United States, United States v. Batchelor

N.B. As per the disclaimer [1]**, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[**Source**: United States Army Board of Review, 19 CMR 452 (1955)]

UNITED STATES

v.

Corporal CLAUDE J. BATCHELOR [...]
CM 377832

Petition for review by USCMA pending

August 1, 1955

PRIOR HISTORY: Sentence adjudged September 30, 1954. Approved sentence: Dishonorable discharge, total forfeiture, and confinement for twenty (20) years.

OPINION: [...]

I

Upon trial by general court-martial, the case being treated as non-capital by direction of the convening authority, the accused pleaded not guilty to but was convicted of two offenses of communicating with the enemy without proper authority (Charge I, Specifications 1 and 2), uttering a certain letter, which was disloyal to the United States, with design to promote disloyalty and disaffection among the civilian populace of the United States (Charge II and its specification), misconduct as a prisoner of war (Additional Charge I, Specification 2), and unlawfully participating in a "trial" of a fellow prisoner of war and recommending that he be shot (Additional Charge II and its specification), all offenses having been committed at Camp 5, Pyoktong, North Korea, while the accused was in the hands of the enemy as a prisoner of war, in violation of Articles 104, 134, 105 and 134, respectively, of the Uniform Code of Military Justice. [...]

II

The accused was convicted of knowingly, and without proper authority, communicating, corresponding and holding intercourse with the enemy, while in their hands as a prisoner of war, from on or about 1 July 1951 until on or about 1 September 1953, by joining with, participating in and leading discussion groups conducted by the enemy proposing, developing, discussing and reflecting certain views and opinions that the United States conducted bacteriological warfare in Korea, was an illegal aggressor in the Korean conflict, and that Communism should be embraced by the prisoners of war; by making speeches favoring Communism; by circulating petitions criticizing the United States for participating in the Korean conflict; by urging United Nations prisoners of war to sign said petitions; and by aiding and assisting the enemy to influence other United Nations prisoners of war to

accept and follow the philosophies and tenets of Communism, in violation of Article 104 of the Code (Charge I, Specification 2). [...]

VIII

[...]

c. Denial of Motions Predicated on Claimed Inapplicability of Code of Prisoners of War (Nos. II and III)

Appellate defense counsel contend, in substance, that all charges, being based on acts done while the accused was a prisoner of war of the Chinese Communists, should be dismissed because the Geneva Prisoner of War Convention of 1929 vests all authority over prisoners of war in the captor power and withdraws such authority from the home power (No. III) [...].

(1) Jurisdiction as to offenses committed while prisoner of war

[...] [A]ppellate defense counsel apparently contend that the Geneva Prisoner of War Convention of 1929, as supplemented by TM 19-500, OPERATES to preclude any such jurisdiction. It is, of course, true that the United States is legally bound to adhere to this Convention [...], and, although the Geneva Prisoner of War Convention of 1949 was not ratified until recently, July 14, 1955 to be exact, it is noted that a letter of July 6, 1951 from the representative of the United States in the Security Council to the Secretary-General of the United Nations states that "The United Nations Forces in Korea have been and are under instructions to observe at all times the Geneva Conventions of 1949 on ... the treatment of prisoners of war ..." (UN Doc. S/2232, 25 Dept/State Bull. 189 (1951). But these Prisoner of War Conventions (hereinafter cited by year and article, e.g. 1929-2) were not intended to, and do not, produce the effect ascribed by appellate defense counsel. They did not purport to affect the jurisdiction of the home power, once the prisoner of war has been repatriated, as to offenses committed in violation of its laws while in enemy captivity.

Nor do they purport to authorize or condone any acts such as are alleged in the specifications of the charges. On the other hand, the express purpose of the Conventions is to assure humane treatment and eliminate cruel and inhuman treatment of victims of warfare (1929-preamble; 1949-3) and, in effecting this purpose, they merely accept the inevitable temporary disciplinary control by the captor-enemy (1929-9, 18, 45, 50, 51, 548 62, 66; 1949-21, 39, 82, 87-94, 98, 100) while giving expression to the principle that prisoners of war continue in the service of their own country (Oppenheim's *International Law*, 7th Ed., Lauterpacht, Vol. II, sec. 127e), and most certainly recognizing the continuance to allegiance to the home country (1929-19, 27, 31, 49, 75; 1949-5, 18, 22, 40, 43, 49, 50, 54, 68, 87, 118) without any duty of allegiance to the captor-enemy of whom they are not nationals (1929-45, 66; 1949-87, 100; Oppenheim's *International Law*, supra, secs. 128, 128b). Nor do the portions of Articles 2 and 45 of the 1929 Convention, which are particularly relied upon, support the contention of appellate defense counsel. Thus, the provision in Article 2 that "Prisoners of War are in the power of the hostile power, but not of the individual or corps who have captured them" merely assures humane treatment and protection by the captor-enemy power (see *Winthrop's Military Law and Precedents*, [2nd Ed., 1920 reprint], p. 790), Article 2 itself recognizing this by further providing that "They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity... ." The provision in Article 45 that "Prisoners of war shall be subject to the laws, regulations, and orders in force in the armies of the detaining power" – Article 45 being the first Article of "General Provisions" under "Chapter 3 – Penalties Applicable to Prisoners of War" – is but the expressed recognition of what we have previously termed the inevitable temporary disciplinary control by the captor-enemy power. The same is patently true of paragraph 57 of TM 19-500 (Change 7, August 29, 1945) providing that "Prisoners are subject to the laws, regulations, and orders in force in the Army of the United States including the Articles of War. They are not subject to the laws, regulations, or orders of the country in whose Armed Forces they served, except as prescribed in this manual", such paragraph 57 falling under the principal heading of

"Discipline and Control", and TM 19-500 being expressly intended to supplement the Geneva Convention of 1929 (par. 2a, Change 3, August 9, 1945). [...]

Manifestly, therefore, the first contention is devoid of merit and it is so determined.

(2) Applicability of Article 104 of the Code of prisoners of war [...]

Nor does the Geneva Prisoner of War Convention of 1929, or that of 1949, even purport to authorize such communications as are alleged in the specifications of Charge I. On the other hand, those Conventions appear to go no further than to require a prisoner of war "to give, if he is questioned on the subject, his true name and rank, or else his regimental number" (1929-5; 1949-17) and to permit complaints because of the conditions of captivity either directly (1929-42; 1949-78) or through their prisoner of war representatives (1929-43; 1949-79). Prisoners of war may not be coerced into giving other information (1929-5; 1949-17). Thus, it has been said:

> "Obviously, prisoners are not bound to furnish information on matters other than their rank and identity. It would be unlawful to inflict punishment or hardships on those prisoners who refuse to give such information. ..." (*Wheaton's International Law – War*, 7th Ed., 1944, p. 184)

and

> "The Convention lays down in detail the information which a prisoner may be required to give. This is restricted to his surname, first names and rank, date of birth, and army, regimental, personal or serial number. ..." (*Oppenheim's International Law*, Lauterpacht, Vol. II, 127)

Patently, an authorization to declare identity and to complain about conditions of captivity

can, by no stretch of the imagination, be construed as a license to engage in the activity charged against the accused herein. [...]

Can it now be fairly said, for the first time, that Congress itself intended these Articles to include such an unexpressed exception simply because the rule of non-intercourse was stated, in the mentioned texts, to be “absolute” whereas, under those Prisoner of War Conventions legally binding upon us, certain minor deviations, such as declaration of identity and complaints, may have been recognized in the case of prisoners of war? We think not. [...]

[...]

IX

The board of review having found the findings of guilty and sentence as approved by proper authority correct in law and fact and having determined, on the basis of the entire record, that they should be approved, such findings of guilty and sentence are hereby affirmed.

Discussion

1. May a prisoner of war invoke Geneva Convention III against his own country? Does Convention III regulate the relations between a prisoner of war and his own country ?
2. Is a prisoner of war subject to the laws of the Detaining Power or to those of the power on which he depends? (GC III, Arts 82 [2] and 99 [3]) What if the two laws contradict each other?
3. a. Does IHL protect a duty of allegiance of a prisoner of war towards the Power on which he depends? May a Detaining Power allow a prisoner of war to violate this duty? May it encourage him to do so? May it promise him advantages going beyond those provided for by Convention III if he does so? May a Detaining Power allow a prisoner of war to engage in propaganda against his own country among the other prisoners of war? In the media? (GC III, Art. 87 [4])

b. If a prisoner of war changes his allegiance and professes, of his own free will, allegiance to the Detaining Power, does he lose his rights under Convention III? May he be accepted for enrolment in the armed forces of the (former) Detaining Power? (GC III, Arts 7 [5], 23 [6], 52 [7] and 130 [8])

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