

*Korea*

Repatriation of Korean Prisoners of War

UN Resolution of 12/3/52

Final UN Proposal Submitted 5/13/53

(See paragraph 6 below. Under U.N. Resolution all prisoners were to be processed through the Repatriation Commission.)

1. Within 2 months after the Armistice Agreement becomes effective, both sides will, without offering any hindrance, repatriate and hand over in groups all those Prisoners of War in its custody who insist on repatriation to the side to which they belonged at the time of capture. Repatriation shall be accomplished in accordance with the related provisions of Article III of the Draft Armistice Agreement. In order to expedite the processing of such personnel, each side shall, prior to the signing of the Armistice Agreement, exchange the total numbers, by nationalities of personnel to be repatriated direct. Each group delivered to the other side shall be accompanied by rosters, prepared by nationality, to include name, rank (if any) and internment or military Serial Number.

2. A. On the date the armistice becomes effective, all Prisoners of War of Korean nationality who, while in the custody of the detaining powers, have elected not to avail themselves of their right to be repatriated, shall be released to civilian status. Those who may subsequently desire to return to the area under the military control of the side to which they formerly belonged shall be permitted and assisted to do so under the provisions of Article 59 of the Draft Armistice Agreement.

B. Terms of reference for Prisoners of War Custodial Commission.

I. General.

1. In order to facilitate the return to their homelands of all prisoners of war, there shall be established a Repatriation Commission consisting of representatives of Czechoslovakia, Poland, Sweden, and Switzerland, that is, the four States agreed to for the constitution of the Neutral Nations Supervisory Commission and referred to

1. In order to insure that all Prisoners of War have the opportunity to exercise their right to be repatriated following an armistice, Sweden, Switzerland, Poland, Czechoslovakia, and India shall each be requested by both sides to appoint a member to a Prisoner of War Custodial Commission.

in paragraph 37 of the draft armistice agreement, or constituted, alternatively, of representatives of four States not participating in hostilities, two nominated by each side, but excluding representatives of States that are permanent members of the Security Council.

14. The Repatriation Commission shall at its first meeting and prior to an armistice proceed to agree upon and appoint the umpire who shall at all times be available to the Commission and shall act as its Chairman unless otherwise agreed. If agreement on the appointment of the umpire cannot be reached by the Commission within the period of three weeks after the date of the first meeting this matter should be referred to the General Assembly.

15. The Repatriation Commission shall also arrange after the armistice for officials to function as umpires with inspecting teams or other bodies to which functions are delegated or assigned by the Commission or under the provisions of the draft armistice agreement, so that the completion of the return of prisoners of war to their homelands shall be expedited.

12. The Repatriation Commission is entitled to call upon parties to the conflict, its own member governments, or the Member States of the United Nations for such legitimate assistance as it may require in the carrying out of its duties and tasks and in accordance with the decisions of the Commission in this respect.

2. The release and repatriation of prisoners of war shall be effected in accordance with the "Geneva Convention relative to the Treatment of Prisoners of War", dated 12 August 1949, the well-established principles and practice of International Law and the relevant provisions of the draft armistice agreement.

which shall be established to take custody in Korea of those Prisoners of War who, while in the custody of the detaining powers, have elected not to avail themselves of their right to be repatriated, and who are not released to civilian status on the date the armistice becomes effective. The Prisoner of War Custodial Commission shall establish its headquarters within the demilitarized zone in the vicinity of Panmunjom. Subordinate bodies of the same composition as the Prisoner of War Custodial Commission shall be stationed at those locations at which the Custodial Commission assumes custody of Prisoners of War.

2. The Armed Forces and any other operating personnel required to assist the Custodial Commission in carrying out its functions and responsibilities shall be provided exclusively by India, whose representative shall also be Chairman and Executive Agent of the Custodial Commission. Representatives from each of the other 4 powers shall be allowed staff assistants in equal number not to exceed 10 each. The arms of all personnel provided for in this paragraph shall be limited to Military Police type small arms.

3. Force shall not be used against the prisoners of war to prevent or effect their return to their homelands and no violence to their persons or affront to their dignity or self-respect shall be permitted in any manner or for any purpose whatsoever. This duty is enjoined on and entrusted to the Repatriation Commission and each of its members. Prisoners of war shall at all times be treated humanely in accordance with the specific provisions of the General Convention and with the general spirit of that Convention.

4. All prisoners of war shall be released to the Repatriation Commission from military control and from the custody of the detaining side in agreed numbers and at agreed exchange points in agreed demilitarized zones.

5. Classification of prisoners of war according to nationality and domicile as proposed in the letter of 16 October from General Kim Il Sung, Supreme Commander of the Korean People's Army, and General Peng Teh-Huai, Commander of the Chinese People's Volunteers, to General Mark W. Clark, Commander-in-Chief, United Nations Command, shall then be carried out immediately.

3. No force or threat of force shall be used against the Prisoners of War specified in paragraph 1 above to prevent or effect repatriation, and no violence to their persons or affront to their dignity or self-respect shall be permitted in any manner for any purpose whatsoever (but see paragraph 7 below). This duty is enjoined on and entrusted to the Prisoner of War Custodial Commission and each of its representatives. Both sides shall have representatives with appropriate representatives of the Prisoner of War Custodial Commission to determine that any personnel who request return to the other side have not been coerced into making this decision. Prisoners of War shall at all times be treated humanely in accordance with the specific provisions of the Geneva Convention, and with the general spirit of that convention.

## II. Custody of Prisoners of War.

4. All prisoners of war who do not avail themselves of the right of repatriation following the effective date of the Armistice Agreement, or who are not released to civilian status on that date, shall be released from the military control and from the custody of the detaining side as soon as practicable, and, in all cases, within 60 days subsequent to the effective date of the Armistice Agreement to the Custodial Commission at locations in Korea to be designated by the detaining side.

5. The locations specified in the preceding paragraph shall be demilitarized by the withdrawal of the military forces of the detaining side to a distance of at least 2 kilometers from the perimeter of the Prisoners of War installation at the time the Custodial Commission assumes control thereof.

6. After classification, prisoners of war shall be free to return to their homelands forthwith, and their speedy return shall be facilitated by all parties concerned.

10. Notwithstanding the provisions of paragraph 3 above, nothing in this Repatriation Agreement shall be construed as derogating from the authority of the Repatriation Commission (or its authorized representatives) to exercise its legitimate functions and responsibilities for the control of the prisoners under its temporary jurisdiction.

6. Notwithstanding the provisions of paragraph 5 above, the Indian representative is entitled to call upon the detaining side in the area under whose military control Prisoners of War installations are physically located, to provide such administrative and security forces as may be needed to augment the forces provided by India. Forces so provided shall be under the operational control of the Senior Officer of the Indian Security Forces.

7. Notwithstanding the provisions of paragraph 3 above, nothing in this agreement shall be construed as derogating from the authority of the Custodial Commission to exercise its legitimate functions and responsibilities for the control of the prisoners under this temporary jurisdiction.

#### IV. Disposition of Prisoners of War.

10. Any Prisoners of War who, while in the custody of the Custodial Commission, decides to avail himself of the right of repatriation, shall so certify to a body consisting of a representative of each member nation of the Custodial Commission. Upon execution of such certificate, he shall, while still in the custody of the Custodial Commission, be delivered forthwith to the Prisoner of War exchange point at Panmunjom for repatriation under the procedure prescribed in the Armistice Agreement.

7. In accordance with arrangements prescribed for the purpose by the Repatriation Commission, each party to the conflict shall have freedom and facilities to explain to the prisoners of war "depending upon them" their rights and to inform the prisoners of war on any matter relating to their return to their homelands and particularly their full freedom to return.

8. Red Cross teams of both sides shall assist the Repatriation Commission in its work and shall have access, in accordance with the terms of the draft armistice agreement, to prisoners of war while they are under the temporary jurisdiction of the Repatriation Commission.

9. Prisoners of war shall have freedom and facilities to make representations and communications to the Repatriation Commission and to bodies and agencies working under the Repatriation Commission and to inform any or all such bodies of their desires on any matter concerning themselves, in accordance with arrangements made for the purpose by the Commission.

### III. Verification.

8. Each side shall be afforded an opportunity to verify or ascertain the attitude towards repatriation of its captured personnel while they are in the custody of the Custodial Commission. To this end, its representatives shall be afforded access to its captured personnel to explain to them their rights, and inform them on any matters relating to their return to their homelands, under the following provisions:

A. The number of such verifying representatives shall not exceed 1 per thousand Prisoners of War held in custody by the Custodial Commission, but the minimum shall not be less than 5;

B. The hours during which the verifying representatives shall have access to the prisoners shall be as determined by the Custodial Commission, and generally in accord with Article 53 of the Geneva Convention relative to the treatment of Prisoners of War;

C. All verifications and interviews shall be conducted in the presence of a representative of each member nation of the Custodial Commission;

D. Additional provisions governing verifications shall be prescribed by the Custodial Commission, and will be designed to employ the principles outlined in paragraph 3 above.

9. Prisoners of War in its custody shall have freedom and facilities to make representations and communications to the Custodial Commission and to representatives and agencies of the Custodial Commission and to inform them of their desires on any matter concerning themselves, in accordance with arrangements made for the purpose by the Custodial Commission.

V. Red Cross Visitation.

12. Essential Red Cross service for Prisoners of War in custody of the Custodial Commission shall be provided by India in accordance with regulations issued by the Custodial Commission.

VI. Press Coverage.

13. The Custodial Commission shall insure freedom of the press by:

A. Providing for observance of the entire operation in South Korea by representatives of the press accredited to the United Nations Command.

B. Providing for observance of the entire operation in North Korea by representatives of the press accredited to the Korean People's Army or the Chinese People's Volunteers.

VII. Logistical Support for Prisoners of War.

14. Each side shall provide logistical support for the Prisoners of War in the area under its military control, delivering required support to the Custodial Commission at an agreed delivery point in the vicinity of each Prisoner of War installation.

15. The cost of repatriating Prisoners of War from the exchange point at Panmunjom shall be borne by the side on which said prisoners depend in accordance with Article 118 of the Geneva Convention.

16. The Custodial Commission is entitled to call upon the detaining side to provide specified unarmed personnel for the operation of facilities or the provision of services within the Prisoner of War installations within the area under its military control.

17. The Custodial Commission shall provide medical support for the Prisoners of War as may be practicable. The detaining side shall provide medical support as practicable upon the request of the Custodial Commission and specifically for those cases requiring extensive treatment or hospitalization. The Custodial Commission shall maintain custody of Prisoners of War during such hospitalization. The detaining side shall facilitate such custody. Upon completion of treatment, Prisoners of War shall be returned to a Prisoner of War installation as specified in paragraph 4 above.

18. The Custodial Commission is entitled to obtain from both sides such legitimate assistance as it may require in carrying out its duties and tasks.

VIII. Logistical Support for the Custodial Commission.

19. Each side shall be responsible for providing logistical support for the personnel of the Custodial Commission stationed in the area under its military control, and both sides shall contribute on an equal basis to such support within the demilitarized zone. The precise arrangements shall be subject to determination between the Custodial Commission and the detaining side in each case.

20. Each of the detaining sides shall be responsible for protecting the verifying representatives from the other side while in transit over lines of communication within its area, as set forth in paragraph 23 for the Prisoners of War Custodial Commission, to a place of residence and while in residence in the vicinity of but not within each Prisoners of War installation. The custodial Commission shall be responsible for the security of such representatives within the actual limits of Prisoners of War installations.

21. Each of the detaining sides shall provide transportation, housing, communication, and other agreed logistical support to the verifying representatives of the other side while they are in the area under its military control. Such services shall be provided on a reimbursable bases.

X. Movement.

23. The movement of the Custodial Commission, its personnel, and repatriated Prisoners of War shall be over lines of communication as determined by the command(s) of the opposing side and the Custodial Commission. A map showing these lines of communication shall be furnished the command of the opposing side and the Custodial Commission. Movement of such personnel, except in the demilitarized areas established in paragraph 5 above, around locations as designated in paragraph 4 above, shall be under the control of, and escorted by, personnel of the side in whose area the travel is being undertaken.

11. The terms of this Repatriation Agreement and the arrangements arising therefrom shall be made known to all prisoners of war.

13. When the two sides have made an agreement for repatriation based on these proposals, the interpretation of that agreement shall rest with the Repatriation Commission. In the event of disagreement in the Commission, majority decisions shall prevail. When no majority decision is possible, an umpire agreed upon in accordance with the succeeding paragraph and with article 132 of the Geneva Convention of 1949 shall have the deciding vote.

16. When the Repatriation Agreement is acceded to by the parties concerned and when an umpire has been appointed under paragraph 14 above, the draft armistice agreement, unless otherwise altered by agreement between the parties, shall be deemed to have been accepted by them. The provisions of the draft armistice agreement shall apply except in so far as they are modified by the Repatriation Agreement. Arrangements for repatriation under this agreement will begin when the armistice agreement is thus concluded.

17. At the end of ninety days, after the Armistice Agreement has been signed, the disposition of any prisoners of war whose return to their homelands may not have been effected in accordance with the procedure set out in these proposals or as otherwise agreed, shall be referred with recommendations for their disposition,

#### IX. Publication.

22. The terms of this agreement shall be made known to all Prisoners of War who, while in the custody of the detaining power, have failed to avail themselves of their right of repatriation.

#### XI. Procedural Matters.

24. The interpretation of this agreement shall rest with the Custodial Commission. The Custodial Commission, and/or any subordinate bodies to which functions are delegated or assigned by the Custodial Commission, shall operate on the basis of unanimity, except with respect to procedural matters; on procedural matters decision shall be by majority vote.

25. The Custodial Commission shall make reports to the opposing commanders once each week concerning the status of Prisoners of War in its custody and any other important matters relating to its functions and responsibilities.

26. When this agreement has been acceded to by both sides and by the 5 powers named herein, it shall become effective upon the date the armistice becomes effective.

#### IV. Disposition of Prisoners of War.

11. Sixty days after transfer of custody of the Prisoners of War to the Custodial Commission is completed, Prisoners of War who have not availed themselves of the right to be repatriated shall be released to civilian status, the Custodial Commission ceasing its function and being dissolved.

cont.

17. including a target date for the termination of their detention to the political conference to be called as provided under article 60 of the draft armistice agreement. If at the end of a further thirty days there are any prisoners of war whose return to their homelands has not been effected under the above procedures or whose future has not been provided for by the political conference, the responsibility for their care and maintenance and for their subsequent disposition shall be transferred to the United Nations, which in all matters relating to them shall act strictly in accordance with international law.