

THE LEGACY OF THE UNCONDITIONAL SURRENDER OF GERMANY: THE TREATMENT OF PRISONERS OF WAR

Maria Giulia Rossi, Giovanni Antonio Esposito and Luca Alessandro Di Marco

Department of Foreign Languages, University of Torino, Italy

Abstract: The twentieth century was a time of great upheaval and change, and the treatment of prisoners of war was no exception. The First World War saw the introduction of new methods of warfare and a sharp increase in the number of prisoners taken. The Second World War was even more devastating, and the treatment of prisoners of war was often brutal and inhumane.

This paper examines the fate of German prisoners of war after the Second World War. It argues that the Geneva Convention of 1929, which had previously been the main legal reference for the treatment of prisoners of war, was no longer valid after the unconditional surrender of the Third Reich. This led to a situation in which prisoners of war were often subjected to harsh treatment, including forced labor and even execution.

The paper concludes by calling for greater attention to be paid to the protection of prisoners of war, even in the aftermath of a conflict.

Keywords: Prisoners of war, Geneva Convention, World War II, Germany, Human rights, Forced labor, Execution

Introduction

The twentieth century was a turning-point in the world's history: two World Wars and a Cold War. The First World War was a catastrophe with no parallel in history; it introduced new kinds of fighting and it didn't spare innocent civilians. In that period nine million soldiers died in the trenches. Armies invaded countries and slaughtered people. The Second World War systematized this trend. The German Army deported Jewish people and created a huge world of internment camps. In 1943, Allied powers introduced a terrible air raid practice that hit all German cities. Escape of millions and millions of civilians was another consequence of this new kind of war. The First World War not only started a new sort of fighting, but also changed the background of captivity and its perception. Also the number of prisoners changed and increased: Stephen Ambrose and Günter Bishof wrote that during the Second World War "some thirty-five million prisoners of war were taken worldwide" (Ambrose and Bishof 1992, 2).

Until the Second World War diplomatic efforts gave a serious contribution to the processing of special agreements such as Geneva Convention 1929, which dealt with disarmed soldiers' destiny. These agreements were more and more generous towards prisoners of war, but after 1945, when the war was over, something changed: the behaviour towards prisoners gradually lost transparency standards. During the Second World War Geneva Convention 1929 represented the main legal reference; after 1945 this agreement was no longer valid because the Third Reich had surrendered: Geneva Convention 1929 hadn't taken an unconditional surrender into account. So, as international rules were changing, what was the fate of German prisoners of war after the Second World War?

Status of Prisoners of War and Transient Camps

The situation of German prisoners of war in Russia is not very relevant in this context: U.S.S.R. had never signed Geneva Convention, so it always treated prisoners of war in the same way: that is badly. France had signed Geneva

Convention, but it had few prisoners of war in its hands in comparison with other countries. In his 1998 study, François Cochet added that “l’essentiel des prisonniers de guerre en mains françaises vient non pas des captures directes effectuées par l’Armée de la libération mais de cessions auxquelles ont procédé les Anglo-Américains” (Cochet 1998, 121). In this case great powers were the United States of America and Great Britain: after 1945 they had together more than five million German prisoners of war in Europe. But they hadn’t expected a number like that. So they decided to invent a new class of prisoners of war: that is DEFs, disarmed enemy forces.

This category was quite disadvantaged: DEFs were not well nourished and not well housed and sheltered.

The reason of this decision was to save resources. So, after 1945, two classes of prisoners of war lived together: POWs, that is prisoners of war, and DEFs, that is disarmed enemy forces. The former status, with normal rights, was granted to German prisoners who had surrendered before 8 May 1945; the latter status was assigned to German prisoners who had surrendered after 8 May 1945. An exchange of letters within Supreme Headquarters of Allied Expeditionary Forces stated

Please confirm that when no large numbers of Allied PWs remain in German hands, any further Germans surrendering can be treated as capitulated troops and not as PW (7 May 1945, in Z 45F-Z 46, *Office of Military Government for Germany*, RG 260, Bundesarchiv Koblenz)

The answer:

It would appear to have a practical rather than a legal basis; under the Geneva Convention such action cannot be taken until surrender or formal capitulation by proclamation. However, the “Unconditional Surrender of Germany” absolves the three Allied Powers from declaring any or all personnel of German Armed Forces to be POWs (7 May 1945, in Z 45F-Z 46, *Office of Military Government for Germany*, RG 260, Bundesarchiv Koblenz)

In his 1982 study, the jurist Wilfried Fiedler wrote about the “Unconditional Surrender of Germany”:

The traditional meaning of the term “unconditional surrender” was lost at the end of World War II due to the use of certain “instruments of surrender” without any new, clear, legal categories first being established. The term “general capitulation” remains less problematical. General capitulation goes beyond the traditional meaning of unconditional surrender since it can include the capitulation of the entire armed force or of essential parts of it. The meaning in the sense of the termination of war is equally distinct from the traditional one; an overlapping with armistice here is obvious. Although certain links, particularly military ones, still exist between a “simple” general capitulation and the traditional meaning, State practice at the end of World War II exhibited with unconditional surrender a special form of general capitulation with has little connection to the legal concepts hitherto developed.

The unconditional surrender of the German High Command has to be regarded as being in a special category, owing its elaborate preparation at the highest political levels during World War II. Characteristically, capitulation in this instance was regarded as a method of terminating hostilities with regard to the entire military forces of a belligerent at the highest level of military command. Thus, contrary to the meaning hitherto given to the term in international law, capitulation referred solely to acts of military surrender, while at the same time leaving open the possibility of adding further provisions. The documents of surrender explicitly stated:

“This act of military surrender is without prejudice to, and will be superseded by any general instrument of surrender imposed by, or on behalf of the United Nations and applicable to Germany and the German armed forces as a whole” (Fiedler 1982, 237).

The U.S. Army assigned these two categories (POW and DEF) to German prisoners of war, but, at the same time, it tried to feed, as much as possible, even German disarmed enemy forces and (it tried) to ease living

conditions in their camps. The conclusion is that, in this case, practice was different from theory: that is DEFs should have been treated badly, but in reality their conditions were not so different from POWs' conditions. This was essentially due to the sense of honour and the moral code of the U.S. Army.

However, even if the U.S. Army avoided, in practice, to discriminate too much between POWs and DEFs, at the beginning of the occupation of Germany it couldn't avoid a very bad period for all German prisoners in its hands: in April 1945, shortly before the unconditional surrender, U.S. Army founded about twenty transient camps along the Rhine River, especially along its left side. These camps gathered German prisoners of war captured during the first months of American penetration into Germany and straight after the surrender. They were transient camps, destined to be dismantled in September 1945. In these camps prisoners had to be recognized, identified and carefully screened. After that German prisoners were sent to other camps, generally permanent. The problem is that transient camps along the Rhine River were completely unorganized, lacking in shelter, beds, food... Indeed Eisenhower's orders on 17 April 1945 were categorical:

Transient enclosures established in Germany for handling enemy prisoners of war will be so operated as to accord the most adequate care and maintenance possible in existing emergencies. Transient enclosures may be so operated and established by advance sections at any point in Germany.

In all cases the greatest practical advantage will be taken of existing facilities. Insofar as practical, transient enclosures will be located within the permanent zone of US occupation. Preference will be given to locations on the east side of the Rhine River. The capacity and location of such enclosures and the number of them will be determined by the section commander concerned and will depend upon the estimated load of prisoners.

Each such enclosure will always be designated as "Prisoner of War Temporary Enclosure" (abbreviated PWTE) and will be numbered by the section commander concerned. Prompt report of each enclosure established will be made to this headquarters by giving number of the enclosure, its location, by coordinates, by naming the nearest small town and the nearest large town, its present capacity and its full capacity with the date when full capacity is expected to be reached. When possible, the nearest airfield will be designated.

No entry into transient enclosures will be permitted except upon pass signed by the section commander. All prisoners of war will be screened as soon as possible after arrival at a transient enclosure. The screening is to determine those who are eligible for prisoner of war status. Primarily, this is intended to eliminate civilians, who will be released (17 April 1945, in Z 45F-Z 46, *Office of Military Government for Germany*, RG 260, Bundesarchiv Koblenz)

Living conditions in these camps were very very difficult and precarious and they openly broke instructions of Geneva Convention 1929. Actually prisoners in transient camps were compelled to be pressed-up within enclosures, without shelter. They usually dug big holes in the ground to protect themselves from bad weather. In this situation it was very hard to sleep. Besides, food also lacked and prisoners sometimes ate what they found in the ground. They hoped to receive help from people outside the camp, but food lacked for everybody, prisoners and civil population. In Germany transient camps were well-known as "complaint camps" because of bad conditions inside. They were also famous as *Rheinwiesenlager*, that is meadow camps. The only furniture of these enclosures, apart from wire fences and barbed wire, were overlooking watchtowers. This situation of extreme discomfort and hardships was confirmed by document sources of the International Committee of the Red Cross, who visited some of these transient camps in spring 1945. We can read an excerpt from a visit report dated 14 may 1945 of International Committee of the Red Cross about Heilbronn camp:

Il n'existait qu'une grande prairie à cet emplacement avant la date d'ouverture du camp, et les Autorités n'ont bénéficié que de la proximité d'une station de chemin de fer et d'un certain nombre de bâtiments situés autour de cette station, utilisées par les bureaux, les magasins et les troupes de garde américaines. Le sol des "cages" est actuellement dépouillé de toute végétation, c'est un terrain vague, brun rouge, poussiéreux, argilleux à 50 cm de la surface, de sorte que, lorsqu'il pleut, il se transforme en marécage. La plupart des prisonniers couchent sur le sol et manquent de tentes et de couvertures. Durant les quelques jours de pluie du mois d'avril, la situation était devenue critique et les prisonniers ne pouvant plus même coucher par terre. Les officiers de plus de 50 ans et certains officiers malades ne peuvent continuer à coucher sur un terrain humide ou supporter les intempéries sans qu'il en découle de graves conséquences pour leur état de santé (14 May 1945, PWTE camp/ Heilbronn C.1, in *Service des camps, zone U.S., Allemagne-1945*, Comité International de la Croix-Rouge)

In Germany spring 1945 was very cold and rainy and that made living conditions in these camps worse. It was not a case of a real intent to harm by the U.S. Army: Americans didn't plan a disaster like that, but mess before and after surrender and the situation of legal anarchy in Germany made a degeneration of this kind possible. We cannot forget that, after 8 May 1945, Germany no longer existed as a state entity and so it couldn't protect its prisoners of war. In his 1951 study, Kurt Laun stated that "the Dönitz government was not recognized because its effectiveness was said no longer to exist" (Laun 1951, 267).

But on the other hand, we cannot explain the disaster of transient camps only on the basis of bad organization: in this first phase of occupation Allied powers had just discovered and personally visited Nazi concentration camps and gas chambers. So there was no way of avoiding a sense of hostility and horror towards all was German. It was not a case of real vengeance, but of inevitable feeling and inevitable negative mood towards all was German.

Conclusions

Transient camps were dismantled in September 1945 once and for all. In the following autumn were founded permanent camps, where prisoners previously identified and screened were gathered. Permanent camps, set up in Bayern, Württemberg-Baden and Hessen, were well organized and fit to lodge and receive prisoners of war. Here they could sleep, eat and amuse themselves with sport or intellectual activities in leisure time, in accordance with Geneva Convention 1929. These camps were the result of a better stabilization of American presence, especially of a full consolidation of power by American Military Government in Germany. But permanent camps were also the result of a new political deal. We cannot forget that in the space of short time, because of Cold War, coalitions were changing and old enemies were becoming partners.

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