared to be "enemy combatants" may be detained indefinitely and have no right under the laws and customs of war or the Constitution to meet with counsel concerning their detention. The term "enemy combatant" is not a term of art which has a long established meaning. According to one commentator:

Until now, as used by the attorney general, the term "enemy combatant" appeared nowhere in U.S. criminal law, international

the United States exercise its rights to self-defense."

⁹ See U.N.S.C.Res. 1368.

law or in the law of war. The term appears to have been appropriated from ex parte Quirin, the 1942 Nazi saboteurs case, in which the Supreme Court wrote that "an enemy combatant who without uniform comes secretly through the lines for the purpose of waging war by destruction of life or property [would exemplify] belligerents who are generally deemed not to be entitled to the status of prisoner of war, but to be offenders against the law of war subject to trial and punishment by military tribunals."

Solis, "Even a 'Bad Man' Has Rights," *Washington Post*, Tuesday, June 25, 2002, Page A19.

In the law of war, "enemy" generally describes an opposing state or quasi-state with which another state or quasi-state is at war.¹⁰ In a war between states, the enemy consists of all the citizens of the other state. In wars involving non-states (typically insurgents or contestants in a civil war), who constitutes the enemy is less clear. The "enemy" as an institution or organization (e.g., an insurgent group or a band of partisans) usually does not have a legally cognizable status like a state.

Moreover, who "belongs" to this de facto organization rests not on a single, fairly objective, not easily changed factor like citizenship, but on each individual's allegiance as reflected in acts or even words. In many modern conflicts, including the present one, it is not

¹⁰ "War" may exist when a state of war has been declared or when activities involving the use of force rise to such a level that a state of war exists. Absent a declaration of war, there may be some uncertainty whether a state of war exists, depending on the level and nature of hostile activities. On September 18, 2001, Congress' Joint Resolution (Public Law 107-40, 115 Stat. 224) authorized the President "to use all necessary force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Based on this and U.S. combat operations in Afghanistan it may be concluded that the United States is at war with al Qaeda, the organization deemed responsible for the September 11 attacks.

There is precedent for treating U.S. citizens as enemy combatants. *Ex parte Quirin*, 317 U.S. 1, 63 S.Ct. 2 (1942) was a case in which German soldiers smuggled themselves into the country, hid their uniforms and planned sabotage here before being caught.¹³ They were arrested, prosecuted for what were regarded as crimes of war, convicted, and sentenced – six to death. The Court stated:

By universal agreement and practice, the law of war draws a distinction between the armed forces and the peaceful populations of belligerent nations and also between those who are lawful and unlawful combatants. Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces. Unlawful combatants are likewise subject to capture and detention, but in addition they are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful.

Id. at 317 U.S. 1, 30-31 (1942) (footnotes omitted). However, *Quirin* may not provide the clear precedential value claimed by the government; there was a formal Congressional “Declaration of War” against Germany, and all eight of the defendants were in fact uniformed members of the German military who donned civilian clothing after surreptitiously entering the United States to engage in sabotage.

Moreover, *Quirin* does not stand for the proposition that detainees may be held incommunicado and denied access to counsel, since the defendants in *Quirin* were able to seek review and they were represented by counsel. Since the Supreme Court has decided that even

¹³ *Quirin*, of course, arose during a declared war against nations who were identified enemies. Although two of the detainees claimed to have American citizenship, that claim was not central to the case, and the Supreme Court had little difficulty in finding that Americans who donned foreign uniforms and swore allegiance to a country at war with the United States could lawfully be treated like other members of the armed forces of the enemy country

unusual for persons to hide their allegiance to the enemy for tactical or other purposes.

In the law of war, a “combatant” commonly refers to members of an armed force.¹¹ Members of a state’s armed force are usually clearly distinguishable from civilians, including other government officials and employees. Members of the force normally wear uniforms and carry a distinctive identification card or document. In an organization, such as a rebel group, with an irregular armed force, the line between combatants and noncombatants is much less clear.¹²

¹¹ See Article 4A(1), Geneva Convention Relative to the Treatment of Prisoners of War, 1949.

¹² This is one reason for the requirements for a recognized chain of command and distinctive insignia.

enemy *aliens* within the United States are entitled to review, that right could hardly be denied to United States citizens.¹⁴

In *In re Territo*, 156 F.2d 142 (9th Cir. 1946), a U.S. citizen was captured in Italy while serving in the enemy Italian army and held as a POW in the United States. The court upheld the denial of his petition for writ of habeas corpus, stating, “all persons who are active in opposing an army in war may be captured and except for spies and other non-uniformed plotters and actors for the enemy are prisoners of war.”

Quirin and *Territo* arose in World War II. Little question existed about who the enemy was or whether the *Quirin* defendants or *Territo* were members of the enemy armed forces. Thus, these decisions turned not on whether the detainees were enemy combatants, but on whether enemy combatants— even if U.S. citizens— could be detained and tried by the military. In the current situation, these lines are less clear, both in general and in application in specific cases.

¹⁴ “The contention that enemy alien belligerents have no standing whatever to contest conviction for war crimes by habeas corpus proceedings has twice been emphatically rejected by a unanimous Court. In *Ex parte Quirin*, 317 U.S. 1, 63 S.Ct. 2, 87 L.Ed. 3, we held that status as an enemy alien did not foreclose ‘consideration by the courts of petitioners’ contentions that the Constitution and laws of the United States constitutionally enacted forbid their trial by military commission.’ *Id.*, 317 U.S. at 25, 63 S.Ct. at 9, 87 L.Ed. 3. This we did in the face of a presidential proclamation denying such prisoners access to our courts.” *Johnson v. Eisentrager*, 339 U.S. 763, 794-95, 70 S.Ct. 936, 951-52 (1950) (Justice Black dissenting).

For this reason, the power to label a citizen an “enemy combatant” is potentially very broad.

B. Application of United States Law

Neither the Joint Resolution authorizing the use of force nor any laws enacted in response to the terrorist attacks have addressed the detention of United States citizens as enemy combatants. That is an important consideration, since existing law calls such detention into serious question.

Title 18, §4001(a) of the United States Code provides that “[n]o citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.” The legislative history indicates that this statute applies in the case of any detention of U.S. citizens, and is not limited to the control of civilian prisons:

The twofold purpose of the amended bill is (1) to restrict the imprisonment or other detention of citizens by the United States to situations in which statutory authority for their incarceration exists and (2) to repeal the Emergency Detention Act of 1950 (Title II of the Internal Security Act of 1950) which both authorizes the establishment of detention camps and imposes certain conditions on their use.

House Report No. 92-116, p. 1435, April 6, 1971, Cong. Record Vol. 117, (1971). The House Report explained that specific repeal of the Emergency Detention Act¹⁵ and that the “mere continued existence” of the act had “aroused much concern among American citizens, lest the Detention Act become an instrumentality for apprehending and detaining citizens who hold

¹⁵ The Act had been enacted at the beginning of the Korean War in order to allow for the “apprehension and detention, during internal security emergencies, of individuals deemed likely to engage in espionage or sabotage.” *Id.* at 1436.

unpopular beliefs and views.” *Id.* at p. 1436.

The House Report also noted that the constitutional validity of the Act was “subject to grave challenge” because it allowed for detention merely if there was “reasonable ground to believe that such person probably will engage in, or probably will conspire with other to engage in, acts of espionage or of sabotage” and permitted the government to “refuse to divulge information essential to a defense” which made the provisions for judicial review inadequate.” *Id.*

Thus, 18 U.S.C. § 4001(a) suggests that no U.S. citizens can be detained by the federal government unless charged with violating some Act of Congress, a conclusion that finds strong support in the only case addressing that statute to ever come before the United States Supreme Court, *Howe v. Smith*.¹⁶ In *Howe*, Chief Justice Burger, writing for the Court, declared that “the plain language of § 4001(a) proscribe[es] detention of any kind by the United States, absent a congressional grant of authority to detain.”¹⁷ The *Howe* Court thus read Section 4001(a) expansively to apply to any and all U.S. citizens who were detained by the United States government, under any circumstances.

Under United States law, the validity of the detention of citizen detainees may be challenged by filing a writ of habeas corpus, which Blackstone aptly called “the great and efficacious writ, in all manner of illegal confinement.”¹⁸ As the United States Supreme Court

¹⁶ 452 U.S. 473 (1981).

¹⁷ *Howe*, 452 U.S. at 479 n.3.

¹⁸ 3 W. Blackstone, Commentaries *131 (Lewis ed. 1902). See generally *Fay v. Noia*, 372 U.S. 391, 399--415, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963).

explained in *Harris v. Nelson*, 394 U.S. 286, 291, 89 S.Ct. 1082, 1086 (1969):

The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Its pre-eminent role is recognized by the admonition in the Constitution that: 'The Privilege of the Writ of Habeas Corpus shall not be suspended * * *.' U.S.Const., Art. I, s 9, cl. 2. The scope and flexibility of the writ—its capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.

The Court further commented:

There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law.

Id., 394 U.S. at 292, 89 S.Ct. at 1087.

C. The Geneva Conventions

The four Geneva Conventions of 1949, to which the United States is a party, provide the general framework for analysis of the grounds and procedures for detention and treatment of enemy combatants. The treatment of captured combatants during an armed conflict is covered by the Third Geneva Convention Relative To The Treatment of Prisoners of War, which defines prisoners of war (POWs) and sets forth the framework for their protection. Persons not entitled to POW status, including so-called "unlawful combatants," are nevertheless entitled to protections provided by the Fourth Geneva Convention Relative To The Protection of Civilian Persons in Time of War. However, in cases in which a civilian has engaged in "acts hostile to the security of the State, such individual shall not be entitled to claim such rights and privileges ... as would ... be prejudicial to the security of such State."

Thus, certain lines of demarcation have been drawn that distinguish what is expected of government in various circumstances. It is relatively clear that when we are at war fighting against a declared enemy, as in World War II for example, enemy prisoners who are captured on the battlefield or in the combat arena are declared Prisoners of War and entitled to protection as such. Those prisoners must be treated in accordance with the Convention and have rights under the Convention. They are not criminal defendants; they have no right to counsel; they may be questioned but need not provide any information other than name, rank serial number and date of birth. Prisoners of war do have the right, subject to censorship for security purposes, to correspond with others outside the prison.

Some individuals are captured during war on the battlefield or in the combat arena but do

not qualify as prisoners of war. Such persons are those who have committed a belligerent act and have been captured, but are not part of an organization that qualifies its members as Prisoners of War. Under some circumstances the Fourth Geneva Convention permits detention of civilians in a war zone.

Since it is not always clear whether an individual captured during a war qualifies as a Prisoner of War, Article 5 of the Geneva POW Convention¹⁹ provides that when there is doubt about the status of a captured individual, he or she will be treated the same as a Prisoner of War until such time as his or her status has been determined by a competent tribunal.²⁰ The Article 5

¹⁹ Article 5 states:

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

²⁰ The United States has substantial experience with Article 5 of the Convention; for example, it established Article 5 tribunals for thousands of individuals during the Gulf War. See *Operational Law*

process, however, is not directly relevant to our examination of the treatment of U.S. citizens who are detained in this country.

D. International Human Rights Laws and Treaties

Any analysis of the treatment of enemy combatants must also consider a variety of other recognized international agreements which are relevant to our analysis, particularly to the issue of access to counsel. They include:

Handbook, JA 422 (Charlottesville 1977) at 18-8.

1. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights, adopted in 1948, has been strongly supported by the United States. Indeed, President Bush proclaimed December 9, 2001 as “Human Rights Day & Bill of Rights Week”²¹

Article 8 declares that everyone “has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law” and Article 9 provides that no one “shall be subjected to arbitrary arrest, detention or exile.”

2. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Principle 17(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly in 1988, requires that “[a] detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.” More important, Principle 18 provides:

1. A detained or imprisoned person shall be entitled to communicate

²¹ The Proclamation, issued for the Declaration's 53rd anniversary, stated: "The terrible tragedies of September 11 served as a grievous reminder that the enemies of freedom do not respect or value individual human rights. Their brutal attacks were an attack on these very rights." President Bush called on "the people of the United States to honour the legacy of human rights passed down to us from previous generations and to resolve that such liberties will prevail in our nation and throughout the world as we move into the 21st century."

and consult with his legal counsel.

- 2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.**
- 3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.**

3. International Covenant on Civil and Political Rights (ICCPR)

The International Convention on Civil and Political Rights was adopted and opened for signature, ratification and accession by U.N. General Assembly resolution 2200A (XXI) on December 16, 1966, and became effective in 1976, following ratification by the necessary number of states.²² Article 14 of the ICCPR describes certain standards and procedures that should be

²² G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

used in all courts and tribunals.²³

IV. DISCUSSION

The attack on the United States on September 11, 2001 – as well as other attacks on United States embassies, personnel, and property abroad – raise new and difficult questions for our legal and political systems. Once it began, the hijacking of planes and wanton and willful taking of lives could not go unanswered. The openly declared goal of Al Qaeda to inflict a holy war upon the United States could not go unrecognized. No President or Congress could ignore the threat and pretend that further attacks should not be expected.

The need for action was undeniable. Congress authorized the President to respond. The

²³ At the American Bar Association Midyear meeting in February 2002, the House of Delegates considered and adopted a Report and Recommendation relating to the November 13, 2001, Military Order Regarding “Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism.” Recommendation 6 urged the President and Congress to assure that the law and regulations governing any tribunal would “[r]equire compliance with Articles 14 and 15(1) of the International Covenant on Civil and Political Rights, including but not limited to, provisions regarding prompt notice of charges, representation by counsel of choice, adequate time and facilities to prepare the defense, confrontation and examination of witnesses, assistance of an interpreter, the privilege against self-incrimination, the prohibition of *ex post facto* application of law, and an independent and impartial tribunal, with the proceedings open to the public and press or, when proceedings may be validly closed to the public and press, trial observers, if available, who have appropriate security clearances.”

United Nations recognized the need for the United States to act in self-defense. Accordingly, the President committed American armed forces to do battle with the Taliban and Al Qaeda in Afghanistan. Whether this was a declared war or not, it was approximately as clear who the enemy was in Afghanistan as in previous conflicts: namely, the enemy were the Taliban fighters who repressed the people of that country and the Al Qaeda forces who benefitted from Taliban protection while providing substantial resources to support the Taliban forces.

Many suspected Taliban and Al Qaeda forces or supporters who were captured in battle have been detained, and questions about those detainees abound. Most knowledgeable people recognize that they are difficult questions to answer and involve the law of war, international law, and treaty obligations. Even so, there is concern among many Americans about the prudence, if not the legality, of prolonged incommunicado detention of a large group of people far removed from the battle in which they were captured.

As a society, we know that America is a land in which dissent is a fundamental right, but we take pains to assure that dissent is not confused with treasonous acts. We do not lightly presume that Americans, even those who protest and complain about their country's policies, are "enemies."

If an American citizen who is detained as a Prisoner of War or as an illegal combatant is subsequently prosecuted for treason or for another crime against the United States, that citizen will have the benefit of the constitutional protections afforded all defendants in American criminal prosecutions. The right to counsel, the privilege against self-incrimination, the right to jury trial and other familiar rights will attach once prosecution commences.

There is reason for confidence, therefore, that an American who is charged with a crime against the United States, even one involving the taking up arms against the United States, will receive the full panoply of rights traditionally afforded criminal defendants. Neither the Executive nor the Congress has sought to interfere with the exercise of these rights, and there is no indication that Due Process will be denied those charged with federal crimes.

But, there is genuine reason for concern about a President's – or anyone's – power to unilaterally declare that an American citizen who is arrested in the United States or elsewhere far from any battlefield or combat arena is part of the enemy and thus may be treated in the same way as enemy seized in battle. Indeed, it is both paradoxical and unsatisfactory that uncharged U.S. citizen detainees have fewer rights and protections than those who have been charged with serious criminal offenses, like John Walker Lindh, a U.S. citizen, or foreign nationals like Zacarias Moussaoui, the alleged "20" hijacker" and Richard Reid, the alleged "shoe bomber."

The war on terrorism requires that new questions be asked. With whom are we at war? Who defines the enemy? How does one conduct war against individuals or groups of individuals who swear no allegiance to any nation and whose affiliations to each other are not always clear? What qualifies an individual as a combatant? Who has the right to negotiate to end the war? Who defines how long the war will last? Where is the war actually being fought?

Without knowing the full and complete answers to these broad questions, it is not clear how to answer the narrower questions: May the Executive detain an American citizen or any other person lawfully in the United States as an "enemy", a "combatant", or an "enemy combatant" on the basis of a unilateral determination that the individual is "connected to", a

“supporter of”; a “member of”; or an “aider, abettor or coconspirator of” an individual or group that has participated in an attack on the United States or expressed support for such an attack?

What standard – reasonable suspicion, probable cause, etc. – applies to such detention?

What time limit, if any, applies to such detention? Is there any judicial review available to a detainee? If a decision is made to detain, must that decision be periodically reviewed? Does a detainee have a right to consult with counsel with respect to detention? While being detained?

U.S. courts have generally deferred to military judgment concerning POW status and related questions. See *Johnson v. Eisentrager*, 339 U.S. 763 (1950); *Hamdi v. Rumsfeld*, ___ F.3d ___ (July 12, 2002).²⁴ This deference flows from the President’s and Congress’ primary responsibility for foreign affairs and the prosecution of war, and from the potential damage of judicial interference in military operations. However, the same is not true in circumstances involving U.S. citizens not on the battlefield or in the zone of military operations. See *Ex parte Milligan*, 71 U.S. 2 (1866); *Duncan v. Kahanamoku*, 327 U.S. 304 (1946).²⁵

²⁴ See also *Ex parte Quirin*, 317 U.S. 1 (1942); *In re Territo*, 156 F.2d 142 (9th Cir. 1946).

²⁵ It should be noted that POWs are entitled to and generally can communicate with outsiders. Through such communications they can gain the services of an attorney who can seek relief in an appropriate court. POWs may also communicate, through their chain of command, with representatives from neutral states and international organizations, and in this way raise issues concerning their detention.

Moreover, the federal judiciary has little experience with detention of Americans as enemy combatants outside a declared war, with nations as enemies, and with captured soldiers. *Ex parte Milligan* and *Ex parte Quirin* can be cited for and against judicial involvement in Executive determinations as to combatants, but the reality is that neither decision addresses whether there can be detentions of Americans or lawful residents without some form of judicial review.²⁶

V. RECOMMENDATIONS

We fully recognize that these are very difficult and complex issues. The stark reality is that there is no universal consensus as to the right answers to either the broad or the narrow questions now facing our nation. With the disquieting recognition that the battles of the future could focus on individuals and groups spread among as well as on nations themselves, we nonetheless believe that there are certain principles that should and could receive support from those who appreciate the need to assure that we do not lose our sacred liberties and freedoms while we fight to save them.

The Task Force therefore recommends that the following principles be followed with respect to the treatment of U.S. citizens declared to be enemy combatants:

²⁶ History has not been kind to the Japanese internment cases, which upheld detention of American citizens and lawful residents. Judicial review was ultimately provided, internment was sustained, and the decisions have been questioned as much as any in American law. Indeed, Congress passed the Civil Liberties Act of 1988 “to provide a Presidential apology and symbolic payment of \$20,000.00 to the internees, evacuees, and persons of Japanese ancestry who lost liberty or property because of discriminatory action by the Federal government during World War II.” See <http://www.usdoj.gov/kidspage/crt/redress.htm>.

1. **The Administration Should Explain the Basis and Scope of Its Authority to Detain U.S. Citizens as Enemy Combatants**

The administration should explain, more fully and formally than it has, the basis for detaining someone as an enemy combatant, especially Americans seized far from any recognized battlefield or combat zone.

This is important as a matter of domestic and international law and public support. Actions taken today will serve as precedents forever. Regardless of the wisdom and good faith with which actions are taken, detention without process in a few cases may be used as justification by others for much broader use of such detention.

By better explaining the rationale for such detention (even recognizing that security concerns may limit what can be made public), the government can win support – assuming its reasoning is sound – and can cabin the authority should others try to extend it inappropriately. There may be substantial reasons for such detentions that would be consistent with domestic and international law, but it is also possible that the case for detention is problematic and might create a dangerous precedent.

The Administration has not yet attempted to explain what procedures it believes should be required to assure that detentions are consistent with Due Process, American tradition, and international law. It cannot be sufficient for a President to claim that the Executive can detain whomever it wants, whenever it wants, for as long as it wants as long as the detention bears some relationship to a terrorist act once committed by somebody against the United States. Short of such a claim, what are the limits?

2. **Congress Should Establish Clear Standards and Procedures Governing Detention of United States Citizens**

Congress, in coordination with the Executive branch, should examine the issue of detaining U.S. citizens as enemy combatants, and should enact legislation establishing clear standards and procedures governing the detention and treatment of U.S. citizens detained as enemy combatants. This is particularly necessary in light of our discussion of 18 U.S.C. §4001(a), *supra*.

The Task Force acknowledges the need to give proper deference to the Executive Branch in times of crisis, but neither the Congress nor the Courts should hesitate to question actions which may impact upon or violate long cherished constitutional principles. As the Washington Post recently observed in an editorial:

. . . the government's actions in this latest case cut against basic elements of life under the rule of law. If its positions are correct, nothing would prevent the president – even in the absence of a formal declaration of war – from designating any American as an enemy combatant. Without proving the correctness of the charge before a court, the military could then detain that person forever. And having done so, it could prevent that detainee from hiring a lawyer to argue that the government, in fact, has it all wrong. If that's the case, nobody's constitutional rights are safe. The administration owes the country a more thoughtful balance; Congress's role – the patriotic thing to do – is to help find it.

Editorial, "Detaining Americans" Washington Post, Tuesday, June 11, 2002, Page A24.

Congress should also maintain continuing oversight of detention of U.S. citizens to assure that such detentions are consistent with Due Process, American tradition, and international law.²⁷

²⁷ As part of its oversight authority, Congress should consider requiring periodic reports from the Executive, and should include a provision in the proposed Homeland Security Department providing the Inspector General with specific authority to investigate allegations regarding denial of access to counsel

As Sen. Russell Feingold (D-WI) observed during a United States Senate Judiciary Committee hearing:²⁸

...I do think we need to learn a lesson from this history to question our government when it appears to be overreaching. Such questions are not unpatriotic and should not be viewed as an inconvenience by the Executive Branch. They are a crucial tool for Congress to play its constitutional role in protecting the great heritage of this country and the rule of law.

or violations of constitutional rights arising from continued detentions.

²⁸ Senate Committee on the Judiciary, December 4, 2001,
http://judiciary.senate.gov/member_statement.cfm?id=128&wit_id=85

3. Citizen Detainees Should Have Access to Judicial Review to Challenge Their Detention

As set forth above, United States citizens who are detained by the Government have a right under the Constitution to seek release from their detention through a petition for writ of habeas corpus, a fundamental right which Congress has not suspended. Citizen detainees who have not been charged with violations of United States criminal laws or the law of war should therefore be afforded a prompt opportunity for judicial review of the basis for their continued confinement.

4. Citizen Detainees Should Not be Denied Access to Counsel

The most complex issue examined by the Task Force is that of access to counsel. We agree that a United States citizen detainee should not be denied access to the courts and he or she should, at the very least, have the right to contact an attorney in order to seek habeas corpus relief.

We also agree, however, that the 6th Amendment right to counsel does not technically attach to uncharged enemy combatants, and we recognize that, depending on the geographical location and the state of hostilities, there may be circumstances in which providing a detainee with access to counsel could be unwise, impractical, or dangerous.²⁹

While we are mindful of such concerns, we do not believe that citizens detained within the United States, far from the battlefield, fall within that category. Indeed, the right to prompt judicial review may well be hollow unless citizen detainees are afforded meaningful access to

²⁹ For example, no reasonable person would suggest that the battle should pause while a combatant captured and detained on the battlefield is granted a visit from his or her lawyer.

counsel and to the effective assistance of counsel in order to appropriately challenge their detention.

Government concerns that affording access to counsel may impede the collection of intelligence are not, in our view, so compelling that they justify denial of access to assistance of counsel. Nor are concerns that counsel might be used by detainees to facilitate communications with others. We have confidence that our nation's lawyers can provide effective representation without breaching security. When government practices result in indefinite incommunicado detention, they must be weighed against the requirements of the rule of law and the sacred tradition of providing our nation's citizens with full Due Process rights.

5. **Consideration Should be Given to the International Impact of Our Treatment of Enemy Combatants**

Finally, we urge the Executive and Legislative branches, in establishing and implementing procedures to govern the detention of U.S. citizens held as enemy combatants, to give full consideration to the impact of its policies as precedents in the use of international legal norms in shaping other nations' responses to future acts of terrorism.

VI. CONCLUSION

The Task Force respects and supports President Bush and his administration in their efforts to root out terrorism and assure our homeland security. Of course, we should have the means to prevent more attacks like those of September 11. At the same time, there must be safeguards to protect the innocent and prevent possible abuses of power.

Since our Nation's founding, it has been a bedrock principle of our Democracy that is it

the duty of the courts to protect the constitutional rights of citizens from overreaching government authority—even when that authority is well-intentioned, and regardless of how unpopular or hated those citizens might be. "Only by zealously guarding the rights of the most humble, the most unorthodox and the most despised among us can freedom flourish and endure in our land."³⁰

We would do well to heed the admonition of Justice Murphy in *Duncan v. Kahanamoku*, 327 U.S. 304, 335:

Moreover, we must be on constant guard against an excessive use of any power, military or otherwise, that results in the needless destruction of our rights and liberties. There must be a careful balancing of interests. And we must ever keep in mind that 'The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances.' *Ex parte Milligan*, supra, 4 Wall. at pages 120, 121.

We are a great nation not just because we are the most powerful, but because we are the most democratic. But indefinite detention, denial of counsel, and overly secret proceedings could tear at the Bill of Rights, the very fabric of our great democracy.

³⁰ *Bridges v. Wixon*, 326 U.S. 135, 166 (1945) (Justice Murphy, concurring.)

The ABA Task Force on Treatment of Enemy Combatants will continue to review and analyze these issues, and the American Bar Association stands ready to be of assistance in any way to help establish standards and procedures to ensure that we do not erode our cherished Constitutional safeguards and that we strengthen the rule of law.³¹

We must get this right. The people of this great country deserve no less.

³¹ As Justice Brandeis warned: "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).

**AMERICAN BAR ASSOCIATION
TASK FORCE ON TREATMENT OF ENEMY COMBATANTS**

SUMMARY OF RECOMMENDATIONS

1. **The Administration Should Explain the Basis and Scope of Its Authority to Detain U.S. Citizens as Enemy Combatants**

2. **Congress Should Establish Clear Standards and Procedures Governing Detention of United States Citizens**

3. **Citizen Detainees Should Have Access to Judicial Review to Challenge Their Detention**

4. **Citizen Detainees Should Not be Denied Access to Counsel**

5. **Consideration Should be Given to the International Impact of Our Treatment of Enemy Combatants**

ABA Task Force on Treatment of Enemy Combatants

Chair

NEAL R. SONNETT is a past chair of the ABA Criminal Justice Section, which he now represents in the ABA House of Delegates, and is a member of the ABA Task Force on Gatekeeper Regulation and the Profession. He is vice-president of the American Judicature Society and past president of the National Association of Criminal Defense Lawyers. The *National Law Journal* profiled him as one of the "Nation's Top White Collar Criminal Defense Lawyers" and selected him three times as one of the "100 Most Influential Lawyers In America." He is a former Assistant United States Attorney and Chief of the Criminal Division for the Southern District of Florida.

Members

JOHN S. COOKE is the Director of Judicial Education at the Federal Judicial Center. He retired from the United States Army in 1998 as a Brigadier General after twenty-six years of service in the Judge Advocate General's Corps. He served as Chief Judge, U.S. Army Court of Criminal Appeals, Commander, U.S. Army Legal Services Agency, Judge Advocate (senior legal advisor) for U.S. Army forces in Europe, and Deputy Commandant, The Judge Advocate General's School. He is outgoing chair of the ABA Standing Committee on Armed Forces Law and served on the ABA Task Force on Terrorism and the Law.

EUGENE R. FIDELL is president of the National Institute of Military Justice and a partner in the Washington, D.C. firm of Feldesman, Tucker, Leifer, Fidell & Bank LLP. He served on the Code Committee on Military Justice and the Advisory Board on the Investigative Capability of the Department of Defense, and has taught Military Justice at Yale Law School. He is coeditor (with Dwight H. Sullivan) of *Evolving Military Justice* (Naval Institute Press 2002) and edited NIMJ's forthcoming *Annotated Guide to the Procedures for Trials by Military Commissions* (LEXIS/NEXIS Matthew Bender 2002).

ALBERT J. KRIEGER is a nationally renowned criminal defense trial attorney now in his 54th year of practice. He is the incoming chair of the ABA Criminal Justice Section and a past president of the National Association of Criminal Defense Lawyers, which he represents in the ABA House of Delegates. He served two terms on the ABA Criminal Justice Standards Committee, and he has been honored by local, state, and national bar associations throughout the nation for his lifetime of contributions to the adversary system of criminal justice.

STEPHEN A. SALTZBURG is Howrey Professor of Trial Advocacy, Litigation and Professional Responsibility at the George Washington University Law School. He served as Associate Independent Counsel in the Iran-Contra investigation, and is a former Deputy Assistant Attorney General in the Criminal Division. He serves in the ABA House of Delegates from the Criminal Justice Section and is on the Council of the Litigation Section. He served on the ABA Task Force on Terrorism and the Law, and is a member of the ABA Task Force on Gatekeeper Regulation and the Profession.

SUZANNE SPAULDING currently serves as chair of the ABA Standing Committee on Law and National Security. She has served as Executive Director of the National Commission on Terrorism (the "Bremer Commission") and Executive Director of the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction. She is a former Deputy Staff Director and General Counsel for the Senate Select Committee on Intelligence; and a former Assistant General Counsel for the Central Intelligence Agency.

Transcripts are not available through this web site.

Transcripts are on file in the Clerk's Office, Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, VA. They may be viewed there at no charge.

**To purchase a transcript, contact
Court Reporter Penny C. Wile: 757-222-7075.**

LEXSEE 6 U.S.T. 3316

U.S. Treaties on LEXIS

MULTILATERAL

PROTECTION OF WAR VICTIMS: Prisoners of War

TIAS 3364

6 U.S.T. 3316; 1949 U.S.T. LEXIS 483

August 12, 1949, Date-Signed

February 2, 1956, Date-In-Force

STATUS:

[*1] Convention, with annexes, dated at Geneva August 12, 1949.
Ratification advised by the Senate of the United States of America, subject to a statement, July 6, 1955;
Ratified by the President of the United States of America, subject to said statement, July 14, 1955;
Ratification of the United States of America deposited with the Swiss Federal Council August 2, 1955;
Proclaimed by the President of the United States of America August 30, 1955;
Date of entry into force with respect to the United States of America: February 2, 1956.

CONVENTION DE GENEVE RELATIVE AU TRAITEMENT DES PRISONNIERS
DE GUERRE DU 12 AOUT 1949

GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF
WAR OF AUGUST 12, 1949

RESERVES FAITES A L'OCCASION DE LA SIGNATURE DES CONVENTIONS
DE GENEVE DU 12 AOUT 1949 POUR LA PROTECTION DES VICTIMES DE
LA GUERRE

RESERVATIONS MADE AT THE TIME OF SIGNATURE OF THE GENEVA
CONVENTIONS FOR THE PROTECTION OF WAR VICTIMS OF AUGUST 12,
1949

TEXT:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the Geneva Convention relative to the Treatment of Prisoners of War was open for signature from August 12, 1949 until February 12, 1950, and during that period was signed on [*2] behalf of the United States of America and sixty other States;

WHEREAS the text of the said Convention, in the English and French languages, as certified by the Swiss Federal Council, is word for word as follows:

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War, have agreed as follows:

PART I

GENERAL PROVISIONS

ARTICLE 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

ARTICLE 2

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not [*3] be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

ARTICLE 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal [*4] dignity, in particular, humiliating and degrading treatment;
- (d) the passing of sentences 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.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

ARTICLE 4

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized [*5] resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

(5) Members of crews, including masters, pilots and apprentices, [*6] of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention:

(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by [*7] neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations

exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

ARTICLE 5

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed [*8] a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

ARTICLE 6

In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

ARTICLE 7

Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by [*9] the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

ARTICLE 8

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

ARTICLE 9

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian [*10] organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

ARTICLE 10

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned [*11] or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

ARTICLE 11

In cases where they deem it advisable in the interest of protected persons particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, [*12] each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

PART II

GENERAL PROTECTION OF PRISONERS OF WAR

ARTICLE 12

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When [*13] prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

ARTICLE 13

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults [*14] and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

ARTICLE 14

Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

ARTICLE 15

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.

ARTICLE 16

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any

adverse distinction based on race, nationality, religious belief or political opinions, [*15] or any other distinction founded on similar criteria.

PART III

CAPTIVITY

SECTION I

BEGINNING OF CAPTIVITY

ARTICLE 17

Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.

If he wilfully infringes this rule, he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical [*16] or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand.

ARTICLE 18

All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents [*17] to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said

receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise sums taken away in any currency other than that of the Detaining Power and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their [*18] captivity.

ARTICLE 19

Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

ARTICLE 20

The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible.

SECTION II

INTERNMENT OF PRISONERS OF WAR

CHAPTER [*19] I

GENERAL OBSERVATIONS

ARTICLE 21

The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the

improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or forbidding its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity [*20] with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and towards the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given.

ARTICLE 22

Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.

ARTICLE 23

No prisoner of war may at any time be [*21] sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner of war camps.

Whenever military considerations permit, prisoner of war camps shall be indicated in the day-time by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such.

ARTICLE 24

Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described [*22] in the present Section, and the prisoners therein shall have the same treatment as in other camps.

CHAPTER II

QUARTERS, FOOD AND CLOTHING OF PRISONERS OF WAR

ARTICLE 25

Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

ARTICLE 26

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of [*23] weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

ARTICLE 27

Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured by the Detaining [*24] Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.

ARTICLE 28

Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit

of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

CHAPTER III

HYGIENE AND MEDICAL ATTENTION

ARTICLE 29

The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners [*25] of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

ARTICLE 30

Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the [*26] blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.

ARTICLE 31

Medical inspections of prisoners of war shall be held at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially [*27] tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.

ARTICLE 32

Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49.

CHAPTER IV

MEDICAL PERSONNEL AND CHAPLAINS RETAINED TO ASSIST PRISONERS OF WAR

ARTICLE 33

Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministrations [*28] to prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

(a) They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.

(b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in [*29] Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.

(c) Although they shall be subject to the internal discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.

During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

CHAPTER V

RELIGIOUS, INTELLECTUAL AND PHYSICAL ACTIVITIES

ARTICLE 34

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises [*30] shall be provided where religious services may be held.

ARTICLE 35

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

ARTICLE 36

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, [*31] to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

ARTICLE 37

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed, at the request of the prisoners concerned, to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

ARTICLE 38

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall [*32] take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise, including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

CHAPTER VI

DISCIPLINE

ARTICLE 39

Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the camp commander regardless of his rank.

ARTICLE 40

The wearing of badges of rank and nationality, as well [*33] as of decorations, shall be permitted.

ARTICLE 41

In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, in places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

ARTICLE 42

The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.

CHAPTER VII

RANK OF PRISONERS OF WAR

ARTICLE 43

Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another [*34] the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognize promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.

ARTICLE 44

Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in

sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

ARTICLE 45

Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

CHAPTER [*35] VIII

TRANSFER OF PRISONERS OF WAR AFTER THEIR ARRIVAL IN CAMP

ARTICLE 46

The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

ARTICLE 47

Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by [*36] the journey, unless their safety imperatively demands it.

If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

ARTICLE 48

In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners'

community property and of the luggage they are unable to take with them [*37] in consequence of restrictions imposed by virtue of the second paragraph of this Article.

The costs of transfers shall be borne by the Detaining Power.

SECTION III

LABOUR OF PRISONERS OF WAR

ARTICLE 49

The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

ARTICLE 50

Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

- (a) agriculture;
- (b) industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and [*38] chemical industries; public works and building operations which have no military character or purpose;
- (c) transport and handling of stores which are not military in character or purpose;
- (d) commercial business, and arts and crafts;
- (e) domestic service;
- (f) public utility services having no military character or purpose.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

ARTICLE 51

Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do [*39] and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures.

ARTICLE 52

Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour.

ARTICLE 53

The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive [*40] hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece work are employed, the length of the working period shall not be rendered excessive thereby.

ARTICLE 54

The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123.

ARTICLE 55

The fitness of prisoners of war for work shall be periodically verified by medical examinations at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required [*41] to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom.

ARTICLE 56

The organization and administration of labour detachments shall be similar to those of prisoner of war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of

their government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

ARTICLE 57

The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for [*42] by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

SECTION IV

FINANCIAL RESOURCES OF PRISONERS OF WAR

ARTICLE 58

Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or by the camp administration who will charge them to the accounts of [*43] the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

ARTICLE 59

Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

ARTICLE 60

The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

Category I: Prisoners ranking below sergeants: eight Swiss francs.

Category II: Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss francs.

Category III: Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: fifty Swiss francs.

Category IV: Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: [*44] sixty Swiss francs.

Category V: General officers or prisoners of war of equivalent rank: seventy-five Swiss francs.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

(a) shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above;

(b) may temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitations will be given without delay to the Protecting Power.

ARTICLE 61

The Detaining Power shall accept for distribution [*45] as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

ARTICLE 62

Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners [*46] who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay.

ARTICLE 63

Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependents shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the [*47] Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

ARTICLE 64

The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

(1) The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.

(2) The payments made to the prisoner in cash, or in any other similar form; the payments made [*48] on his behalf and at his request; the sums transferred under Article 63, third paragraph.

ARTICLE 65

Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war.

ARTICLE 66

On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed [*49] by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

ARTICLE 67

Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities.

ARTICLE [*50] 68

Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim by a prisoner of war for compensation in respect of personal effects monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, [*51] signed by a responsible officer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123.

SECTION V

RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

ARTICLE 69

Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures.

ARTICLE 70

Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or to another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address [*52] and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

ARTICLE 71

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary [*53] reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner of war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.

ARTICLE 72

Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, [*54] sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving

assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels.

ARTICLE 73

In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations concerning collective shipments, which [*55] are annexed to the present Convention, shall be applied.

The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

ARTICLE 74

All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners [*56] of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them.

ARTICLE 75

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to [*57] supply them

with such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

(a) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaux referred to in Article 122;

(b) correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby.

ARTICLE 76

The censoring of correspondence addressed to prisoners of war or despatched by them shall be done as quickly as possible. Mail shall be censored only by [*58] the despatching State and the receiving State, and once only by each.

The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

ARTICLE 77

The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instruments, papers or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take [*59] what measures are necessary for the authentication of their signatures.

SECTION VI

RELATIONS BETWEEN PRISONERS OF WAR AND THE AUTHORITIES

CHAPTER I

COMPLAINTS OF PRISONERS OF WAR RESPECTING THE CONDITIONS OF CAPTIVITY

ARTICLE 78

Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited nor considered to be a part of the correspondence quota referred to in Article 71. They must be transmitted immediately. Even if they are recognized to be unfounded, they may not give rise to any punishment.

Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers.

CHAPTER II

PRISONER OF WAR REPRESENTATIVES [*60]

ARTICLE 79

In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. [*61] In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.

ARTICLE 80

Prisoners' representatives shall further the physical, spiritual and intellectual well-being of prisoners of war.

In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance, this organization will be within the province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention. [*62]

Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war.

ARTICLE 81

Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspection of labour detachments, receipt of supplies, etc.).

Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to consult freely his prisoners' representative.

All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities [*63] for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 71.

Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

In case of dismissal, the reasons therefor shall be communicated to the Protecting Power.

CHAPTER III

PENAL AND DISCIPLINARY SANCTIONS

I. General Provisions

ARTICLE 82

A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only.

ARTICLE 83 [*64]

In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures.

ARTICLE 84

A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.

ARTICLE 85

Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

ARTICLE 86

No prisoner of war may be punished more than once for the same act [*65] or on the same charge.

ARTICLE 87

Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges.

ARTICLE 88

Officers, non-commissioned officers and men who are prisoners of war undergoing a [*66] disciplinary or judicial punishment, shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.

In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.

Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war.

II. Disciplinary Sanctions

ARTICLE 89

The disciplinary punishments applicable to prisoners of war are the following:

(1) A fine which shall not exceed 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days.

(2) Discontinuance of privileges [*67] granted over and above the treatment provided for by the present Convention.

(3) Fatigue duties not exceeding two hours daily.

(4) Confinement.

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.

ARTICLE 90

The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

ARTICLE 91

The escape of a prisoner of war shall be [*68] deemed to have succeeded when:

(1) he has joined the armed forces of the Power on which he depends, or those of an allied Power;

(2) he has left the territory under the control of the Detaining Power, or of an ally of the said Power;

(3) he has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

ARTICLE 92

A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must [*69] be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

ARTICLE 93

Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, or the wearing of civilian clothing, shall occasion disciplinary punishment only.

Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only.

ARTICLE 94

If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made.

ARTICLE 95

A prisoner of war accused of an offence [*70] against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interests of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline.

ARTICLE 96

Acts which constitute offences against discipline shall be investigated immediately.

Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced, the accused shall be given precise information regarding [*71] the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.

ARTICLE 97

Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war [*72] and shall be under the immediate supervision of women.

ARTICLE 98

A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 78 and 126.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand over to the infirmary the perishable goods contained [*73] in such parcels.

III. Judicial Proceedings

ARTICLE 99

No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel.

ARTICLE 100

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power on which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in [*74] its power as the result of circumstances independent of his own will.

ARTICLE 101

If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.

ARTICLE 102

A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.

ARTICLE 103

Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

Any period spent by a prisoner of war in confinement [*75] awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.

The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial.

ARTICLE 104

In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This

period of three weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

The said notification shall contain the following information:

- (1) Surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any;
- (2) Place of internment or confinement;
- (3) Specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable;
- (4) Designation of the court which will try the case, likewise the date and place fixed for the opening of the [*76] trial.

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned.

ARTICLE 105

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate [*77] or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war 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, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held *in camera* [*78] in the

interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

ARTICLE 106

Every prisoner of war shall 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. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

ARTICLE 107

Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, [*79] if a prisoner of war is finally convicted or if a sentence pronounced on a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

- (1) the precise wording of the finding and sentence;
- (2) a summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defence;
- (3) notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing sub-paragraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

ARTICLE 108

Sentences pronounced on prisoners of war after a conviction has become duly enforceable, 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. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

[*80]

In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and despatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph.

PART IV

TERMINATION OF CAPTIVITY

SECTION I

DIRECT REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES

ARTICLE 109

Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.

Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the cooperation of the neutral Powers concerned, to make arrangements for the accommodation [*81] in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the following Article. They may, in addition, conclude agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity.

No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities.

ARTICLE 110

The following shall be repatriated direct:

- (1) Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.
- (2) Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.
- (3) Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

The following may be accommodated in a neutral country:

- (1) Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in [*82] a neutral country might increase the prospects of a more certain and speedy recovery.
- (2) Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

(1) Those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation;

(2) Those whose mental or physical powers remain, even after treatment, considerably impaired.

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation [*83] and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention.

ARTICLE 111

The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers, shall endeavour to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities.

ARTICLE 112

Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them. The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission.

ARTICLE 113

Besides those who are designated by the medical authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories [*84] listed below shall be entitled to present themselves for examination by the Mixed Medical Commissions provided for in the foregoing Article:

(1) Wounded and sick proposed by a physician or surgeon who is of the same nationality, or a national of a Party to the conflict allied with the Power on which the said prisoners depend, and who exercises his functions in the camp.

(2) Wounded and sick proposed by their prisoners' representative.

(3) Wounded and sick proposed by the Power on which they depend, or by an organization duly recognized by the said Power and giving assistance to the prisoners.

Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by Mixed Medical Commissions, but shall be examined only after those belonging to the said categories.

The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the Mixed Medical Commission, likewise the prisoners' representative of the said prisoners, shall have permission to be present at the examination.

ARTICLE 114

Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have [*85] the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country.

ARTICLE 115

No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

Prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment.

ARTICLE 116

The cost of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend.

ARTICLE 117

No repatriated person may be employed on active military service.

SECTION II

RELEASE AND REPATRIATION OF PRISONERS OF WAR AT THE CLOSE OF HOSTILITIES

ARTICLE 118

Prisoners of war [*86] shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the Power on which the prisoners depend. This apportionment shall be carried out on the following basis:

(a) If the two Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.

(b) If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as its frontier or its port of embarkation nearest to the territory of the Power on which the prisoners [*87] of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war.

ARTICLE 119

Repatriation shall be effected in conditions similar to those laid down in Articles 46 to 48 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 118 and to those of the following paragraphs.

On repatriation, any articles of value impounded from prisoners of war under Article 18, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 122.

Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can [*88] reasonably carry. Each prisoner shall in all cases be authorized to carry at least twenty-five kilograms.

The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.

Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence.

Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of the proceedings or until punishment has been completed.

By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

SECTION III

DEATH OF PRISONERS OF WAR

ARTICLE 120

Wills of prisoners of war shall be drawn up [*89] so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power; a certified copy shall be sent to the Central Agency.

Death certificates, in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 122. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 17, and also the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The detaining authorities shall ensure that prisoners of [*90] war who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the [*91] Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

ARTICLE 121

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

PART V

INFORMATION BUREAUX AND RELIEF SOCIETIES FOR PRISONERS OF WAR

ARTICLE 122

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners [*92] of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in the fourth, fifth and sixth paragraphs of this Article regarding any enemy person belonging to one of the categories referred to in Article 4, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.

The Bureau shall immediately forward such information by the most rapid means to the Powers concerned, through the intermediary of the Protecting Powers [*93] and likewise of the Central Agency provided for in Article 123.

This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 17, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names, rank, army, regimental, personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital, and deaths, and shall transmit such information in the manner described in the third paragraph above.

Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

The Information Bureau shall also be responsible for replying to all enquiries sent to it concerning prisoners of war, including those [*94] who have died in captivity; it will make any enquiries necessary to obtain the information which is asked for if this is not in its possession.

All written communications made by the Bureau shall be authenticated by a signature or a seal.

The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full particulars of the identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the Parties to the conflict concerned.

ARTICLE 123

A Central Prisoners of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned [*95] the organization of such an Agency.

The function of the Agency shall be to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of

war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief societies provided for in Article 125.

ARTICLE 124

The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 74, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

ARTICLE 125

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet [*96] any other reasonable need, the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, for distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such societies or organizations may be constituted in the territory of the Detaining Power or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

As soon as relief supplies or material intended for the above-mentioned purposes are handed over to prisoners of war, or [*97] very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organization making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners.

PART VI

EXECUTION OF THE CONVENTION

SECTION I

GENERAL PROVISIONS

ARTICLE 126

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They

shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, [*98] and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

ARTICLE 127

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.

ARTICLE 128

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during [*99] hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

ARTICLE 129

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit [*100] by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

ARTICLE 130

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

ARTICLE 131

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

ARTICLE 132

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, [*101] the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

SECTION II

FINAL PROVISIONS

ARTICLE 133

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

ARTICLE 134

The present Convention replaces the Convention of July 27, 1929, in relations between the High Contracting Parties.

ARTICLE 135

In the relations between the Powers which are bound by the Hague Convention respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of the Hague.

ARTICLE 136

The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which [*102] opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Convention of July 27, 1929.

ARTICLE 137

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ARTICLE 138

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

ARTICLE 139

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

ARTICLE 140

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions [*103] to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

ARTICLE 141

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

ARTICLE 142

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect [*104] only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

ARTICLE 143

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

IN WITNESS WHEREOF the undersigned, having deposited their respective full powers, have signed the present Convention.

DONE at Geneva this twelfth day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

PEOPLE'S REPUBLIC OF ALBANIA

Mr. MALO, First Secretary to the Albanian Legation in Paris:

(1) Convention for the Amelioration of the Condition of the Wounded and Sick [*105] in Armed Forces in the Field.

Article 10: "The People's Republic of Albania will not recognize a request by a Detaining Power to a humanitarian organization or to a neutral State to take the place of a Protecting Power, as being in order, unless the Power of which the protected persons are nationals has given its consent."

(2) Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

Article 10: "The People's Republic of Albania will not recognize a request by a Detaining Power to a humanitarian organization or to a neutral State to take the place of a Protecting Power, as being in order, unless the Power of which the protected persons are nationals has given its consent."

(3) Convention relative to the Treatment of Prisoners of War.

Article 10: "The People's Republic of Albania will not recognize a request by a Detaining Power to a humanitarian organization or to a neutral State to take the place of a Protecting Power, as being in order, unless the Power of which the prisoners of war are nationals has given its consent."

Article 12: "The People's Republic of Albania considers that in the case of prisoners [*106] of war being transferred to another Power by the Detaining Power, the responsibility for the application of the Convention to such prisoners of war will continue to rest with the Power which captured them."

Article 85: "The People's Republic of Albania considers that persons convicted under the law of the Detaining Power, in accordance with the principles of the Nuremberg trial, of war crimes and crimes against humanity, must be treated in the same manner as persons convicted in the country in question. Albania does not, therefore, consider herself bound by Article 85 so far as the category of persons mentioned in the present reservation is concerned."

(4) Convention relative to the Protection of Civilian Persons in Time of War.

Article 11: "The People's Republic of Albania will not recognize a request by a Detaining Power to a humanitarian organization or to a neutral State to take the place of a Protecting Power, as being in order, unless the Power of which the protected persons are nationals has given its consent."

Article 45: "The People's Republic of Albania considers that in the case of protected persons being transferred to another Power by the Detaining Power, [*107] the responsibility for the application of the Convention to such protected persons will continue to rest with the Detaining Power."

ARGENTINA

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

YASER ESAM HAMDI,)
)
 ESAM FOUAD HAMDI, As Next)
 Friend of Yaser Esam Hamdi,)
)
 Petitioners,)
)
)
 v.)
)
)
 DONALD RUMSFELD)
 Secretary of Defense)
)
)
 COMMANDER W.R. PAULETTE,)
 Norfolk Naval Brig)
)
 Respondents.)

CASE NO. 2:02CV439

DECLARATION OF FRANK W. DUNHAM, JR.

1. My name is Frank W. Dunham, Jr., and I am the Federal Public Defender for the Eastern District of Virginia. I currently represent Yaser Esam Hamdi who is being held in the Naval Brig in Norfolk.

2. I have been in communication with Attorney Tony West, counsel for John Walker Lindh, an American citizen and defendant charged generally in this district with Title 18 offenses

after being captured with a Taliban unit in Afghanistan. (*See United States v. John Phillip Walker Lindh*, Crim. No. 02-37-A, Alexandria Division). To the extent further detail on this case is required, it is respectfully suggested that this Court take notice of its own proceedings.

3. As a result of direction from Judge Ellis in *Lindh* (*see* attached transcript excerpts), I was contacted by Tony West in late May or early June of this year. Mr. West wanted my permission to speak to Mr. Hamdi.

4. Mr. West explained at that time, and has recently reaffirmed in more detail, that he wanted to speak to Mr. Hamdi because he was provided by the government with statements and/or government summaries of statements attributed to Mr. Hamdi which were deemed by the government and the Court in *Lindh* to be exculpatory to Mr. Lindh on the issues of:

- a. whether Mr. Lindh was an enemy combatant;
- b. whether Mr. Lindh bore arms against Americans;
- c. whether Mr. Lindh was part of an uprising of prisoners captured by the Northern Alliance.

5. Mr. West could not tell me what specifically was in the statements because he is subject to a protective order, but he says they are definitely not classified. While unable to provide detail, he did say that since these statements were clearly exculpatory to *Lindh* on these particular issues, it might not be unreasonable to infer that they are equally exculpatory in nature to *Hamdi* on these issues.

6. *Lindh* counsel advises that while Mr. Lindh has firsthand knowledge concerning Mr. Hamdi, he cannot be interviewed by third parties due to the Special Administrative Measures under which he is being detained.


FRANK W. DUNHAM, JR.

Subj: Judge Ellis re Yasser Hamdi
Date: 8/9/02 5:00:05 PM Eastern Daylight Time
From: KEfigenio@mofa.com (Efigenio, Kerry A.)
To: fdunham@aol.com

Mr. Dunham, here is excerpts from the 5/28 and 5/31 court hearings regarding Mr. Hamdi.

Kerry Efigenio
tel: 415-268-7210

> Tuesday, May 28, 2002

>
> 23 ATTORNEY HARRIS: His name is Isaam Humdi
>
> 24 (phonetic), and he has been the subject of a government
>
> 25 report that has been produced under Brady as material and

19

> 1 exculpatory.
>
> 2 THE COURT: Yes. Well, I think I recall
>
> 3 the report, but I don't recall that he was in Norfolk.
>
> 4 Is that where he is now?

> 5 ATTORNEY DAVIS: Yes, your Honor.

=====
> 21

> 1 THE COURT: I take it time he is not
>
> 2 charged or indicted at this time.
>
> 3 ATTORNEY DAVIS: I'm sorry, your Honor?
>
> 4 THE COURT: He is not charged and indicted
>
> 5 at this time?
>
> 6 ATTORNEY DAVIS: That's correct. He does
>
> 7 continue to be viewed as an enemy combatant, and in that
>
> 8 way is like the other detainees. That is, he has --
>
> 9 well, I believe he has joint Saudi/U.S. citizenship, and
>
> 10 was, for all intents and purposes, a Saudi combatant in

>
> 11 Afghanistan, like many of the others.

> 12 THE COURT: Well, I told you before I have
> 13 never understood this dual citizenship. I know it has
> 14 some sanction in some of the cases. But every time I
> 15 administer the oath of citizenship to new citizens once a
> 16 month, they have to give up, renounce, abjure all of
> 17 their fidelity and loyalty to any other prince or
> 18 potentate, and have to give up their passports.

> 19 I don't see how you can be a citizen of
> 20 this country and some other country. Maybe some other
> 21 countries can see it, but I don't. In any event, that's
> 22 not relevant at this time.

> 23 He is not to be moved, is he, from
> 24 Virginia?

> 25 ATTORNEY DAVIS: No; at least now, no, your
> 22

> 1 Honor.

> 2 THE COURT: All right. Well, Mr. Harris
> 3 would like to talk to him, I am sure.

> 4 Is that right, Mr. Harris?

> 5 ATTORNEY HARRIS: Yes, your Honor.

> 6 THE COURT: And I want to know why he
> 7 shouldn't be able to talk to him, since he is in
> 8 Virginia, and none of the arguments you've made
> 9 elaborately ly and forcefully in the other pleadings
> 10 apply to him.

=====

> 8 THE COURT: Well, let me suggest to you,
> 9 and you can take it as a direction, that counsel in

>
> 13 picture of the American justice system in that regard.
>
>
>
>
=====

> Friday, May 31, 2002
>

> 2 THE COURT: All right, the record will reflect that
>
> 3 this is United States against John Walker Lindh and that
>
> 4 counsel are present and prepared to proceed.
>

> 5 Let me begin first with the Government's response.
>
> 6 The Government, in compliance with the Court's direction,
>
> 7 has filed a pleading reflecting the results of a hearing in
>
> 8 Norfolk relating to Yaser Hamdi.
>

> 9 And, Mr. Bellows or Mr. Davis, whoever is going to
>
> 10 address this – Mr. Davis?
>

> 11 MR. DAVIS: Yes, Your Honor.
>

> 12 THE COURT: Mr. Davis, I take it that Judge Doumar
>
> 13 has appointed Mr. Dunham to represent Mr. Hamdi, and the
>
> 14 Government is considering whether to seek relief from that
>
> 15 order?
>

> 16 MR. DAVIS: That's correct, Your Honor. The order
>
> 17 of May 29th does appoint Mr. Dunham in the Federal Public
>
> 18 Defender's office as counsel for Mr. Hamdi.
>

> 19 THE COURT: All right, now it seems to the Court
>
> 20 that there are two separate considerations. One is whether
>
> 21 defense counsel here can interview Mr. Hamdi, and that's,
>
> 22 of course, at least for the time being a matter that they
>
> 23 are free to pursue with Mr. Dunham directly. There is no
>
> 24 reason why Mr. Harris or Mr. Brosnahan can't call Mr.>
>
> 25 Dunham.

>
>
> 1 I think you might be willing to predict with some
>
> 2 confidence what the results of that would be, but
>
> 3 nonetheless there is no reason why they shouldn't contact
>
> 4 him, is there?
>

=====

>
> 20 THE COURT: So the matter is really premature at
>
> 21 this time as to whether any subpoena is appropriately
>
> 22 issued to that person, but I don't see any reason why you
>
> 23 can't contact Mr. Dunham and talk to him about gaining
>
> 24 access to Mr. Hamdi.

> 25 Mr. Dunham may well tell you, the answer is no for
> 5

>
> 1 the time being. We'll wait until the Government appeal is
>
> 2 over, and I will consider it again. I don't know what he
>
> 3 is going to tell you, but that's predictable. But the
>
> 4 subpoena itself seems premature.

> 5 Mr. Harris, do you want to address that, or Mr.
>
> 6 Brosnahan?
>

=====

>
> 17 THE COURT: Well, Mr. Harris, it seems to me it's
>
> 18 still premature. You can subpoena him, and I'll consider
>
> 19 whether there is an objection to the subpoena at the
>
> 20 appropriate time, and we will take it up.

> 21 In the meantime, if you want access to him, try Mr.
>
> 22 Dunham. There is no reason why you can't call Mr. Dunham,
>
> 23 but we will see whatever he says. He may not represent him
>
> 24 for very long. I don't know. I don't know what the status
>
> 25 of that will ultimately be.
>

=====
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U.S.-BORN TALIBAN HELD IN NORFOLK

Published: April 6, 2002

Section: FRONT, page A1

Source: MATTHEW DOLAN THE VIRGINIAN-PILOT

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NORFOLK - A military jail at Norfolk Naval Station became the home Friday for an American-born man captured in Afghanistan as U.S. officials continued to wrestle with his legal status.

On a sunny but brisk afternoon, Yasser Esam **Hamdi**, 22, arrived at 2:15 at the base's Chambers Field. He was placed in a green government minivan with tinted windows and driven down Hampton Boulevard by military police escort, a short ride from the airstrip to the base's brig, officials confirmed. All day, access to the two-building compound ringed by barbed wire was blocked by armed guards and barricades on the entrance road.

Hamdi was seized by U.S. forces with fighters of the ruling Taliban militia and the al-Qaida terror network after a November prison uprising in the northern Afghan town of Mazar-e Sharif.

"Given the likelihood that **Hamdi** is an American citizen, it was deemed appropriate to move him to the United States," said Lt. Cmdr. Jeff Davis, a Pentagon spokesman. "As a captured enemy combatant, **Hamdi** remains in the control of the Department of Defense."

Hamdi left the U.S. naval base at Guantanamo Bay, Cuba, aboard a C-130 transport plane early Friday. His plane touched down at Dulles International Airport shortly after noon and took off again about 90 minutes later.

He had been at Guantanamo Bay since Feb. 11.

Officials did not explain why **Hamdi** was flown to Dulles and then moved to Norfolk.

No civilian criminal charges have been filed against **Hamdi**.

A Justice Department official said no decision has been made on

HOW TO HANDLE **HAMDI'S** legal status. Options include pursuing federal criminal charges or seeking a trial by military tribunal.

That decision is "a long way off," said the official, speaking on condition of anonymity.

Gen. Tommy Franks, commander of U.S. forces in Afghanistan, told reporters Friday that because **Hamdi** spoke English when he was captured, officials knew there was a possibility he might be American. Franks said the matter had not been resolved when **Hamdi** was transferred to Guantanamo Bay along with other prisoners captured in Afghanistan.

If federal charges are brought, **Hamdi** would be tried in one of the four U.S. District Courts in the Eastern District of Virginia - Alexandria, Newport News, Norfolk or Richmond. Federal law mandates that anyone charged with a federal crime who is brought into the country from a foreign nation must be tried in the district where the plane touches down.

While Alexandria seems the likely court of choice, the Norfolk court could still be an option because **Hamdi** will be housed nearby at the naval base, officials said. It was unclear why the Norfolk brig was chosen rather than a military confinement facility closer to Alexandria. The Marine Corps, for example, has a brig at Quantico, roughly 30 miles from the Alexandria courthouse, though it is certified to hold prisoners for no more than 90 days at a time.

Though the Washington area is home to a variety of military bases, another defense official suggested that the brig at Norfolk Naval Station is the closest military facility to Alexandria with the kind of security arrangements needed for a prisoner like **Hamdi**. Holding him there would facilitate a transfer to Justice Department custody when the proper time for that comes, the official said.

One official said Navy leaders had been told to prepare for **Hamdi's** arrival in Norfolk but given no indication of how long he might be staying. The Norfolk brig can officially hold 145 prisoners.

"It's hardly state of the art," said Virginia Beach attorney Greg D. McCormack, who specializes in handling military cases. McCormack and another lawyer familiar with the facility described the brig's security as tight.

The brig, which opened in 1972 as the Naval Station Correctional Center, is located on an unsecured portion of the Norfolk base, well outside the gates and fencing that surround

the rest of the base. Just off Ingersoll Road, the three-story facility sits northwest of Camp Allen Elementary School and is visible from Interstate 564.

In 1973, the brig had a riot in which a dozen prisoners reportedly took over sections of the jail.

The brig is certified to confine prisoners from all branches of the armed services and also operates a correctional custody unit, which can hold 20 male and 10 female prisoners. That unit is designed to provide training and regimentation to junior sailors and return them to their units to complete their enlistments.

According to a Navy Web site, the brig's staff includes three officers, 120 enlisted sailors and six civilian employees.

McCormack, the lawyer, said the facility has a solitary-confinement block with about six, single-occupancy cells. Prisoners facing the most-serious charges are confined in those windowless cells, he said.

Typically, prisoners awaiting military trials known as courts-martial and those convicted and sentenced to prison terms of less than 36 months are held in the Norfolk brig, McCormack said.

A defense official suggested that the military would have preferred to turn **Hamdi** over to federal marshals, but the Justice Department was not prepared to move forward with charges.

John Walker Lindh, a former Californian who was dubbed "American Taliban," was captured at the same Afghan prison as **Hamdi** and awaits trial in Alexandria.

Lindh never was held at Guantanamo Bay. After being taken aboard a Navy ship in the Arabian Sea in November, he was flown Jan. 23 to Alexandria. He is charged with conspiring to murder Americans, providing support and services to foreign terrorist organizations, including al-Qaida, and using firearms and destructive devices during crimes of violence.

Before deciding **Hamdi's** citizenship claims, Justice Department officials were reportedly researching whether he had ever sought dual citizenship or renounced his American citizenship.

Justice Department officials recently located a birth certificate backing up **Hamdi's** claim that he was born in Baton Rouge, La., in 1979, while his Saudi parents worked there. He went to Saudi Arabia with his parents while still a toddler, Pentagon spokeswoman Victoria Clarke said Thursday.

Clarke said she did not know when **Hamdi** initially told U.S. officials of his claim to American citizenship.

Reach Matthew Dolan at mdolan(AT)pilotonline.com or 446-2322. **Description of illustration(s):**
STEVE EARLEY PHOTOS/THE VIRGINIAN-PILOT
Military police escort a minivan transporting suspected American Taliban Yasser Esam **Hamdi** down Hampton Boulevard to the brig at the Norfolk Naval Station on Friday. No decision has been made on how to handle **Hamdi's** legal status.

A Norfolk Naval Station police officer provides security as a motorcade carries the American Taliban suspect to the brig on Friday. The suspect was flown from Guantanamo Bay, **Cuba**, earlier in the day.

COLOR PHOTOS
GENEVIEVE ROSS/THE VIRGINIAN-PILOT
IN NORFOLK: Armed guards block the road leading to the Norfolk Naval Station brig, where American-born Taliban fighter Yasser Esam **Hamdi**, 22, was moved Friday.

TERRY RICHARDS/NEWS GROUP NEWSPAPERS LTD.
IN AFGHANISTAN: A Taliban prisoner identified as Yasser Esam **Hamdi** is shown in December in Mazar-e Sharif following his capture. **Hamdi** was eventually sent on to the U.S. detention center at Guantanamo Bay, **Cuba**, before being moved Friday to the Norfolk Naval Station brig. A birth certificate backs up **Hamdi's** claim that he was born in the United States.

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Thursday, August 8, 2002

Politics & Policy

More Terror Suspects May Sit in Limbo

White House Seeks to Expand Indefinite Detentions
in Military Brigs, Even for
U.S. Citizens
By Jess Bravin

Washington -- SUSPECTED TERRORISTS Jose Padilla and Yaser Hamdi -- U.S. citizens being held in stateside Navy brigs without bail, charges, access to attorneys or the right to remain silent -- may soon have company.

Stung by the courtroom circus that yet another accused terrorist, Zacarias Moussaoui, has created, and the aggressive defense marshaled by John Walker Lindh before he plea-bargained his way out of a possible life sentence, the Bush administration is preparing to expand its policy of indefinitely detaining in U.S. military jails people it designates as "enemy combatants." Such prisoners -- whether Americans or foreigners captured in the U.S. -- aren't afforded the same constitutional rights as criminal defendants, or even the limited rights allowed in military tribunals.

The White House is considering creating a high-level committee to decide which prisoners should be denied access to federal courts. The Goose Creek, S.C., facility that houses Mr. Padilla -- mostly empty since it was designated in January to hold foreigners captured in the U.S. and facing military tribunals -- now has a special wing that could be used to jail about 20 U.S. citizens if the government were to deem them enemy combatants, a senior administration official said.

U.S. citizens or aliens arrested on American soil have better claims to constitutional rights than the foreigners captured overseas who are being held at the U.S. Guantanamo Bay Naval Base in Cuba. This year, two federal judges have ruled that the Guantanamo detainees have no right to seek freedom in U.S. courts.

Raising the stakes this week in what could become a constitutional showdown, the administration refused a federal court's order to turn over intelligence documents related to the capture of Mr. Hamdi, who is imprisoned in Norfolk, Va., claiming the judge lacked the authority on procedural grounds. It also is trying to get his public defender removed from the case. Officials said they selected brigs in South Carolina and Virginia partly because they fall under the jurisdiction of courts that are more conservative and presumably more sympathetic to the administration. The Padilla case is being handled by a judge in New York, where a grand jury has been investigating terrorist activity, but the administration wants it transferred to Charleston, S.C.

The moves are part of a fierce fight the administration is waging to establish precedents in the two cases that would allow it to indefinitely detain more people it designates as wartime foes. The issues seem destined for the Supreme Court, which has a mixed record on such matters. During the Civil War, it barred the military detention of noncombatant Americans when federal courts are functioning, but it upheld the roundup of 120,000 Japanese-Americans and the secret trial and execution of Nazi saboteurs during World War II.

"There's a different legal regime that we're developing" to confront terrorism, a senior official said, melding the once-separate realms of civilian law and the law of war. Criminal law determines guilt and assigns punishment for past wrongdoing, but the law of war gives governments vast powers to prevent possible harm by imprisoning and interrogating enemy soldiers.

Does that mean future Moussaouis won't face civilian trials? "Not if we can help it," said a White House official.

Some in Congress consider the policy misguided. "The fact that somebody is despicable . . . is not enough under the tradition and history of this country to imprison them forever without them ever having a hearing," said Sen. John Edwards, a North Carolina Democrat.

Critics point to a 1971 law, partly inspired by the Japanese-American detentions, that bars imprisoning citizens "except pursuant to an act of Congress." The administration maintains that the law doesn't apply to enemy combatants.

Attorney General John Ashcroft said last month that courts could hear petitions filed for such prisoners. But in papers filed Tuesday in the **Hamdi** case, the Justice Department argued for the narrowest possible review, saying a signed Pentagon declaration that Mr. **Hamdi** is an enemy combatant should settle the matter.

At the outset of the campaign against al Qaeda, the international Islamist network organized by Osama bin Laden, career federal prosecutors maintained that they are best suited to deal with terrorists. But the Moussaoui and Lindh cases soured top officials on that route.

After dropping the most serious charges against Mr. Lindh, prosecutors agreed to let him to plead guilty to aiding the enemy in Afghanistan, and he now faces 20 years in prison. But the elaborate defense put up by the Californian's lawyers drained government resources and threatened to expose intelligence, military techniques and personnel, and even to bring al Qaeda battlefield prisoners to the witness stand in the Alexandria, Va., federal courthouse. Mr. Moussaoui, a French citizen captured in Minnesota while allegedly conspiring to take part in the Sept. 11 plot, is representing himself and flooding the same court with bizarre and accusatory motions aimed at glorifying Mr. bin Laden.

By the time Mr. Padilla, an American from Chicago, was arrested in May, the administration already had tired of such games. Mr. Padilla is a onetime gang member who converted to Islam in the early 1990s. He was arrested after returning from Pakistan, where he allegedly took part in an al Qaeda plot to detonate a "dirty bomb" that would spread radioactive material in the U.S.

Originally jailed on a secret "material witness" warrant, Mr. Padilla was transferred to military custody on the eve of a hearing where a court-appointed lawyer was to seek his freedom. President Bush personally approved Mr. Padilla's transfer, but

officials said they are considering procedures that wouldn't require presidential involvement in future cases.

Under one proposal, a committee of the attorney general, the defense secretary and the director of central intelligence would determine whether a U.S. citizen should go to military detention. If the prisoner were foreign, the national-security adviser also would be involved.

At least two prisoners now held as material witnesses could be candidates for combatant classification:

-- James Ujaama, a U.S. citizen from Seattle, was arrested last month as part of an investigation into alleged plans to set up an al Qaeda-linked training camp in rural Oregon. He is jailed in Alexandria.

-- Mohammed Mansour Jabarah, a Kuwaiti-born Canadian citizen, was arrested in Oman and turned over to the U.S. after allegedly plotting to blow up U.S. and Israeli embassies in Singapore. He is being held at Fort Hamilton in Brooklyn, N.Y., according to an administration official.

In Hanahan, S.C., next door to Mr. Padilla's brig, residents have their own concerns. "I didn't know they could lock you up without a trial," says Charles Bates, a retired shipyard worker whose house abuts the naval facility. His greater concern, however, is the possibility of retaliatory terrorist strikes against his town. "It's not helping the value of our property, having that brig there," he adds.

--- INDEX REFERENCES ---

NEWS SUBJECT: Defense Department; Armed Forces; Executive Government; Justice Department; September 11 Terrorist Attacks; Crime; Crime/Courts; Wall Street Journal; English language content; Domestic Politics; Political/General News; Politics; Acts Of Terror; Military Action; Government Bodies (GVDEF GDEF GVEXE GVJUS 911 CRM GCRIM WSJ ENGL GPOL GCAT PLT GTERR MLT GVBOD)

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B6 SUNDAY, AUGUST 11, 2002 R DM VA

The Washington Post

AN INDEPENDENT NEWSPAPER

Why Mr. Hamdi Matters

CONSIDERING what is known about Yasser Ram Hamdi, it is easy to lose sight of why his case is so important. The government claims that Mr. Hamdi—the Louisiana-born, Saudi-raised and likely American citizen who is currently being held indefinitely without charge or access to counsel in a military brig in Norfolk—is an enemy combatant. He was, the government says, captured when the Taliban unit to which he was attached surrendered to the Northern Alliance, and he has al-

ready admitted that he went to Afghanistan to train with and, if necessary, fight for the Taliban. His father's claim, made in a letter last week to members of Congress, that his son went as a relief worker is being greeted with skepticism. Mr. Hamdi is, in short, hardly a sympathetic character. Many Americans will be tempted to conclude that if people like him cannot be locked up easily, there must be some problem with the rules.

A remarkable story in Thursday's Wall Street Journal shows why this instinct may be wrong and why it is essential that the government be required to justify persuasively "enemy combatant" designations. The White House, the Journal reported, has become dismayed by the legal circus of the Zacarias Mousaoui trial and the strong defense put forth for John Walker Lindh. In reaction, it has determined that, rather than pursue civilian trials, the government should—assuming it prevails in the Hamdi and Jose Padilla cases—use enemy combatant detentions instead. A wing of a navy brig in Goose Creek, S.C., where Mr. Padilla—held in connection with an alleged dirty bomb plot—now resides, is available for Americans subject to military detentions. And a high-level committee—composed of the attorney general, the defense secretary and the CIA director—is being contemplated to decide which American citizens should be locked up with no rights. The White House did not respond to our requests for clarification. Eiden-

nor did it comment upon the accuracy of the Journal's story.

The government is right to worry about the chaos the Mousaoui trial has produced, which has been both dangerous and embarrassing. And few doubt that the military has the authority to detain enemy combatants—a long-standing feature of the laws of war. But the idea of using enemy combatant designations of citizens as a relatively routine means of handling terrorism cases is appalling. A cardinal principle of liberty in this country is the requirement that the government justify deprivations of freedom. Yet the emerging hallmark of the enemy combatant cases is the unwillingness of the government to do precisely that. In Mr. Hamdi's case, the Justice Department initially argued that its designation was unreviewable by any court. Even now, after an appeals court cast doubt on that position, the government contends that the courts should not look beyond the sketchiest of evidentiary statements it has offered in justifying its view of Mr. Hamdi. Creating a regime under which these detentions would be a norm, rather than an extraordinary exception, would be extremely dangerous.

For this reason, it is critical that judges remember how the doctrine they are creating could be used against people other than the ones whose cases they are currently seeing. The government's case against Mr. Hamdi may be solid. But if it is allowed to detain him without some procedure that requires a persuasive showing, it will create a rule that allows Americans to be exempted from the protections of the Bill of Rights on the strength of a two-page statement the government condescends to present in court. A goodly number of people in this country have controversial political beliefs or associate with people who might turn out to be terrorists. Whatever process is used to lock up Americans must be capable of distinguishing such people from actual terrorists and soldiers