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PRISONERS OF WAR: REPATRIATION
OR INTERNMENT IN WARTIME

American and Allied Experience,
1775 to Present

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TABLE OF CONTENTS

	<u>Page</u>
I. Early Exchanges: 1775 to 1900	1
II. World War I.	5
A. Hague Conventions of 1899 and 1907.	5
B. Bilateral Agreements, Exchanges, and Internments.	7
III. World War II	11
A. Geneva Convention of 1929	11
B. Bilateral Agreements and Exchanges in Europe.	12
C. Accommodation and Internment in Neutral Countries	15
D. Lack of Agreements and Exchanges with Japan	16
IV. Korean War Exchanges	17
V. Vietnam War.	19
VI. Summary.	25

PRISONERS OF WAR: REPATRIATION OR INTERNMENT IN WARTIME

American and Allied Experience, 1775 to Present

I. Early Exchanges: 1775 to 1900 1/

On April 19, 1775, the Massachusetts Militia engaged the British forces at Lexington in the opening battle of the American Revolution, which led to this country's first experience with the prisoner of war (POW) question. The first POW exchange, which was authorized by the Continental Congress, took place on June 16, 1775, at Charlestown, Massachusetts. 2/ Subsequently, a number of similar exchanges were effected locally by army commanders. In some instances, prisoners taken by the American forces were granted liberty on parole within prescribed limits in the colonies or even allowed to return to their own country on condition that they not reengage in military activities. However, the Government was completely unsuccessful in its efforts to negotiate a treaty on POW exchanges with the British Government, though British and American seamen who had been imprisoned in France and Britain were exchanged under a more limited agreement. 3/ The Treaty of Paris, which was signed in September 1783 and ratified by Congress in January 1784, provided for the immediate release of prisoners by both sides. 4/

1/ For a comprehensive discussion of POW exchanges during hostilities in Europe prior to World War I, refer to Du Payrat, Armand. *Le Prisonnier de Guerre dans la Guerre Continentale*. Paris, Arthur Rosseau, 1910. pp. 371-418.

2/ Lewis, Lt. Col. George G., U.S.A., and Capt. John Mewha, U.S.A. *History of Prisoner of War Utilization by the United States Army, 1776-1945*. Department of Army Pamphlet No. 20-213, Washington, U.S. Govt. Print. Off., June 1955. p. 3.

3/ *Ibid.*, pp. 4-7; U.S. Department of the Army, Headquarters. *International Law, Volume II*. Department of Army Pamphlet No. 27-161-2, Washington, U.S. Govt. Print. Off., October 1962. pp. 69-70.

4/ Lewis and Mewha, *op. cit.*, pp. 20-21.

During the War of 1812, prisoners were exchanged under a U.S.-British POW exchange agreement of May 1813, which had been preceded by a limited number of local battlefield exchanges. POW's were paroled on condition that they not resume military activities until designated as "regularly exchanged" through an exchange of lists of prisoners thus repatriated. 1/

In the Mexican War (1846-1848), a large number of POW's were unilaterally released on parole by the Americans, possibly as many as 10,000, primarily because they placed such a heavy burden on the extended supply lines of the American forces. 2/ In addition, limited "head for head" exchanges of individual prisoners took place on several occasions. 3/

As there was no formal exchange agreement in effect during the first year of the American Civil War, any exchanges that took place were by mutual agreement of opposing military commanders. 4/ [After several months of negotiations a formal agreement was signed by Union and Confederate authorities on July 22, 1862. This agreement, known as the Dix-Hill Cartel, stipulated that all POW's held by both sides were to be released and that henceforth prisoners were to be discharged on parole within ten days of capture. A distinction was made between "paroled" prisoners and those "exchanged." The former were not to take up arms again or serve in any military capacity "until

1 / Ibid., pp. 23-24.

2 / Ibid., pp. 25-26. There have been other instances when prisoners have been released during hostilities without any assurance of reciprocity. For instance, during the Napoleonic Wars, the Russian Imperial Government released all French prisoners, and the French Government, in return, ordered the repatriation of 8,000 Russian POW's. Similarly, in the Boer War, 2,000 British prisoners were freed without conditions. See Du Payrat, op. cit., pp. 394-395, Fooks, Herbert C. Prisoners of War. Federalsburg, Maryland, J.W. Stowell Printing Company, 1924. p. 290; Thompson, Elizabeth M. War Prisoner Repatriation. Editorial Research Reports v. 2, 1952. p. 825.

3 / Lewis and Mewha, op. cit., p. 26.

4 / Fooks, op. cit., pp. 280-281.

exchanged under the provisions of this cartel. The exchange is not to be considered complete until the officer or soldier exchanged for has been actually restored to the lines to which he belongs." ^{1/} In short, each side, upon paroling prisoners of the other side, was authorized to discharge an equal number of its own officers and enlisted men from parole, furnishing the other party a list of the prisoners released on parole and a list of its own men discharged from parole status. The lists were intended to "keep both parties advised of the true condition of the exchange of prisoners." ^{2/}

If the agreement had been fully implemented, relatively few prisoners would have accumulated on either side, but its successful operation was difficult at best, requiring complete good faith not only by the opposing sides but by the individual parolees as well. Beginning in December 1862 a series of alleged violations by both parties resulted in a partial breakdown of the agreement. Even so, however, of some 665,000 prisoners taken on both sides during this bitter war, over 250,000 were exchanged and another 248,000 were paroled. ^{3/}

The Spanish-American War was of such short duration -- lasting only three months -- that the 150,000 Spanish POW's ^{4/} taken by the United States were not repatriated until after hostilities had ended in August 1898. On the other hand, very few Americans were captured though on several occasions

^{1/} U.S. Congress. House. Report on the Treatment of Prisoners of War, by the Rebel Authorities, During the War of the Rebellion To Which Are Appended the Testimony Taken by the Committee and Official Documents and Statistics, Etc. House Report No. 34. Hearings before the Special Committee on the Treatment of Prisoners of War and Union Citizens, 1867-1868. Washington, U.S. Govt. Print. Off., 1869. p. 421. See also: Lewis and Mewha, *op. cit.*, pp. 27-30, 40-42.

^{2/} U.S. Congress. House. Report on the Treatment of Prisoners of War, by the Rebel Authorities, During the War of the Rebellion To Which Are Appended the Testimony Taken by the Committee and Official Documents and Statistics, Etc., *op. cit.*

^{3/} *Ibid.*, pp. 228-229.

^{4/} U.S. National Archives. Records of the Adjutant General's Office, Record Group 94, Document No. 2061016.

Spaniards were used in local exchanges to gain the release of U.S. sailors held by the enemy. 1 /

Thus, it can be said that, except for the American Civil War, from the founding of the Republic to the beginning of World War I reciprocal exchanges of POW's during hostilities were few, 2 / and those that did occur were for the most part arranged locally by military commanders rather than by national governments. In all of the above cases, it appears that little or no distinction was made between sick or wounded and able-bodied prisoners, and except during the Spanish-American War, the treatment of POW's was often cruel and unjust. If one side abused its prisoners, the other was very likely to retaliate in kind. Indeed, up to the time of the Civil War, the laws of war were "largely a matter of unwritten tradition, and it was the United States, during the Civil War, that took the lead in reducing them to systematic, written form. In 1863 President Lincoln approved the promulgation by the War Department of 'Instructions for the Government of Armies of the United States in the Field'...[which] comprised 159 articles, covering such subjects as...'prisoners of war' and 'spies.'" 3 /

1 / Lewis and Mewha, op. cit., pp. 43-45.

2 / Patch, Buel W. Prisoners of War. Editorial Research Reports v. 1, 1942. p. 85.

3 / Taylor, Telford. Nuremberg and Vietnam: An American Tragedy. Chicago, Illinois, Quadrangle Books, Inc., 1970. p. 21.

II. World War I

A. Hague Conventions of 1899 and 1907

Following the Crimean War, the American Civil War, and the Franco-Prussian War of 1870, mounting pressures for the codification of the laws of war and their embodiment in international agreements resulted eventually in a series of treaties known as the Hague and Geneva Conventions. Twenty-four nations, including the United States, adopted and ratified the Hague Convention of 1899 with Respect to the Laws and Customs of War on Land. This was the first time in history that an agreement governing the laws of warfare had been ratified by so many nations. It was supplemented by the second Hague Convention of 1907 Respecting the Laws and Customs of War on Land, which was also signed and ratified by a considerable number of countries, including the United States. These agreements contained identical provisions regulating the treatment and status of POW's, and both included articles providing for possible internment of sick and wounded in neutral countries ^{1/} and for parole. However, the only reference to direct repatriation during hostilities was an indirect one in the Annex to the Hague Convention of 1907. Article 21 thereof stipulated that the obligations of belligerents with regard to the handling of sick and wounded were governed by the 1906 Geneva Convention For the Amelioration of the Condition of the Wounded in Armies in the Field. ^{2/}

^{1/} Prior to World War I, there had been little, if any, resort to transfer of POW's by agreement to neutral states for internment. See Flory, William E.S. Prisoners of War: A Study in the Development of International Law. Washington, American Council on Public Affairs, 1942. p. 135.

^{2/} The Geneva Convention of 1906 superseded the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Time of War.

This in turn specified (Article 2) that the exchange and internment of wounded was optional, dependent upon the negotiation of bilateral exchange pacts:

The belligerents remain free, however, to mutually agree upon such clauses, by way of exception or favor, in relation to the wounded or sick as they may deem proper. They shall especially have authority to agree --

1. To mutually return the sick and wounded left on the field of battle after an engagement.
2. To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported and whom they do not desire to retain as prisoners.
3. To send the sick and wounded of the enemy to a neutral State, with the consent of the latter and on condition that it shall charge itself with their internment until the close of hostilities.

However, Article 2 of the Hague Convention of 1907 stipulated that the respective conventions would apply only between contracting parties and then only if all the belligerents were parties to the convention. Inasmuch as all the powers engaged in the war were not parties to the treaty, the United States Government took the position that it was not to be considered a party to either the Hague or Geneva Conventions though it would comply fully with their provisions. ¹/ And since there was no more pertinent and current agreement in effect between this country and Germany, the Treaty of Amity and Commerce, signed by the United States and Prussia in 1785, governed

¹/ Papers Relating to the Foreign Relations of the United States, 1918, Supplement 2; the World War. Washington, U.S. Govt. Print. Off., 1933. p. 7; Dennett, Carl P. Prisoners of the Great War. Boston, Houghton Mifflin Company, 1919. p. 164; Lewis and Mewha, op. cit., pp. 47-48.

the treatment of POW's during the war. ^{1/} Unfortunately, it did not include any provision for prisoner exchanges.

B. Bilateral Agreements, Exchanges, and Internments

✓ The first substantial prisoner exchanges of the ^{First World} war, which were restricted to sick and wounded, were carried out through Sweden in the spring of 1916 when roughly 17,000 Russians were exchanged under an agreement of May 13, 1916, for 8,000 Austro-Hungarians and 2,000 Germans. ^{2/} Exchanges also took place in 1917. For example, Japan and Germany agreed to exchange "invalid" prisoners by way of Holland and the United States beginning in January 1917, ^{3/} and toward the end of that year, Russia released all civilian German internees in order to obtain the release of 4,000 Russian officers held in German prisons. ^{4/} The need for more specific bilateral agreements covering the repatriation of POW's, however, was not recognized by either the British or French Governments until the war was well underway. ✓ Britain, France, and Germany did conclude an agreement in April 1916 under which prisoners suffering from 20 specified types of wounds and diseases were to be interned in Switzerland for the duration of the war. ^{5/} The first French contingent reached Switzerland on May 25, 1916, and by March 1918, more than 26,000 French, British, Belgian, and German soldiers were reportedly interned in Switzerland. ^{6/} However, the first ✓

^{1/} Lewis and Mewha, op. cit., pp. 21, 47.

^{2/} New York Times, May 21, 1916, Section I, p. 20; November 15, 1916. p. 7.

^{3/} Ibid., January 20, 1917. p. 3.

^{4/} Ibid., December 15, 1917. p. 3.

^{5/} Dennett, op. cit., p. 1; Patch, op. cit., p. 93; New York Times, June 18, 1916, Section I. p. 16; McCarthy, Daniel J. The Prisoner of War in Germany. New York, Moffat, Yard, and Company, 1917. pp. 252-262, 316-331.

^{6/} New York Times, March 17, 1918. p. 5.

agreement on direct repatriation was not concluded until July 1917 between the British and the Germans -- three years after the beginning of hostilities. This agreement was supplemented by a second one signed in July 1918. A similar Franco-German agreement became effective on March 15, 1918, and was later supplemented by another dated May 15, 1918. Although the United States Government attempted to arrange a conference on POW's in the spring of 1918, U.S.-German negotiations on the POW question did not actually begin until September 1918. ^{1/}

The Anglo-German agreement of July 1917, in addition to providing for the direct repatriation of sick and wounded, authorized the release of the more seriously sick and wounded prisoners who were interned in Switzerland. Also, those commissioned and noncommissioned officers (NCO's) who had been in captivity for more than 18 months were to be eligible for internment in either Holland or Switzerland. ^{2/} In late 1917, the first party of British POW's released by the Germans arrived in Holland for internment, ^{3/} and as many as 10,000 British and German officers and NCO's may have been interned in Holland when the armistice was signed in November 1918. ^{4/} However, while the British and Germans may have exchanged a few "permanently injured" POW's in Holland and Switzerland as early as 1915 under a tacit arrangement, ^{5/} there is no record of direct Anglo-German exchanges prior to the signing of the armistice.

^{1/} Dennett, op. cit., pp. 165-167.

^{2/} New York Times, July 28, 1917. p. 3.

^{3/} Ibid., January 1, 1918. p. 8.

^{4/} Ibid., July 18, 1918. p. 6.

^{5/} Ibid., June 18, 1916, Section I. p. 16.

The supplementary agreements between France, Britain, and Germany contained provisions regarding exchanges that can be summarized as follows:

1. All POW's (and internees) were to be exchangeable "head for head and rank for rank" after 18 months' confinement.
2. All enlisted POW's (and internees) over 48 years of age, or over 40 in the case of fathers with at least three children, were to be returned after 18 months of captivity. Officers in this category and those prisoners in "poor" health were to be interned in Switzerland or Holland.
3. Exchanged prisoners were prohibited from going within a specified distance of the front. 1 /

The first exchange pursuant to these agreements took place in May 1918 -- barely six months before the armistice -- involving 160,000 French and German troops. 2 / When substantial Russo-German repatriations were resumed in late May 1918, under a new agreement, seriously sick and wounded Russians were exchanged for able-bodied Germans. 3 /

In the meantime, in the absence of a U.S.-German POW pact, few, if any, of the 4,500 4 / American troops captured by the German forces were exchanged while hostilities were in progress. But since official records indicate that Germany held only 3,550 U.S. prisoners at the time of the armistice, 5 / it is possible that a small number of American sick and wounded were

1 / Dennett, op. cit., p. 1; New York Times, March 22, 1918. p. 6; May 10, 1918. p. 3; May 27, 1918. p. 2; July 16, 1918. p. 7; July 17, 1918. p. 8; July 18, 1918. p. 6; Patch, op. cit., p. 93.

2 / New York Times, June 17, 1918. p. 7.

3 / Ibid., May 24, 1918. p. 5; June 20, 1918. p. 5.

4 / The Army Almanac. Harrisburg, Pennsylvania, The Military Service Publishing Company, 1959. p. 382.

5 / Patch, op. cit., p. 90 (footnote).

repatriated in 1918, prior to the cessation of hostilities, though there are no records on this. (However, on January 14, 1918, when the first prisoner exchange between Austria and the Allies was executed, several Americans were reportedly among the 325 sick and wounded Allied soldiers released by the Austrians.) ^{1/} In order to remedy this problem, a U.S.-German conference on POW's was opened in Berne, Switzerland, on September 23, 1918, which led to the preparation of an elaborate agreement covering the internment, treatment, and repatriation of prisoners. However, as it was not signed until November 11, the day of the armistice under which all American and Allied POW's were to be immediately released, it was never ratified. Under the terms of the armistice, German POW's, on the other hand, were not to be repatriated until the treaty of peace came into force. ^{2/} Consequently, most German prisoners were not released until the early months of 1920 though the sick and wounded were repatriated beginning in April 1919. ^{3/}

^{1/} New York Times, January 14, 1918. p. 3.

^{2/} Estimates of the total number of prisoners taken by both sides during World War I range from around 5,000,000 to over 7,000,000. See Patch, op. cit., p. 90.

^{3/} U.S. Department of the Army. Historical Division. United States Army in the World War, 1917-1919, Reports of the Commander-in-Chief, A.E.F., Staff Sections and Services Volume 15. Washington, U.S. Govt. Print. Off., 1948. p. 343. Lewis and Mewha, op. cit., p. 63.

III. World War II

A. Geneva Convention of 1929

After World War I had exposed the inadequacies of the Hague and Geneva Conventions, a more comprehensive code of regulations to govern the treatment of POW's was drawn up during a meeting in Geneva of the major world powers. This meeting eventually resulted in the signing on July 27, 1929, of the Convention Relative to the Treatment of Prisoners of War, which was ratified or adhered to by some 40 nations, including the United States. Japan and Soviet Russia were the only major belligerents in World War II not parties to the Convention.

For the first time the repatriation of all seriously sick and wounded prisoners became an obligation for signatories. Article 68 read as follows:

Belligerents shall be required to send back to their own country, without regard to rank or numbers, after rendering them in a fit condition for transport, prisoners of war who are seriously ill or seriously wounded.

Agreements between the belligerents shall therefore determine, as soon as possible, the forms of disablement or sickness requiring direct repatriation and cases which may necessitate accommodation in a neutral country. Pending the conclusion of such agreements, the belligerents may refer to the model draft agreement 1 / annexed to the present Convention.

Article 72 of the same Convention stated that prisoners who had been in captivity for an extended period of time might be repatriated or interned

1 / The Model Draft Agreement directed that sick and wounded POW's whose recovery was not expected within one year, the incurably sick and wounded, and the convalescent sick and wounded were to be repatriated directly.

in a neutral country by special agreement:

During the continuance of hostilities, and for humanitarian reasons, belligerents may conclude agreements with a view to the direct repatriation or accommodation in a neutral country of prisoners of war in good health who have been in captivity for a long time.

Finally, Article 74 stipulated that repatriated prisoners could not be restored to active military service.

B. Bilateral Agreements and Exchanges in Europe

In October 1939, after the outbreak of war, the International Committee of the Red Cross (ICRC) called on the belligerent states to conclude bilateral agreements governing the exchange of seriously sick and wounded POW's as required by Article 68. At the same time, the ICRC said that it was prepared to act as intermediary and that certain "protecting powers" had already taken steps toward the implementation of the Model Draft Agreement which was an Annex to the Convention. The British, French, and German Governments subsequently expressed a willingness, subject to reciprocity, to apply the Model Draft Agreement without amendment. It was agreed that exchanged POW's would be transported through Switzerland, the "protecting power." In July 1940 British-German negotiations finally got underway in Switzerland, looking toward the establishment of a ferry service between the two countries for the repatriation of the seriously sick and wounded. However, a divergence of opinion over modes of transportation led to a prolongation of these talks, and at the end of 1941 a serviceable agreement still had not been reached.

✓ The British and Italian Governments signed an agreement early in 1942 which led to the first exchange of sick and wounded of the war in April 1942, when 340 Italians were exchanged for 60 British. Also, by early 1942 the Germans had started to repatriate sick and wounded Yugoslavs. ^{1/}

When the United States declared war, the State Department asked the Swiss Government to inform enemy nations that the United States would comply fully with the Geneva Convention of 1929. Shortly thereafter, the German, Italian, and Japanese Governments announced that they also would observe the Convention obligations. ^{2/} [In March 1942, the United States and Germany formally agreed to enforce the Model Agreement.] ^{3/}

Meanwhile, [despite the efforts of the ICRC and the Swiss Government, actual exchanges between Germany and the Allies were not forthcoming until the number of prisoners held by both sides was equalized following the Tunisian campaign. Then in October 1943, the British Foreign Office announced that an agreement between Germany, Britain, and the United States had been reached providing for the repatriation of disabled prisoners as well as a small number of "protected [sanitary, medical, religious] personnel," civilian internees, and merchant seamen. This eventually resulted in a series of major exchanges at various places between October 1943 and February 1945. These repatriations involved the exchange of roughly 13,500

^{1/} International Committee of the Red Cross. Report on its Activities During the Second World War (September 1, 1939-June 30, 1947). Volume I: General Activities. Geneva, 1948. pp. 373-376, 378.

^{2/} Lewis and Mewha, op. cit., p. 75.

^{3/} Reciprocal Application of the Model Agreement Annexed to the Convention Signed at Geneva, July 27, 1929. Arrangement between the United States of America and Germany, effected by exchange of notes between the Secretary of State and the Minister of Switzerland at Washington, in charge of German interests, dated March 4 and 30, 1942.

Allied POW's (including approximately 900 Americans) ¹/_{for about 21,000} Germans and Italians. ²/

Other exchanges took place. For example, toward the end of 1944, the ICRC succeeded in organizing and carrying through a "head for head" exchange of seriously sick and wounded between France and Germany involving roughly 1,700 POW's. ³/ In addition, U.S. and German forces operating in France effected three battlefield exchanges in November and December 1944. These involved the exchange of 113 American soldiers for an equal number of Germans and included both wounded and able-bodied servicemen. ⁴/ The United States and Germany also negotiated to exchange "head for head" a small number of POW's who had been sentenced to death for murder of fellow prisoners, but this exchange was never effected because Allied forces overran the German camps containing the condemned Americans before the negotiations were completed. ⁵/ In a move reflecting decisions taken prior to the surrender of the German Armed Forces on May 9, 1945, the U.S. Army Service Forces

¹ / A total of 129,701 Americans were captured by the Axis powers in World War II. See Shaffer, Helen B. Treatment of War Prisoners. Editorial Research Reports v. 2, 1967. p. 512.

² / International Committee of the Red Cross, op. cit., pp. 376, 378-382. Keesing's Contemporary Archives, October 16-23, 1943. pp. 6053-6054. Facts on File, October 18, 1943. p. 332; November 1, 1943. p. 347; February 15, 1944. p. 49; February 24, 1944. p. 65; March 5, 1944. p. 74; March 15, 1944. p. 88; May 17, 1944. p. 161; June 7, 1944. p. 184; September 26, 1944. p. 305; February 21, 1945. p. 59. New York Times, February 16, 1944. p. 1; March 7, 1944. p. 3; May 17, 1944. p. 5; August 22, 1944. p. 18; August 24, 1944. p. 13; September 14, 1944. p. 9; January 5, 1945. p. 11; January 17, 1945. p. 11; and February 16, 1945. p. 13; American National Red Cross. Prisoners of War Bulletin. Washington, D.C. December 1943. p. 6; May 1944. p. 5; August 1944. p. 5; November 1944. p. 1; March 1945. pp. 4, 11.

³ / International Committee of the Red Cross, op. cit., pp. 377, 381.

⁴ / American National Red Cross Archives. Hodges, Andrew G. American National Red Cross Field Director with the 94th Division. Report to H.D. Gibson, American National Red Cross Commissioner, March 1, 1945. File No. 619.2/65.

⁵ / Lewis and Mewha, op. cit., pp. 76-77.

announced on May 18 that about 50,000 German POW's held in this country would be repatriated because they were "of no use." These included commissioned and noncommissioned officers who could not be forced to work, "rabid Nazis, and the sick or insane." ^{1/} On the other hand, no exchanges were carried out between the Soviet Union and Germany until after the cessation of hostilities.

C. Accommodation and Internment in Neutral Countries

Apart from the direct repatriation of the seriously wounded and sick, Section IB of the Model Draft Agreement annexed to the Geneva Convention provided for the possible accommodation in neutral countries of POW's whose recovery was "presumable within the period of one year" and those whose health might be gravely impaired by continued detention. Under the terms of Article 68 of the Convention, the belligerents were to determine by further agreement the types of disablement or sickness warranting either repatriation or accommodation in a neutral country. [While the majority of the belligerents agreed to implement the provisions of the Model Draft Agreement relating to the direct repatriation of the seriously sick and wounded, they declined to abide by the provisions for accommodation in neutral countries. The belligerents agreed that direct repatriation was in the best interest of the disabled but could not agree on the question of prisoners who had been subject to a long period of captivity.] ^{2/} However, a fairly large number of combatants (escaped POW's and deserters) as well as civilian refugees

^{1/} Facts on File, May 18, 1945. p. 158.

^{2/} International Committee of the Red Cross, op. cit., pp. 382-385.

who had gone either singly or in groups into neutral states were interned for the duration of the war. By the war's end, approximately 150,000 combatants of thirty-seven nationalities had been interned in Switzerland, Rumania, Hungary, Lithuania, Latvia, and elsewhere. 1/

D. Lack of Agreements and Exchanges with Japan

Even though Japan was not a party to the 1929 Geneva Convention, the ICRC proposed in June 1944 that the Japanese Ministry of Foreign Affairs consider a reciprocal agreement between the countries concerned for the repatriation of wounded and sick. In a reply dated October 1944, the Japanese Government explained that "practical difficulties were involved in the repatriation of wounded and sick, but, even so, the Japanese Government was giving the question of the transfer of these persons the required attention...." 2/ Nothing came of this or other such efforts, and as a result of Japan's negative attitude no exchanges were effected between the United States and Japan until after the war. 3/ However, under a 1942 U.S.-Japanese agreement regulating the status and treatment of civilian internees, several thousand American civilians who had been interned by the Japanese were exchanged against an approximately equivalent number of Japanese civilians who had been interned in this country. 4/

1/ Ibid., pp. 555-557.

2/ Ibid., p. 464.

3/ Ibid., pp. 463-464.

4/ Ibid., pp. 442-443; Keesing's Contemporary Archives, October 16-23, 1943, p. 6054; Facts on File, June 18, 1942, p. 196; July 22, 1942, pp. 236-237.

IV. Korean War Exchanges

A revised Geneva Convention, drafted in 1949, had been signed by many countries by the time hostilities broke out in Korea in June 1950. Although none of the major powers involved had ratified the treaty, both sides declared shortly after the outbreak of war that they would abide by its stipulations. Subsequently, in late 1952, the Executive Committee of the League of Red Cross Societies asked the belligerents to repatriate sick and wounded POW's. The U.N. Command concurred, but North Korea chose to ignore the request. General Mark Clark, Commander of the U.N. Forces in Korea, wrote to the North Korean and Chinese Communist commanders in February 1953, urging them to consider the League's request and stating that the United Nations Command was ready to effect the proposed exchange in accordance with Article 109 of the Geneva Convention, which requires the repatriation of all seriously wounded and sick POW's. On March 28, 1953, the Communist commanders agreed to the exchange. At the same time, the North Korean and Chinese Communist military leaders suggested that the "reasonable settlement of the question of exchanging sick and injured prisoners of both sides during the period of hostilities should be made to lead to the smooth settlement of the entire question of prisoners of war and the armistice, thereby achieving an armistice in Korea...." ^{1/} On April 11, liaison officers of the two commands signed an agreement that set forth arrangements under which the sick and wounded would be exchanged. This

^{1/} Hermes, Walter G. Truce Tent and Fighting Front. Washington, U.S. Govt. Print. Off., 1966. p. 412.

operation, labelled "Little Switch," began on April 20 and was completed by May 3, 1953. 1/ In all, 6,670 North Korean and Chinese Communists were exchanged for 684 members of the U.N. Forces, including 149 U.S. military personnel. However, by far the greatest number of POW's, a total of 88,596 to be exact, were not exchanged until after the armistice agreement was signed on July 27, 1953. 2/

1/ American National Red Cross. Report of Joint Red Cross Team Operation in Korea. Washington, 1953. p. 4; White, William Lindsay. The Captives of Korea: An Unofficial White Paper on the Treatment of War Prisoners. New York, Charles Scribner's Sons, 1957. pp. 228, 234; Hermes, op. cit., pp. 411-419.

2/ Hermes, op. cit., Appendix B, p. 514.

V. Vietnam War 1 /

In 1965, the ICRC informed the parties to the Vietnamese conflict that hostilities had reached the point where "there can be no doubt they constitute an armed conflict to which the regulations of humanitarian law as a whole should be applied." 2 / The parties were reminded of their responsibilities under the 1949 Geneva Convention Relative to the Treatment of Prisoners of War and were asked what steps they planned to take to abide by it. The Convention, ratified by the United States Senate in 1956 and signed with reservations by the North Vietnamese in 1957, set standards for the treatment of prisoners in any armed conflict, whether or not there had been a declaration of war. It included a provision (Article 109) making the direct repatriation of all seriously sick and wounded an obligation for belligerents. Parties to the conflict were also urged under Article 109 to make arrangements for the accommodation in neutral countries of sick and wounded prisoners suffering from specified types of wounds and illnesses. This article further stated that belligerents might conclude agreements providing for direct repatriation or internment in a neutral country of able-bodied POW's who had undergone long periods of captivity.

1 / For information on exchanges of POW's during the French-Indochina War, see Ho, George J. The Prisoner of War Issue in the Indochina War, With Special Emphasis on the Release of Prisoners, 1954-1962. Washington, Library of Congress, Congressional Research Service, July 13, 1971. p. 3. JX 5141, 70-170F.

2 / Patitucci, Jean B. American Prisoners of War in Southeast Asia. Washington, Library of Congress, Legislative Reference Service, May 4, 1970. p. 2. JX 5141, 70-104F.

All prisoners of war taken by the U.S. forces in Vietnam have been turned over to the South Vietnamese Government, and despite several violations publicized in November 1970, the prisoner of war camps in South Vietnam are, in general, administered in accordance with the provisions of the Geneva Convention and are inspected regularly by the Red Cross. The North Vietnamese and Vietcong, on the other hand, have refused to provide a complete list of their prisoners and to give full information about the conditions of imprisonment as required by the Geneva Convention, maintaining that captured U.S. military personnel are war criminals not entitled to the protection of the Geneva Convention.

There is a discrepancy between U.S. and North Vietnamese figures on the number of Americans held captive in North Vietnam. On March 5, 1971, the White House released the following recapitulation of U.S. POW's and men missing in action in Southeast Asia:

	<u>Missing</u>	<u>Captured</u>	<u>Total</u>
North Vietnam	402	378	780
South Vietnam	482	79	561
Laos	<u>261</u>	<u>3</u>	<u>264</u>
TOTALS	1,145	460	1,605

In the past, the Government of North Vietnam has admitted that it had captured 370 American servicemen. However, on December 22, 1970, a North Vietnamese official in Paris gave representatives of two U.S. Senators what was described as a "complete" list of U.S. military personnel held prisoner

in North Vietnam. It included the names of 339 POW's and an additional 20 prisoners who had died in captivity, plus nine others who have been released, for a total of 368. ^{1/} This was ten fewer than the White House figure, excluding all those missing in action, many of whom have been presumed to be in captivity.

As early as July 1967, President Johnson publicly appealed to North Vietnam and the National Liberation Front (NLF) "to permit impartial inspection of all prisoners" and urged the repatriation of the sick and wounded. He also offered to discuss prisoner exchanges "at any time and in any appropriate way, using intermediaries or directly, by public means or privately." ^{2/} At the opening session of the Paris peace talks in January 1969, Ambassador Lodge proposed "the early release of prisoners of war on both sides," saying that the United States was "prepared to discuss this at an early date so as to arrange for the prompt release of prisoners held by both sides." ^{3/} On December 10, 1970, the Government of South Vietnam, with U.S. support, proposed the release of all North Vietnamese POW's in return for the release of all U.S. and Allied prisoners in Indochina. President Nixon, in his foreign policy report to Congress on February 25, 1971, repeated his October 7, 1970, proposal that called for the "immediate and unconditional release of all prisoners of war held by both sides." ^{4/}

^{1/} U.S. Discloses Figures on POW's and Missing. New York Times, March 6, 1971. p. 3.

^{2/} Patitucci, op. cit., p. 14.

^{3/} Ibid., p. 15.

^{4/} The President's Second Annual Report on Foreign Policy, p. 79.

North Vietnam has rejected U.S. and South Vietnamese offers to repatriate sick and wounded POW's and a proposal in April 1971 that prisoners from both sides be held in a neutral country.

The North Vietnamese and Vietcong position on the POW issue rested until September 1970 on Point 9 of the National Liberation Front's 10-point formula of May 1969, which stated that the question was to be negotiated at the end of the conflict, following the withdrawal of U.S. troops from Vietnam. In statements at the Paris talks, they said that information on prisoners would not be released until the United States had "ceased its aggressive war in Vietnam and withdrawn its troops from Vietnam...." ^{1/} The proposal made by the Provisional Revolutionary Government on September 17, 1970, indicated a willingness on their part to negotiate "at once" on "the question of releasing captured military men" if the United States declared it would withdraw all troops by June 30, 1971. ^{2/} Hanoi's chief spokesman at the Paris peace talks said on two or three occasion that "there will be no problem" about rapid repatriation of all American prisoners held by Hanoi once President Nixon sets a "reasonable" deadline for total withdrawal of all American armed forces, including all U.S. military advisers, from South Vietnam. ^{3/}

^{1/} Patitucci, op. cit., p. 7.

^{2/} Niksch, Larry A. Issues and Current Status of the Paris Peace Talks. Washington, Library of Congress, Legislative Reference Service, October 21, 1970. p. 58. DS 556 G, 70-252F.

^{3/} Hanoi Ties POW's to U.S. Pullout. Washington Star, April 21, 1971; Hanoi Aide, In Interview, Links Pullout Date and P.O.W. Issue. New York Times, May 24, 1971. p. 2; Shub, Anatole. Hanoi, VC Elusive on POW's. Washington Post, June 11, 1971. pp. A1, A12.

Then on July 1, 1971, Madame Binh, representing the PRC at the Paris peace talks, made a new seven-point proposal, the first point of which was addressed specifically to the question of POW's. It stated, inter alia, that "if the U.S. Government sets a terminal date for the withdrawal from South Vietnam in 1971 of the totality of U.S. forces and those of the other foreign countries...the parties will at the same time agree on the modalities (a) of the withdrawal in safety...(b) of the release of the totality of military men of all parties and of the civilians captured in the war (including American pilots captured in North Vietnam)...These two operations will begin on the same date and end on the same date." 1/

At the time this paper went to press this new proposal was being carefully studied by the Administration, and Ambassador Bruce in Paris was seeking clarification of this point as well as several other more negative aspects of the proposal.

Since the beginning of the war, the North Vietnamese have released only nine Americans, and the Vietcong, who never signed the Geneva Convention, have freed 23, three by means of battlefield negotiations, plus a few South Vietnamese soldiers. Several of these may have been released for medical reasons, but there was no explanation for the other releases. By comparison, the South Vietnamese have already released several hundred sick and wounded North Vietnamese and Vietcong POW's, and they recently offered to release 660 more. However, after representatives of the ICRC discovered that only 13 were willing to be repatriated, the

1/ Washington Post, July 2, 1971. p. A4.

North Vietnamese Government announced that the previously agreed arrangements for the transfer were no longer valid. No North Vietnamese vessel appeared at the rendezvous point several miles off the Demilitarized Zone on June 4 to receive the prisoners, and the South Vietnamese Government was obliged to abandon the plan. ^{1/}

^{1/} Hanoi Rejects Saigon Offer, Refused to Accept POW's. Washington Post, June 4, 1971. pp. A1, A16.

VI. Summary

With the exception of the American Civil War, when over 250,000 prisoners were exchanged and another 248,000 were paroled, large-scale POW exchanges during the wars of the 18th and 19th centuries in which the United States participated were rare. When they did occur, they were usually limited in scope and were almost always arranged locally by military commanders. In some cases they were covered by bilateral exchange agreements, and in all cases it appears that little or no distinction was made between sick or wounded and able-bodied prisoners until the signing in 1864 of the Geneva Convention for the Amelioration of the Condition of the Wounded in Time of War. In one instance -- the Mexican War (1846-1848) -- the United States unilaterally released 10,000 Mexican soldiers because they placed such a heavy burden on the extended American supply lines.

The modern history of repatriation and internment of POW's dates in effect from the Hague Conventions of 1899 and 1907 on the Laws and Customs of War on Land, which incorporated the Geneva Conventions of 1864 and 1906. However, the Hague agreements had limited practical effect during World War I, especially as far as the United States was concerned. The first substantial prisoner exchanges of the war were in May 1916 between the Central Powers and Russia and were restricted to the seriously sick and wounded. Germany, Austria, Britain, and France arranged rather belatedly for the internment of sick and wounded POW's in neutral countries. Even though some large-scale direct repatriations took place not long before the armistice, which included able-bodied prisoners in certain agreed

categories, the vast majority of the five to seven million prisoners were held in prison camps for the duration of the war.

Inasmuch as the United States took the position that it was not to be considered a party to either the Hague or Geneva Conventions and since there was no bilateral POW exchange agreement in effect between this country and Germany during the war, few, if any, of the 4,500 Americans captured by the Germans were exchanged while hostilities were in progress.

The experience in World War II was possibly somewhat better, at least in the European theater, with ten major repatriations of sick and wounded as well as a smaller number of "protected personnel," civilian internees, and merchant seamen, beginning in April 1942. These involved some 20,000 Germans and Italians and about 13,500 Allied personnel. For the most part, however, prisoners had to await the end of the hostilities before being repatriated. Just as Japan refused to consider any prisoner exchanges in World War II, in the Korean conflict North Korea and Communist China showed little interest in an exchange agreement until it suited their purposes to use discussions on the POW's as a way to begin negotiations to end the war.

In the Vietnam war prisoner exchanges during hostilities have been virtually nonexistent. In accordance with the Geneva Convention, all prisoners taken by the United States in Vietnam have been turned over to the South Vietnamese Government, which has released several hundred seriously sick and wounded North Vietnamese and Vietcong POW's. Earlier this year the Government of South Vietnam tried unsuccessfully to release 660 more. By comparison, the North Vietnamese and Vietcong have released only 32 Americans, and an unknown number of South Vietnamese. There

has been no apparent reciprocity by the other side involving the release of sick and wounded Vietnamese POW's.

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