

HOSPITALIZATION OF CIVILIAN INTERNEES

000718

File

TO: Mr. Lesser

FROM: Mr. Smith

SUBJECT: Concerning <sup>Hospitalization</sup> ~~Occupation~~ of Civilian Internees

Generally speaking, international agreements designed for the benefit of victims of war are still intended primarily for members of the Armed Forces of belligerent nations, since until the recent development of "total war" these made up the bulk of the cases requiring aid, and the incidental civilian casualties could be cared for within the country of their domicile. The large scale displacement and internment of civilian populations had not become prevalent at the time these agreements were entered into. Since the agreements ordinarily do not mention civilians, their language must be construed in the light of changing conditions in order to bring such persons under their protection.

A recent American writer<sup>1</sup> states that "The term prisoner of war is not employed in contemporary usage to denote military prisoners only". At another point he declares that "In British law the term is applied to both military prisoners and interned alien enemies" and he cites a leading English case. In 1940 the United States War Department regulations state that "Every person captured or interned by a belligerent power because of war is, during the captivity or internment, a prisoner of war and is entitled to be recognized as such under the laws of war". However, according to Flory "The Judge Advocate General of the Army has correctly pointed out that interned enemy aliens are not, strictly speaking, prisoners of war, nor are they in the position of members of the Armed Forces of a state who had been interned before the United States declared war in their state of origin. Until an agreement is reached between belligerents, it is neither the duty nor the right to treat them as prisoners of war".<sup>2</sup>

Oppenheim<sup>3</sup> admits that the Geneva Convention of 1929 "does not contain anything regarding the treatment of private enemy individuals. . . . whom a belligerent thinks it necessary to make prisoners of war; but it is evident that they may claim all the privileges of such prisoners". And at another point, "The same is valid with regard to enemy civilians who at the outbreak of war are within the territory of a belligerent and for military reasons are interned." He defines a prisoner of war as "Every individual who is deprived of his liberty, not for a crime but for military reasons." Any such person "has a claim to be treated as a prisoner of war".

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1 Page 25 of "Prisoners of War" by W.E.S. Flory, published by the American Council on Public Affairs in 1942.  
2 Page 27 ibid, citing U.S. War Department, Digest of Opinions of the Judge Advocate General of the Army, 1912 to 1931, sec. 2211-2.  
3 International Law, sixth edition, volume 2, sec.127.

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In March 1942 the German Government approached the United States with a request to enforce the Model Agreement attached to the Geneva Convention, discussed below, concerning direct repatriation and hospitalization in a neutral country of prisoners of war for reasons of health. In reply the United States accepted the offer but indicated that "In accordance with the declared intention of the United States to apply to civilian enemy alien internees the provisions of the Geneva Prisoners of War Convention to the fullest extent possible" it would like to include civilians in the proposed repatriation. Apparently the Germans were unwilling to accede to this request at that time.

On November 11, 1918 the United States and Germany had entered into an agreement concerning "Prisoners of War, Sanitary Personnel and Civil Prisoners."<sup>4</sup> Because the Armistice in World War I was signed on the same day, it apparently was never thought necessary to ratify this agreement, and it presumably is not binding upon either country at this time, but it does illustrate very well the direction in which international regulations were headed at that time.

Article 151 of Section C of that agreement relating to "Civilian Citizens and Civil Prisoners" provided for the immediate repatriation of all women and children, all males under 18 and over 45, except officers in the merchant marine, and "invalids" of any age, who wished to return to this country.

Article 169 provided that certain specified sections of the agreement referring specifically to prisoners of war should apply to civilian prisoners in the same manner, "with such modifications as circumstances may require; provided that no such modification shall be less favorable to the prisoners than the original provision, and that ~~such~~ consideration be paid to their education and profession". The principle sections pertinent to this discussion are Article 63, 66 and 67.

Article 63 merely provides that the captor provide the same medical and dental care it provides for its own military.

Under Article 66, "if the Captor State is unable to furnish any of the medicines or medical supplies necessary for the treatment of the sick or wounded prisoners of war, it shall notify the Protecting Power and shall allow such medical supplies to be furnished and shall expedite their transportation and delivery". Under Article 67, "In every prisoner of war camp a sick call shall be held daily at a specified hour in the presence of a medical officer to which prisoners of war may attend and receive medical attention."

The Chairman of the American Delegation to this Conference was John Work Garrett who is described by one writer on International Law as the leading American authority on civilian internment. He was in charge of German and Austro-Hungarian Civilian Prisoners of War between 1914 and 1917, and inspected camps of French prisoners of war in Germany at the request of the French Government in 1916. He was also a delegate to the Hospital Ship Conference at the Hague in 1904. Unfortunately he appears never to have published anything.

<sup>4</sup> American Journal of International Law for 1919, supplement to volume 13.





2. The incurable.
3. Those who have been cured but "whose mental and physical fitness appears to have suffered considerable diminution."

B. Hospitalization in a neutral country should be provided for:

1. The sick and wounded who can be cured within a year but who would benefit by removal.
2. Prisoners of war generally, whose mental or physical health will be seriously menaced by continued captivity.

C. Repatriation of those in paragraph B supra should be granted to:

1. Those who have relapsed into the classes described in paragraph A
2. Those who have recovered but "whose mental and physical fitness appears to have suffered considerable diminution."

II A-B. Lists the ailments requiring repatriation and hospitalization respectively.

III Broad interpretation of conditions requiring either repatriation or hospitalization is urged, especially in neuropathic and psychopathic cases and in all cases involving tuberculosis. The specified arrangements in II are to be considered as illustrative, not exclusive.

Both the Swiss plan of 1916, and the codification provided by the Model Agreement, envisaged free use of the facilities as occasion shall arise. Numerical exchanges were not contemplated. In practice, however, this policy, presumably advertently, has not always been followed.

As a matter of general interest it might be pointed out that according to international law humane or charitable acts performed by a neutral country do not violate its neutrality even if performed only on behalf of subjects of one belligerent.<sup>11</sup>

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<sup>11</sup> Proceedings of the American Institute of International Law 1921, p. 105-7

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TO: Mr. Lasser

FROM: Mr. Smith

SUBJECT: Concerning <sup>Hospitalization</sup> ~~Occupation~~ of Civilian Internees

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The Historical Development of the Rules Concerning the Sick and Wounded

The Geneva Conference of 1864 marks the beginning of the current efforts of the Nations of the World to humanize war as much as possible. It required belligerents "To protect the sick and wounded regardless of their nationality, and to send them back to their own country when they recovered and were unfit for further service".<sup>5</sup>

The subsequent Geneva Conference of 1906 provided (Article 2) "The sick and wounded of an army who fall into the hands of the other belligerent are prisoners of war and the general rules of international law concerning prisoners are applicable to them. Belligerents are, however, free to arrange with one another such exceptions and mitigations with regard to the treatment of the sick and wounded prisoners as they deem expedient. In particular they will be at liberty to agree:--1) To restore to one another the wounded left on the field after a battle; 2) To repatriate the sick and wounded whom they do not wish to retain as prisoners after rendering them fit for removal or after their recovery; 3) To hand over to a neutral state with the latter's consent the enemies sick and wounded to be interned by the neutral state until the end of hostilities."<sup>6</sup>

It was made clear at the Conference that these suggestions were not intended to be exhaustive, and that subject to fundamental principles, opposing Commanders are free to come to any agreements concerning the care of sick and wounded.

The most recent of the Geneva Conventions (1929)<sup>7</sup> adds additional refinements. Under Article 9, prisoners of war must be removed from districts which are unhealthy or the climates of which are too severe for prisoners coming from temperate climates. Lodgings must be hygienic, free from damp, adequately heated, etc.

Under Article 14, every camp shall have an infirmary where prisoners of war shall receive every kind of attention, and isolated quarters shall be provided for contagious diseases. "Prisoners affected with a serious illness, or whose condition necessitates an important surgical operation, must be admitted at the expense of the detaining power to any military or civil medical unit qualified to treat them". Annexed to this Convention was a Model Agreement which will be discussed more fully below.

During World War I, for the first time, effective implementation was

<sup>5</sup> Wheaton, International Law, Sixth Edition, Volume 2, p.733.

<sup>6</sup> Ibid, p.735

<sup>7</sup> 47 Stat. 2074

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given to the doctrine announced as early as 1864, concerning the repatriation of persons unfit for military service. In 1914 at the request of the International Red Cross, the Swiss Government opened negotiations with Germany directed at achieving an exchange of prisoners of war so wounded as to be unfit.<sup>8</sup> This program was considerably encouraged by the Vatican. From it developed the idea of internment in a neutral country, namely Switzerland, prisoners of war not totally incapacitated, with the understanding between the belligerents involved that any such prisoners who escaped and returned to their native countries would be sent back.

The program was carried out under the supervision of the Surgeon-General of the Swiss Army and care was directed by the Swiss Sanitary Corps with expenses paid by the belligerent states. Itinerant commissions of Swiss doctors visited places of internment in the countries involved in the plan, which were France and Germany, and later Great Britain. Any prisoner in any of the camps visited was privileged, without fear of subsequent punitive action by the captor, to apply to these roving commissions. Prisoners selected by the medical commission were assembled in a convenient place in each country for final examination by a Commission of Control composed of two Swiss doctors, two doctors of the captor army and a non-voting representative of the government of the captor.

It was estimated by the Swiss that two or three percent of the total number of prisoners of war held in 1918 were in need of hospitalization of this type. They also urged that civilians be included in the program. Children should be included as a matter of course and it was also urged that fathers in need of rehabilitation should be included in civilian groups, in order to introduce new vigor into debilitated post-war family groups.

By the end of the war 26,000 prisoners had been transferred to Switzerland, including 10,000 Germans and 16,000 English, French and Belgian.<sup>9</sup> Five hundred thousand invalid and sick prisoners had been exchanged and repatriated through Switzerland since the beginning of the war. In addition Russo-German exchanges had been managed by the Danish Red Cross. These prisoners were not sent to or through Switzerland but were returned to their own countries by way of Sweden with the cooperation of the Swedish Red Cross.

The Model Agreement Concerning the Direct Repatriation and Hospitalization in a Neutral Country of Prisoners of War for Reasons of Health,<sup>10</sup> referred to above, incorporated many of the details of the foregoing program.

I A. Provides for the direct repatriation of:

1. The sick and wounded not likely to recover in one year and who require treatment and "whose mental and physical fitness appears to have suffered considerable diminution."

<sup>8</sup> "Swiss internment of prisoners of war"--Report from the Swiss Commission in the United States by Edouard Favre, Jan. 1917

<sup>9</sup> Garner, International Law and the World War, Vol. 2, p. 55

<sup>10</sup> 47 Stat. 2067

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2. The incurable.

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B. Hospitalization in a neutral country should be provided for:

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11 Proceedings of the American Institute of International Law 1921, p. 106-7

ORIGINAL TEXT OF TELETYPE MESSAGE

FROM: Secretary of State, Washington  
TO: American Legation, Bern  
DATE: June 22, 1945  
Number: 2131

*Handwritten:*  
See  
Am. Friends  
*(Circled stamp)*

[REDACTED]

From the War Refugee Board for McCalland

Friends Service Committee would like to know whether it would be possible to arrange for hospital internment in Switzerland of selected hospitalized or ill civilian prisoners held in Germany or occupied countries. Committee point out similar arrangements were worked out during last war.

THIS IS FIVE EIGHT CABLE NO. 42

HULL

cc: Solly Abrahamson, Aksin, Bernstein, Cohn, DuBois, Friedman, Gustafson, Hadel, Laughlin, Lesser, Luskford, Mann, Marston, Marks, McCormack, Sargoy, Smith, Standish, Stewart, Weinstein, H. D. White, Fable, Files.

DECLASSIFIED  
State Dept. Letter, 1-11-78  
By E. H. Fable Date SEP 1 1972

**BEST AVAILABLE COPY**

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COPY

AMERICAN FRIENDS SERVICE COMMITTEE

TWENTY SOUTH TWELFTH STREET

Philadelphia 7, Penna.

June 2, 1944

Mr. Lesser  
War Refugee Board  
Washington, D. C.

Dear Mr. Lesser:

We wonder if you would be willing to raise with Ross McClelland on our behalf two points which I am indicating in very brief form suitable for inclusion in a cable if that, as we suppose, is the only current method you have of communicating with Mr. McClelland:

Is there possibility developing plan for hospital internment Switzerland of selected civilian prisoners now held Germany or occupied countries which could balance similar treatment afforded German prisoners Great Britain or U.S. coast. Precedent last war. stop Can you handle requests regarding individual problems of hospitalized and/or ill refugees in occupied territory and refer to proper sources for help? If so, should we inform you direct or through Geneva office comm. If in occasional instances you can recommend plans we glad secure necessary cooperation relatives here for funds or other help.

If these questions are already answered to your satisfaction and you can advise us about them or if you feel that they cannot properly be raised, please have no hesitation in letting us know. In any case, the wording suggested above is, of course, subject to any changes you see fit.

Very sincerely,

(signed) Marjorie Page Schauffler

(Mrs.) Marjorie Page Schauffler  
Associate Secretary - Refugee Division

MP2/111

APR 28 1944

TO: Mr. Berle  
FROM: J. W. Pehle

I have your memorandum of April 22, 1944, referring to my memorandum of April 18 and the attached proposed cable to Minister Harrison concerning Andre Blumel.

The War Refugee Board has, of course, no particular interest in Blumel. On the other hand, it is vitally interested in determining whether the hospitalization technique is feasible. And although the Board has been on record almost since the date of its creation as not being in a position to concern itself with individual cases, we have not shrunk from dealing with individual cases where it was necessary to do so in order to test the feasibility of a relief or escape device.

Accordingly, I would appreciate it very much if you would reconsider the proposed message concerning Blumel, bearing in mind that so far as we are concerned any other individual may be substituted as the subject of the experiment. Of course, if such substitution is made, it may be necessary to delete any reference to the American Friends Service Committee.

(Initialed) J. W. P.

*J. W. Pehle*  
*5-2-44*

LS:essentials 4/28/44

*See Lessons File on:  
Hospitalization of certain prisoners*

*What did you  
come from?*

April 22, 1944

*[Handwritten signature]*

MEMORANDUM FOR MR. PHILIP:

Your memorandum of April 18. This is a request from the American Friends Service Committee asking special intervention for Andre Blumel, secretary to former Prime Minister Blum. They want him released from internment and sent to Switzerland; want us to ask the Swiss to do it.

We can not. Blumel is not a refugee any more than any other French citizen, and there are many thousands of them in internment. The Swiss still recognize Vichy, and this man is a political prisoner of the Vichy Government. The United States has no peculiar relations with him apart from many thousands of others entitling us to ask special treatment for them; if we are to use up whatever limited influence we have (if any) we should be obliged to use it first for political prisoners whose release would be of benefit to the United Nations.

I don't blame the Friends Service Committee for wanting to take care of their friends, but if we start using the War Refugee Board for that, it will lose its real significance. Further, if the American Government starts using the Swiss for that, they will lose any ability to take care of either our prisoners or the real refugees.

Adolf A. Berle, Jr.,  
Assistant Secretary

A-B:AAB:GES

A true copy of  
the signed original

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Cable from War Refugee Board to Harrison at Bern for McClelland

The American Friends Service Committee reports having information to the effect that Andre Blumel, formerly secretary to former Premier Blum of France is interned by the Germans and is so seriously ill as to be in danger of death unless he is promptly removed to a place where more adequate medical care is available to him. While we are unaware of any previous instance where a civilian internee has been released by the interning power for hospitalization in a neutral country, you are requested to approach appropriate officials of the Swiss government and inquire whether they would be willing to approach Germany in an effort to procure Blumel's release for hospitalization in Switzerland.

It is suggested that a technique similar to that developed by the Swiss in 1916 for prisoners of war, and later embodied in the Geneva Conference of 1929 and the Model Agreement annexed thereto, might be employed, with such suitable guarantees and assurances to the Germans as the circumstances may warrant.

Funds for Blumel's transportation, medical and hospital expenses are available.

Please keep the War Refugee Board advised of any developments in this matter.

THIS IS WRB BERN CABLE NO. 1

In order to avoid confusion in connection with its cables to representatives in the field, the Board, commencing with this cable, intends to number its cables to each representative consecutively. In replying to Board cables kindly refer to the WRB designation. You should also consecutively number all cables to the Board.

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April 18, 1944  
11:25 a.m.

Miss Chauncey (for the Sec'y) Abrahamson, DuBois, Friedman, Hodel, Laughlin, Lesser, Mann, Pehle, Stewart, Central Files, Cable Control Files

Enclosures 1/13/44