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# **PUNISHMENT TO WAR PRISONERS**

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# PUNISHMENT TO WAR PRISONERS

By *JUMPEI SHINOBU*

**O**N April 18, 1942, a squadron of American bombers made a futile attempt to raid Tokyo. According to announcements made by the Imperial Headquarters and the Washington High Command, all the planes, except one, were either damaged or destroyed. The squadron was under the command of Major-General Dolittle, who was later transferred to the North African front. The American bombers, failing to attack military objectives, deliberately bombed and machine-gunned non-military establishments, hospitals and school buildings, as well as innocent civilians, including school children and farmers. Many of the raiders were brought down by anti-aircraft fire and the crews were meted out appropriate punishment for their malfeasance. The American Government self-assertively construed this just action of Japan as a violation of the Hague Regulation of 1909 respecting the Laws and Customs of War on Land and unleashed an uncalled-for tirade against this country.

The question is whether a belligerent Government has the right to administer special punishment to war prisoners, if they are found to have wilfully committed offences of militarily illegal character. It is apparent that effectives, if they purposely bomb and machine-gun non-combatants and non-military installations, forfeit the right to be treated as prisoners of war when they are captured. They could be tried for the offences they have committed and punished accordingly. In this case it would not at all be an arbitrary action to exclude the question of their treatment from the scope of the Hague Regulation of 1909 respecting the Laws and Customs of War on Land. It may be mentioned that the regulation under Article IV provides that prisoners of

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war are in the power of the hostile Government, but not of the individuals or corps who capture them, and that they must be humanely treated. This stipulation is the guiding principle for the treatment of war prisoners. It has been incorporated in the Geneva Convention of 1929 concerning the Treatment of prisoners of War, which has a similar specific provision under Article II. Inasmuch as war prisoners are *hors de combat*, having fallen into the power of the enemy after giving up any idea of resistance, it is not only inhuman, but also unnecessary to maltreat or punish them. But if some captured prisoners are found to have deliberately carried out attacks on non-combatants and non-military objects in preference to undertaking attacks which are obligatory on the prosecution of war, they can be punished for their evil-doing, and such a punishment is justified.

During the Sino-Japanese and Russo-Japanese Wars in the Meiji era, Japan accorded fair and humane treatment to war prisoners. It was the unanimous verdict of international jurists in the West that Japan was as faithful as any other country in observing international law in this regard. Japan treated some 80,000 Russian prisoners extremely humanely. It is no wonder that they expressed their satisfaction at the kind and just treatment accorded them by this country. No less humane treatment was given by

Japan to the German prisoners who were captured in the Tsingtao campaign of 1914, as a sequel to its participation in the last World War. It is on record that the German and Austrian prisoners of war, some 4,700 in number, were more than satisfied with the benevolent treatment extended to them by this country. Hence, it is clear that it is not in the nature of Japan to treat war prisoners harshly. The American flyers, who were given deserving punishment, were made to pay for their irrational acts not sanctioned by any written or unwritten code of warfare. It is a fact that Japan is according generous treatment to a large number of British, American, Dutch and other prisoners who have either surrendered or been captured in the course of a series of decisive engagements. These prisoners have committed no offence, because they have simply discharged their duties in

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conducting legitimate fighting, and so they deserve to be treated as humanely and kindly as possible. The International Red Cross Society has already reported that the prisoners of war in Japan are being treated fairly and justly.

Humane treatment of war prisoners is governed by certain indispensable conditions. In the first place, war prisoners must be obedient in their behaviours while detained in the captor country. They no doubt enjoy some specified rights, but at the same time they are subjected to a number of obligations. One of the obligations is that they should faithfully abide by the laws and regulations of the captor country, which is not expected to treat them as its guests. That the war prisoners be treated humanely is conditional on that they will not offer any resistance to the armed corps or its members of the captor country. In the second place, *bona fide* war prisoners must be those who have never committed militarily illegal offences, that is, war crimes against a belligerent nation. A war crime is a violation of the rules and customs of warfare. Injuries intentionally administered to innocent civilians of a belligerent nation and deliberate bombing of non-military targets such as schools and hospitals, as well as those establishments protected by the code of warfare are regarded as war crimes, because they violate the rules and customs of warfare. There are also war crimes set forth in the military and naval criminal codes, wartime municipal laws and military laws enforced in a territory under armed occupation. It is, therefore, obvious that both theory and precedent agree that violations of the universally recognized rules and customs of warfare shall be arraigned as war crimes. The punishment meted out to some American flyers is fully vindicated on this ground alone.

International law condones damage to be inflicted on non-military establishments or injury to be administered to civilians, provided such actions are done unintentionally or due to a grave error in judgment. Consequently, inadvertent actions are pardonable. But international law does not give any protection to an effective if he deliberately causes damage to non-military objectives and injury to non-combatants. In this case it em-

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powers the captor country to meet out such punishment to him as it deems necessary. This is another reason why no objection can be raised against the punishment administered to some of the crews of the American bombers by the Japanese authorities. The step taken by Japan was legitimate, as well as legal. Although the American Government is perfectly aware that Japan had acted within the bounds

of legal propriety, it has taken shelter behind the Geneva Convention of 1929 concerning the Treatment of War Prisoners to allege that the step taken by the Japanese military authorities contravened this international agreement. At the outset, it may be pointed out that Japan has not ratified the said convention and, therefore, it cannot be bound by its stipulations. Be that as it may, it is true that Japan, though it has not ratified the convention, is faithfully respecting the spirit of it in its treatment of war prisoners, as endorsed by the views expressed from time to time by the inspectors of the International Red Cross Society and the officers of the prisoners themselves. The convention in question does not provide that prisoners who have committed war crimes should be accorded the same treatment as given to legitimate war prisoners. How can then the Washington Government allege that Japan has contravened its provisions? America's move is either designed for home consumption or to make a spurious prejudicial propaganda against this country. It has no legal or international backing.

It must be noted that Japan is honestly and sincerely observing all the international agreements and regulations relative to the treatment of prisoners of war, which do not prohibit the administering of punishment to them, if they are found to have committed war crimes against a belligerent nation before or after their capture. For instance, if a flyer after wilfully bombing and machine-gunning non-combatants and non-military targets is apprehended by the members of a local corps, he is liable to be brought before the Military Tribunal to be tried as a combatant who has intentionally committed war crimes. He is immediately, by his own action,

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debarred from seeking the protection of laws and customs governing the treatment of rightful war prisoners. After due trial, he is given appropriate punishment. His Government has no right to allege that he has been treated unjustly. Moreover, a punishment of this nature is accorded to serve as an object lesson to prospective perpetrators of war crimes. If the activities of effectives are not restricted to military objects as a rule, it will be well-nigh impossible for a belligerent nation to protect its non-combatants and non-military establishments. Put in another form, it means that for the safety and protection of non-combatants and non-military installations and enterprises, it is necessary that effectives who commit war crimes must be dealt with severely and rigorously. No one should think that a captive can escape with impunity by committing clear-cut war crimes, which are certainly punishable under international law, though the afore-mentioned Geneva and the Hague conventions do not contain the required stipulations in specific forms.