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CODIFYING HUMANITY: THE LEGAL LEGACY OF WORLD WAR I IN THE TREATMENT OF PRISONERS OF WAR

Codificare l'umanità: l'eredità giuridica della Prima guerra mondiale nel trattamento dei prigionieri di guerra

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Abstract

This paper explores the transformative impact of World War I (WWI) on the legal framework governing the treatment of prisoners of war (POWs) in international conflicts. Beginning with an examination of early customary practices and the landmark Hague Conventions of 1899 and 1907, it highlights the limitations and challenges these frameworks faced during the unprecedented scale of WWI. In response to these challenges, the post-war period witnessed significant legal advancements, culminating in the Geneva Convention of 1929, which introduced clearer and more enforceable protections for POWs. By tracing the evolution of POWs legislation, the paper underscores the meaningful legacy of WWI on the development of international norms.

Questo contributo analizza il significativo impatto della Prima guerra mondiale (WWI) sul quadro giuridico relativo al trattamento dei prigionieri di guerra (POWs) nei conflitti internazionali. A partire da un esame delle pratiche antecedenti non standardizzate e delle Convenzioni dell'Aia del 1899 e del 1907, si evidenziano i limiti e le criticità che tali strumenti normativi hanno dimostrato di fronte alla portata del conflitto. In risposta a tali sfide, il periodo postbellico fu segnato da significativi sviluppi giuridici, culminati nella Convenzione di Ginevra del 1929, che introdusse tutele più chiare ed efficaci per i prigionieri di guerra. Ricostruendo l'evoluzione della legislazione in materia, l'articolo mette in luce l'importante eredità della Grande guerra nella definizione degli standard internazionali.

Keywords: prisoners of War, World War I, warfare legislation, Geneva and Hague Conventions.
Prigionieri di guerra, Prima guerra mondiale, diritto bellico, Convenzioni di Ginevra e dell'Aia.

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1. Before the "War of Wars": attempts in POW's treatment regulation before WWI

Just the fact that the First World War is commonly known by the names of "the Great War" or "the War of Wars" gives us a glimpse of its importance and impact on western societies and their perception of its brutality. The hard consequences of the WWI experience indubitably shaped the following history, societies' mentality, and nations' warfare, introducing the new century in what some may describe as the worst way possible.

Nevertheless, some aspects of its impact have been largely underestimated, and they are still harshly recognized for their influence in what came next. POWs legislation is certainly one of them.

The horrible realities which took place in the 1939-1945 conflict definitely overshadowed the significance that WWI had on the *jus in bello*, exceeding every possible scenario about the atrocities that human beings are capable of committing. However, the enormous legislative effort that followed, to set limits and boundaries on an international legal framework, must not be perceived as the first of its kind. Lots of its principles and themes still embody to this day the experience of WWI, and that of captivity is probably one of the most significant.

To attempt to prove what we just said, we will start with what came before, trying to draft a summarising image of how the POWs international legal framework looked like before the Great War.

1.1. *Early practices and customary laws*

As one can easily imagine, fighting a war has always included capturing enemy combatants. Whether they are hostages or prisoners, deciding the fate of detained soldiers has always been a warfare issue. In ancient times, there were only three options: slavery, sacrifice, or ransom.

Over time, only ransom persisted into the modern age, but it remained "a common notion that prisoners of war were in the power of the ruler whose armed forces captured them" (Kokebayeva, Smagulov, Mussabalina 2016, 4231) and the states of origin of POWs had no rights over their lives.

Nevertheless, under the influence of the European Enlightenment, the idea of war prisoners starts to change. "Informal understandings on the treatment of POWs are as old as war" (Morrow 2001, 971), formalizing this understanding into internationally binding treaties marked one of the twentieth century's revolution in modern warfare. Between these stages bilateral agreements predominated, with the 1785 treaty between Prussia and USA being the first of them, when for the first time "the idea appeared that military captivity and a sentence for a criminal offense were fundamentally different" (Kokebayeva, Smagulov, Mussabalina 2016, 4231).

As previously said, the need for principles governing POWs treatment on an international and enduring framework came only with the beginning of the twentieth century. According to Dr. Morrow (2001), this need arose from four strategic problems that prompted states into signing these treaties:

a. *Monitoring Under Noise*: "noise", in this context, refers to uncertainty about the enemy behaviour, making it difficult to distinguish genuine violations of the informal understandings from situations where inadequate treatment might be due to factors outside the detaining power's control.
b. *Individual vs. State Violation*: ensuring the humane treatment of POWs requires addressing violations at both the state and individual levels. The risk of individual soldiers mistreating prisoners, driven by motives ranging from revenge to battlefield stress, necessitates mechanisms to control such behaviour and prevent escalation into broader cycles of violence.
c. *Variation in Preferred Treatment*: states historically held different views on the appropriate treatment of POWs, influenced by strategic considerations, ideological beliefs, and even racial prejudices. These types of variations required establishing a common standard acceptable to all parties.
d. *Raising a Mass Army*: modern warfare relies on mass armies, and mass armies rely on public support for conscription and military service. Formalising standards for POWs treatment at international level enhanced states' credibility in their commitment to protecting citizens serving in the armed forces.

Of course, in practice, all of these problems are strictly related to each other. As Dr. Morrow (2001) points out, the need to address these challenges collectively led to the formalisation of POWs treatment understandings.

In light of this, on the initiative of Tsar Nicholas II of Russia, the Hague Conventions of 1899 and 1907 were convened to reform the 1864 Geneva Convention. In fact, the 1864 Convention was "the first international instrument to define the status of war prisoners based on the idea of the humane treatment" (Kokebayeva, Smagulov, Mussabalina 2016, 4232), yet it failed to establish any principles or standards to clarify what "humane" treatment entailed.

1.2. *The Hague Conventions of 1899 and 1907*

Adopted on 29 July 1899 and entering into force on 4 September 1900, the *Hague Convention (II) on the Laws and Customs of War on Land* (hereafter referred to as HC II), dedicates all sixteen articles of its second chapter to POWs legislation.

In the very first article of the chapter, Art. 4, we find the requirement for the "humane treatment" that we were discussing earlier: "Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them. They must be humanely treated. [...]" (HC II, Ch. II, Art. 4).

Subsequently, their treatment is equated with that of the hostile government's own soldiers: "The Government into whose hands prisoners of war have fallen is bound to maintain them. [...] prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them" (HC II, Ch. II, Art. 7).

Moreover, while internment is permitted, confinement should be employed solely as an indispensable safety measure. POWs labour is permissible, provided it is neither excessive nor directly linked to military operations, and POWs should receive fair wages for their work. The HC II also subjects POWs to the capturing state's laws and regulations, allowing for disciplinary measures for insubordination or escape attempts. The HC II outlines specific provisions for parole, allowing POWs to be set free under their word of honour if their country's laws permit, and details the obligations of both the POWs and the capturing state regarding parole. It also establishes the creation of information bureaus to facilitate communication between POWs and their families and tracking their status. Finally, the HC II underscores the need for swift repatriation of POWs upon the conclusion of peace.

As one can easily notice, regulating POWs treatment was not among the top priorities of the twenty-six states that gathered to draft this convention. Although the reasons behind the convening of the 1899 conference by Tsar Nicholas II remain disputed, the most accepted theory falls on new weapons regulation and disarmament, and even failing in that goal: "[...] the gathering left Nicholas II's principal disarmament objectives unfulfilled. The delegates failed to adopt instruments regarding the prevention of new types and calibres of rifles and naval guns. Nor were they able to agree on fixing the size of military forces and naval armaments or their budgets" (Hayashi 2017, 2).

But it would not be too long before a new call for legislation was made, in 1907. Adopted on 18 October 1907 and entering into force on 26 January 1910, the *Hague Convention (IV) Respecting the Laws and Customs of War on Land* (hereafter referred to as HC IV) largely followed the path established by its predecessor.

One notable difference lies in Art. 5, concerning the confinement of prisoners. While the 1899 version permits confinement as an "indispensable measure of safety" (HC II, Ch. II, Art. 5), the 1907 version adds a critical detail: such confinement is permissible "only while the circumstances which necessitate the measure continue to exist" (HC IV, Ch. II, Art. 5). This addition safeguards against indefinite detention without justification.

The HC IV also clarifies financial provisions for captured officers and broadens religious freedom, by guaranteeing prisoners the right to attend services of "whatever church they may belong to" (HC IV, Ch. II, Art. 18), a more inclusive phrasing than the 1899 convention's "exercise of their religion" (HC II, Ch. II, Art. 17).

Further distinctions arise in the handling of recaptured escaped prisoners. The HC II stipulates that recaptured prisoners face disciplinary punishment only if caught before rejoining their army *or* leaving occupied

territory. The 1907 version removes the condition of leaving occupied territory, focusing solely on whether they rejoined their army or not.

These and other minor, yet significant, differences between the two conventions highlight the existence of a discussion on POWs treatment but, again, not as a primary focus. Essentially, the 1907 conference confirmed the resolution of its 1899 predecessor.

2. The Slap of Reality: application and efficacy of International Conventions

The aim of this chapter is to outline the gaps between legal prescriptions and wartime reality. We will do so by analysing specific case studies and drawing on the perspectives of historians, legal scholars, and military practitioners.

What we are about to display will be no more than a demonstration of the truthfulness of the words of Dr. J.W. Garner (1920, 452): "the war demonstrated in a striking manner that many of the rules which had been agreed upon by the body of States for the conduct of war were inadequate, illogical, or inapplicable to the somewhat peculiar and novel conditions under which they had to be applied during the late war".

The first key point to highlight is the existence of a variety of different captives to which the HCs were not prepared for. Prior to WWI, the legal framework was primarily focused on traditional POWs, combatant soldiers captured on the battlefield:

> with some additional protections offered for padres, medical staff and journalists taken prisoner on the field of battle: other kinds of conflict captives – civilian internees or guerrilla fighters, for example [...] – were excluded from any protection under international humanitarian law until much later in the twentieth century" (Jones 2011, 3-4).

The unprecedented scale and nature of the conflict led to a diversification of those captured during wartime. The Conventions, designed for a different type of conflict, proved to be inadequate to address the challenges posed by this diversification of captives. The Conventions' broad guidelines failed to provide clear standards for the treatment of these new categories of captives, leaving them vulnerable to abuse. The 1929 Geneva Convention on Prisoners of War, which will be discussed later, represented a significant step towards addressing this need.

But this was not the only unpredicted obstacle or challenge they needed to face. To illustrate the challenges in correctly applying the existing legal framework, we'll use the help of those who personally faced the situation: the International Committee of the Red Cross (hereafter referred to as ICRC) and Sir Herbert E. Belfield (1857-1934), Lieutenant General of the British Army and Director of Prisoner of War Work throughout WWI.

2.1. *Violations and challenges in implementation*

Ironically, from the very start of the war, one of the main challenges faced by the ICRC was to even *remind* the states of their obligations under the HC IV: "On 21 September 1914, the ICRC thus issued what may be considered its first 'rappel du droit': it sent an appeal to all States parties to the conflict, reminding them of the need 'to ensure the rigorous and faithful application' of the Geneva Convention of 1906" (Cameron 2015, 1103).

As a matter of fact, one could argue that the HC IV could not be legally applied to WWI. The infamous *si omnes* clause stipulated that the treaties would only be binding in a conflict if *all* participating states were parties to the conventions. Technically, Montenegro, Serbia, Italy, and the Ottoman Empire, despite being party to the convention, had been unwilling or unable to ratify it by the outbreak of war, assuming *de facto* a non-party status. That meant the HC IV was not legally binding for any of the warring states throughout the entire war.

Despite its technical inapplicability, no state explicitly invoked the *si omnes* clause to justify violations of

the Convention. The core principles of the HCs were recognized as customary international law by the time of WWI, meaning that even non-ratifying states were expected to observe these rules in practice. However, this lacuna would later be fixed in the 1929 Geneva Convention.

Coming to actual infractions, by the end of the war the ICRC published almost eighty allegations of violations (Cameron 2015, 1109) of both Hague and Geneva preceding Conventions. Approximately 30 involved attacks on medical facilities, 20 concerned mistreatments of medical staff or wounded individuals, 15 cases involved violations against hospital ships, such as seizure, bombardment, or obstruction of free passage and a few addressed misuses of the Red Cross emblem (Cameron 2015, 1111).

The substantial lack of POWs mistreatment allegation, compared to other kinds, could be hypothesised to have been due to their potential consequences:

> it should be recalled that reciprocity and reprisals were heavily used during the First World War, to the grave detriment of the victims. The ICRC was acutely aware of the risk of reprisals – especially against POWs – and it appealed to the parties to stop using them. There is also evidence that it worked behind the scenes to encourage parties to avoid creating circumstances that could give rise to reprisals.

Despite the author's conclusion that:

> we must surmise that the ICRC somehow weighed the potential costs in terms alleged violations being used to justify reprisals or for propaganda purposes and concluded that it was nevertheless beneficial to publish allegations received" (Cameron 2015, 1112), the existence of these violations cannot be denied. Even formal complains held by single prisoners were subject to strict "restrictions [which] left the way open for abuse, and in fact during the First World War the majority of written complaints submitted by prisoners of war never reached their destination (Pictet 1960, 382).

The Drs. Kokebayeva, Smagulov and Mussabalina's paper we discussed earlier (2016, 4234-7), solely analysing German concentration camps, details a vast number of these violations. Using POWs for tasks of a military nature; an inadequate typhus epidemic control within the camps (leading Russian and French governments to accuse Germany of setting it up); overcrowding, insufficient ventilation and heating, and parasite infestations reported as widespread issues in many camps, signifying disregard for the prisoners' basic living standards; racist discrimination in the confiscation of parcels, especially against Russian prisoners; diffusion of restrictions on the right to appeal and punishment for complaints; illegal disciplinary actions, such as tying prisoners to stakes, submerging them in water, depriving them of food, and using dogs against them, as cruel and inhumane treatment.

Despite the harsh conditions in Germany at the time, these actions cannot be interpreted as accidental or involuntary, making the above-mentioned appeal to "humanity" by the HC IV totally vain: "As interpreted by the Germans during the late war it virtually reduced the Hague conventions to a nullity" (Garner 1920, 462).

Having said that, it is still fair and reasonable to question the actual applicability of the articles in HC IV, starting with probably the most discussed one: Art. 6 and the prohibition of work of a military nature. In the words of Sir Belfield (1923, 136):

> it was practically impossible in this or any other country to adhere strictly to this law. Every kind of labour enabled a belligerent country as a whole the better to withstand the strain of events, and the employment of prisoners of war in any form of work, by releasing home labourers, directly augmented the fighting power of the captor.

On a practical level, according to the words of the Lieutenant General, any force taken from the arms of the enemy and employed at home as forced labour, however distant in nature from the military environment, contributes to the nation's war effort and its own sustenance. However, as he points out, this does not coincide with a clearance of military employment, which was the very case of Germany:

> Except as regards Germany, where we found every reason to make strong remonstrances as to the nature of some of the work on which prisoners were engaged and the conditions it was often carried on, [...] we had no cause to complain of the kind of work exacted from British prisoners of war by enemy Powers (Belfield 1923, 136-7).

Later on, this was not the only requirement considered *impossible to apply* by Sir Belfield. Art. 7, as we mentioned before, required an equal treatment of POWs as their rank correspondents of the captor state: "the terms of this Article, partly by force of circumstances, were virtually ignored by, as far as is known, all belligerents; in fact it is almost impossible to conceive the conditions in which their literal fulfilment would be practicable, if, indeed, this was contemplated by the composers" (Belfield 1923, 138).

As the facts have shown, and as was in fact also to be expected, not only do different powers apply different standards on the treatment of their soldiers, but in the event of a lack of resources or times of crisis, it would be unthinkable for a state to divide the available resources equally between its own soldiers and civilians and the prisoners of enemy states.

Another element of challenge was to be found in the *ambiguity* of the articles, and in the lack of a general definition of some of their prescriptions. This disparity applied to the treatment of non-combatants internee, as we discussed before; differences in the hierarchical structures of the various armies, sometimes making it complex to indicate a corresponding rank to ensure fair treatment; or in the severity of punishments:

> The military codes of enemy Powers differed much from our own, punishments being in most cases more severe and the relative gravity of offences very different. An offence of minor importance in our eyes might be considered as of much gravity in Turkey or Germany. The infliction of heavy punishments for, to them, seemingly trivial offences, though strictly legal according to the captor's code, caused much complaint by British prisoners, who, entirely ignorant of the Hague Convention and of the legal powers of their captor, not unnaturally regarded themselves as victims of harsh, if not illegal treatment (Belfield 1923, 140).

In conclusion, the difficulties in correctly applying HC IV are undeniable and variously motivated, partly due to its unsuitability for the specific conflict, partly due to the necessity of events, and partly due to the ambiguity of its drafting. This, of course, does not justify every violation of it nor incidents and attitudes of a clearly cruel and inhuman nature.

What remains to be disputed, in the light of all this, is where the effectiveness of laws of war lies, in order to better understand the extent of the failure of HC IV and what came after.

2.2. *The debate on the efficacy of war laws*

As Dr. T. Adams rightfully claims in his paper *The Efficacy Condition* (2019, 226-38): "That efficacy is a condition of the existence of a legal system has long been accepted. [...] we can say that a legal system will count as effective if most of its laws are either obeyed, enforced or otherwise stand capable of being enforced".

This definition of *efficacy*, while being perfectly valid for almost all kinds of legal systems, cannot claim to be unanimously accepted when applied to war laws.

The question of whether international laws governing warfare truly mitigate conflict's brutality has sparked an ongoing debate. Over time, numerous positions have followed one another, proposing different definitions of the true substance of their effectiveness. We will try to address this debate by proposing two antithetical theories, one with a clear practical and cynical nature and one with a more theoretical and optimistic outlook.

On one side there is Edward N. Luttwak, a Romanian-born American political scientist, historian, and strategist known for his work on military strategy, geopolitics, and international relations. Luttwak expresses a profound disillusionment with the efficacy of international humanitarian law, specifically referencing the Geneva Convention: "As for the Genocide Convention, I spit on it, given all the difference it has made to the fate

of the Cambodians, Rwandan Tutsis, Sarajevo Bosnians and indeed every beleaguered ex Yugoslav population" (Luttwak 2015, 8 cited in Jones 2011, 1).

His stance suggests that he views the effectiveness of war laws solely through their ability to *prevent* violations, a standard that history has repeatedly shown to be difficult to achieve.

On the other hand, we have Dr. Garner, already mentioned above, who argues that the efficacy of war laws should not be judged solely on whether they are never broken. He acknowledges that violations will eventually occur but emphasises that laws serve to establish norms and boundaries of acceptable behaviour. During a lecture in Germany he stated, "that although the laws of war had been breached in the First World War that was *not* the essential point regarding their value" (cited in Jones 2011, 6). In his more nuanced view, the conventions in force at the time gained their effectiveness and their impact on the war from their very condition of *existence*: "What character the world war would have had had there been no binding norms upon any of the belligerents[?]" (cited in Jones 2011, 6).

The two visions are evidently opposite. For Dr. Luttwak, it is only the degree to which laws have been broken that determines their effectiveness: the more laws have been broken, as has largely happened in the case we are dealing with, the less value they take on and the less effective or impactful they can be considered.

On the contrary, Dr. Garner interprets them more as mental archetypes, aligning with the idea that laws influence the mentality surrounding warfare. The very existence of laws limiting what a state can claim the right to do in warfare implies that *there are* such limits. While Luttwak dismisses their value based on their failure to prevent all violations, Garner argues that the primary value of war laws lies in their ability to define acceptable wartime conduct, providing a framework for assessing the actions of states. They establish a shared understanding of what constitutes a violation, even when such violations occur, and they offer a foundation for holding perpetrators accountable while deterring future breaches.

Ultimately, this ongoing debate highlights the complex and often contradictory nature of attempting to regulate warfare. While it is undeniable that war laws cannot completely prevent atrocities, their significance in establishing a framework for acceptable conduct and shaping perceptions of what constitutes a violation cannot be denied either. This framework, though imperfect, has demonstrably contributed to a gradual shift towards a more humane approach to warfare. The very existence of war laws, and their continuous evolution in response to new challenges, reflects a persistent hope that even amidst the chaos and brutality of conflict, a semblance of order and restraint can be imposed.

Talking about new challenges, we can now move on to analyze, considering all we just discussed about, how the legal framework evolved after the WWI trauma.

3. The Warfare Aftermath: how the WWI experience shaped succeeding legislation

As we have seen, WWI exposed significant inadequacies in the existing laws of war. This experience served as a catalyst for a fundamental shift in the international community's approach to regulating armed conflicts. The failure of the HCs, both II and IV, brought the world to the conviction that: "if war cannot be conducted in a civilized manner it can at least and should be conducted with some regard to the principles of humanity. [...] The whole doctrine of military necessity should likewise be carefully considered and an effort made to define its limits" (Garner 1920, 462).

The need for new international conferences became increasingly evident and urgent. The main promoter of what would become the Geneva Conventions of 1929 was the ICRC, which expressed the wish that a special convention on the treatment of prisoners of war be adopted. In fact, two treaties were signed at Geneva on 27 July 1929, at the end of the Diplomatic Conference of Geneva held from the 1st to the 27th of July of that year. The other treaty, the *Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field*, was meant to replace the previous Geneva Conventions of 1864 and 1906.

Our focus will be on the *Convention relative to the Treatment of Prisoners of War*, which was not intended to replace the HC II and IV, but rather to support and integrate them. For the first time in history, an international

legal agreement was devoted exclusively to the treatment of POWs, representing a groundbreaking moment in international law and addressing the critical issues exposed by the atrocities of WWI.

As Dr. Garner (1920, 463-4) observed: "This task may be said to be one of the legacies left by the war and it should be entered upon at the earliest possible date and with the seriousness of purpose commensurate with the magnitude of its importance".

3.1. *The 1929 Geneva Convention: a turning point*

Adopted on 27 July 1929 and entering into force on 19 June 1931, the *Geneva Convention (II) Relative to the Treatment of Prisoners of War* (hereafter referred to as GC II) counts nearly one hundred articles, more than sixfold those contained in HC II and IV on the same subject.

The GC II went beyond simply revising the existing rules on POWs treatment and marked a turning point in the development of international humanitarian law. The Convention aimed not only to make the existing standards more effective but also to introduce new mechanisms for their implementation. The Convention's detailed provisions, covering all aspects of captivity, from food and clothing to labour conditions and disciplinary procedures, aimed to leave no room for ambiguity and reduce the risk of mistreatment.

One of the biggest innovations can be found in the second article, which establishes an absolute *ban* on reprisals against POWs. As we discussed before, reprisals have been a huge problem and source of harm during WWI: "[...] reprisals may lead to irreparable harm and are always at risk of abuse. In World War I, reprisals led to a vicious cycle of acts, each more barbaric than the last, and left the normally applicable law in tatters" (Wylie 2019, 1338).

The GC II aimed to end this cycle of suffering and establish a more humane approach by recognizing POWs as individuals deserving of protection. Indeed, following this path, the Convention introduced a new paradigm shift by establishing POWs as *humanitarian subjects* entitled to protection under international law, regardless of their enemy combatant status:

> The [second] article was critical, therefore, in cementing the conceptual shift that transformed POWs from 'disarmed enemies' into 'victims of war'. [...] In the words of the US delegate, the ban on reprisals represented nothing less than a 'new humanitarian rule of international law'. 'Were [the convention] to contain but this one principle', the conference rapporteur triumphantly proclaimed to those present, 'you would not have met in vain' (Wylie 2019, 1342).

This contrasted with the HC IV focus on the obligations of the detaining power, with the GC II emphasizing the rights of POWs, such as the right to complain, communicate with neutral representatives, have legal representation, keep the possession of their belongings, and even the right to "not be threatened, insulted, or exposed to unpleasantness or disadvantages of any kind whatsoever" if unwilling or unable to expose "information[s] regarding the situation in their armed forces or their country" (GC II, Part. II, Art. 5).

Another significant innovation was the emphasis placed on neutral or protective powers. This system, codified in Articles 86-88 of the Convention, built upon informal practices observed during WWI, when protective powers covered detention camps inspections and worked as mediators between the warring parties, significantly highlighting their importance and leading to a legal regulation of their role: "The Prisoner of War Convention drafted at that Conference [GC II] thus became the first international agreement negotiated in time of Peace to give official recognition to the institution of the Protecting Power" (Schmitt 1961, 32).

The GC II formalized this practice, granting protecting powers the authority to visit any location where POWs are interned, inspect premises, and converse with prisoners privately. This right of access aimed to ensure transparency and deter potential abuse. Moreover, the Convention encouraged protecting powers to use their good offices to settle disputes between belligerents concerning the Convention's application, potentially proposing conferences or nominating neutral individuals to facilitate dialogue. Despite its limitations, the GC

II's protecting power system laid the foundation for the more robust framework found in the 1949 Geneva Conventions. These later Conventions further strengthened the role of protecting powers in safeguarding the rights and welfare of POWs, but nevertheless: "It may well be considered that the provisions of the 1929 Convention relating to Protecting Powers constituted the most important advance contained in that convention [...]. The lessons learned during World War I had not been forgotten" (Schmitt 1961, 32).

In the previous chapter, we have emphasised the problems that have arisen from the application of HC IV: work of a military nature, fair treatment of prisoners according with their rank, and non-combatant prisoners. On each of these issues, novelties have been introduced in the new Convention.

Part VII, titled *Application of The Convention to Certain Categories of Civilians* is dedicated to non-combatant prisoners, containing Art. 81 which states:

> Persons who follow the armed forces without directly belonging thereto, such as correspondents, newspaper reporters, sutlers, or contractors, who fall into the hands of the enemy, and whom the latter think fit to detain, shall be entitled to be treated as prisoners of war, provided they are in possession of an authorization from the military authorities of the armed forces which they were following (GC II, Part VII, Art. 81).

Although the text does not refer to all possible non-soldier prisoners, the presence of this article marks another innovation in wartime legislation, contemplating and regulating the presence of non-combatant prisoners in prison camps.

With regard to the treatment of correspondence of rank, Art. 21 deals with the removal of the vagueness of the previous version: "At the commencement of hostilities, belligerents shall be required reciprocally to inform each other of the titles and ranks in use in their respective armed forces, with the view of ensuring equality of treatment between the corresponding ranks of officers and persons of equivalent status" (GC II, Sect. II, Ch. 6, Art. 21).

While this applies to officers, the treatment of troops is equated to that of the "depot troops", soldiers stationed at a military base or depot, typically responsible for tasks such as training, logistics, and administration, aiming to guarantee prisoners a basic level of sustenance and nutrition comparable to non-combatant soldiers: "[...] As regards dormitories, their total area, minimum cubic air space, fittings and bedding material, the conditions shall be the same as for the depot troops of the detaining Power", "The food ration of prisoners of war shall be equivalent in quantity and quality to that of the depot troops. [...]" (GC II, Sect. II, Ch. 1, Art. 10 and Ch. 2, Art. 11).

Finally, Sir Belfield did not go unnoticed, and the new regulation of forced labour merely prohibited work directly and closely related to the capturing state's war effort: "Work done by prisoners of war shall have no direct connection with the operations of the war. In particular, it is forbidden to employ prisoners in the manufacture or transport of arms or munitions of any kind, or on the transport of material destined for combatant units. [...]" (GC II, Sect. III, Ch. 3, Art. 31).

In conclusion, as we have seen, the GC II represented a truly turning point in both POWs treatment legislation and in international humanitarian law. The lesson learned during WWI deeply influenced its drafting and its impact cannot be denied. The final step is to examine the subsequent developments, analysing how this impact endured over time and tracing its influence in the conventions signed after WWII and into the present day.

3.2. *Lasting impacts and the path to 1949 Geneva Convention*

As we discussed at the very beginning of this paper, the horrors of WWII exceeded every possible expectation. We can surely say, without underestimating the impact of WWI, that the WWII trauma marked the mentality of all humankind in a way that was never experienced before. As one can easily understand, the appeal for a "humane treatment" of prisoners was more neglected and mistreated than ever.

Subsequently, the experience of WWII led to a new cycle of conventions, held once again in Geneva. But

while the 1929 conventions sought to develop the principles of earlier ones, the aim of the 1949 conventions was to create a more robust and enforceable framework to prevent the recurrence of such horrors. The focus shifted from codifying a legal framework suited to the new kind of warfare, to establishing a stronger, more detailed, and rights-focused approach.

Four treaties were signed in Geneva on the 12th of August 1949, following the Diplomatic Conference of Geneva began on April 21. The one we will focus on is the third, the *Geneva Convention (III) Relative to the Treatment of Prisoners of War* (hereafter referred to as GC III), in force from the 21 of October 1950 to present day.

The GC III contains 143 Articles, whereas the GC II had 97 and the HC IV only 16. The raising of POWs' treatment as a priority is evident. For the sake of brevity and relevance, we will not analyse every innovation and reformulation of the Conventions, instead we are going to focus only on the parts where the influence of WWI remains clear and visible. To do so, we will use the help of the ICRC's *Commentary* volume of 1960, where the impact of WWI is frequently highlighted.

In the previous chapter we discussed the importance of protecting powers and how the WWI led to the first international legislation concerning their role and activities: "The Article [86] was excellent. It paid a tribute to the work achieved by certain Protecting Powers in the past, while at the same time legalizing such work in the future. [...] The Second World War clearly showed the value of this Article" (Pictet 1960, 95).

The only problem was that there was nothing *compulsory* in Art. 86 of GC II, which stated only the "*possibility* of collaboration between the protecting Powers [...] [*italics added*]" (GC II, Part VIII, Sect. II, Art. 86). Subsequently, the ICRC directed its efforts on fixing this lacuna. "Surprisingly enough, [...] [the proposal for the compulsory clause] gave rise to hardly any objections at the Diplomatic Conference" and the first sentence was then updated to: "The Present Convention *shall* be applied with the co-operation and under the scrutiny of the Protecting Powers [...] [*italics added*]" (GC III, Part I, Art. 8). As the ICRC noticed: "This is a command" (Pictet 1960, 98), closing the cycle started in WWI.

Also, as mentioned before, during WWI bilateral agreements had a significant impact "to the conclusion of special agreements on the treatment of prisoners of war and on other problems of a humanitarian nature". "This idea [...] is very largely the result of experience gained during the First World War [...]. [However,] on the other hand, no meeting of this kind took place during the Second World War" (Pictet 1960, 125). This experience led to the first formalization of this possibility, thanks to Art. 11, which reads: "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 [...]. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose" (GC III, Part I, Art. 11).

We briefly talked about the absolute ban of reprisals introduced in the GC II. However, "It was not always easy to obtain respect for the corresponding provision of the 1929 Convention, and the efforts made by the ICRC in this field during the Second World War demonstrate the great importance of this rule" (Pictet 1960, 142) as well as the long-lasting teachings of WWI.

These variations do not even consider the very large number of articles that remained identical, or practically identical, between the two conventions. The commentary we are relying on mentions tens of times articles that, born out of WWI experience, have proved their essentiality and function to this day. Among these there are articles regarding prisoners' safety, the development of "intellectual relief", the custom of appointing prisoners' representatives, the restriction and prohibition of certain punishment practices, the formation of information bureaux, and many further examples.

As has been rightfully stated: "In a very real sense, the conceptual bedrock of modern International Humanitarian Law that took shape in the four Geneva Conventions of 1949 emerged out of the mud and rubble of World War I as much as it did from the dust clouds and death camps of World War II" (Wylie 2019, 1350).

The transformative impact of WWI on the legal treatment of POWs underscores its enduring legacy. Rather than being merely a tale of failure, it represents a moment of profound learning and progress. The Conventions born out of the war's devastation did more than codify new rules; they shaped the global understanding of justice in warfare and set the stage for the even more comprehensive GC III.

In reflecting on this progression, it becomes evident that the laws of war, while never fully eradicating the brutality of conflict, play an essential role in defining its boundaries. They serve as a moral compass, fostering accountability and reinforcing the principle that even in war, humanity must prevail. As this paper has shown, the legacy of WWI is not confined to its immediate aftermath but resonates in the continued evolution of international legal norms, reminding us of the ongoing pursuit of justice and humanity in the face of conflict.

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International Conventions

Hague Convention (II) on the Laws and Customs of War on Land (adopted 29 July 1899, entered into force 4 September 1900).

Hague Convention (IV) Respecting the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910).

Geneva Convention (II) Relative to the Treatment of Prisoners of War (adopted 27 July 1929, entered into force 19 June 1931).

Geneva Convention (III) Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950).