

WAR DEPARTMENT : OFFICE OF THE CHIEF OF STAFF

Rules of Land Warfare



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WAR DEPARTMENT,
OFFICE OF THE CHIEF OF STAFF,
Washington, April 25, 1914.

The following Rules of Land Warfare are approved and herewith published for the information and government of the armed land forces of the United States.

By order of the Secretary of War.

W. W. WOTHERSPOON,
Major General, Chief of Staff.

CONTENTS.

	Page.
Preface.....	7
Abbreviations.....	8
CHAPTER I. The laws of war on land.....	11
Introduction.....	11
General principles.....	14
II. Hostilities.....	17
The commencement of hostilities.....	17
III. The armed forces of belligerents.....	21
IV. Prisoners of war.....	25
Appendix A—Form of certificate, newspaper correspondents, etc., accompanying an army.....	35
V. The sick, wounded, and dead.....	38
Appendix A—Form of certificate of personnel of voluntary aid societies.....	54
VI. Section I. The conduct of hostilities.....	56
Section II. Stratagems.....	60
Section III. Espionage and treason.....	63
Section IV. Bombardments, assaults, and sieges.....	66
VII. Section I. Intercourse between belligerents.....	71
Section II. Capitulations.....	76
Appendices A, B, C, and D—Forms of capit- ulation.....	80
Section III. Armistices.....	88
Appendices A, B, C, D, E, F, G, and H— Forms of armistice.....	94
Section IV. Passports, safe-conducts, safeguards and cartels.....	100
Appendices A, B, C—Forms of passports, safe-conduct, and safeguard.....	103
VIII. Military authority over hostile State.....	105
IX. Treatment of enemy property.....	118
Appendix A—Form of requisition.....	129
X. Penalties for violations of the laws of war.....	135
XI. Neutrality.....	135
Neutral rights and duties.....	135
Appendix—Form of convention for intern- ment in neutral territory.....	146
XII. Automatic submarine contact mines.....	147

APPENDICES.

	Page.
APPENDIX No. 1. Convention III of The Hague, October 18, 1907, relative to opening of hostilities, with translation.....	151
2. Convention IV of The Hague, October 18, 1907, respecting the laws and customs of war on land with translation.....	153
3. Convention V, respecting the rights and duties of neutral powers and persons in war on land, of The Hague, October 18, 1907, with translation.....	165
4. Convention VIII, relative to the laying of automatic submarine contact mines, of The Hague, October 18, 1907, with translation.....	170
5. Convention IX, respecting bombardment by naval forces in time of war, of The Hague, October 18, 1907, with translation.....	174
6. Convention XI, relative to the right of capture in naval warfare, of The Hague, October 18, 1907, with translation.....	177
7. Declaration XIV, prohibiting the discharge of projectiles and explosives from balloons, of The Hague, October 18, 1907, with translation.....	181
8. Table of ratifications and adhesions to the second peace conference at The Hague, in 1907.....	184
9. International convention for the amelioration of the condition of the wounded and sick in armies in the field, at Geneva, July 6, 1906, with translation.....	186

PREFACE.

The accompanying Rules of Land Warfare have been prepared for use of officers of the land forces of the United States. The official translations will be printed in heavy type for the purpose of distinguishing them from the other portions of the text, much of which is explanatory, and yet a considerable part of which is believed to present the substantive law as to matters upon which The Hague and Geneva conventions are silent or by no means complete.

It has been found essential to make many additions to the text of The Hague and Geneva conventions (the latter, consisting of 33 articles, is reasonably complete), since these do not deal exhaustively with their subject matter.

It will be found that everything vital contained in G. O. 100 of A. G. O. of April 24, 1863, "Instructions for the Government of Armies of the United States in the Field," has been incorporated in this manual. Wherever practicable the original text has been used herein, because it is believed that long familiarity with this text and its interpretation by our officers should not be interfered with if possible to avoid doing so.

The original text of the several conventions will be found printed in the appendices numbered from 1 to 9. These are arranged in parallel columns in French and English as ratified by this Government. The text of the manual which is for the guidance of officers of our Army is the official translation of the French as ratified by the United States Senate and published in the United States Statutes at Large.

Convention No. XI, "Relative to the laying of automatic submarine contact mines," is incorporated in the text because of its value to officers of the coast artillery primarily, and because of its interest as well to officers of the mobile troops. In view of the incomplete and unsatisfactory state of the law upon this subject, as stated in the text of this convention, it was deemed prudent to incorporate in the foot notes the rules prescribed by the Institut de Droit International at their meetings in Paris in 1910, and again at Oxford in 1913. The latter being incorporated in a "Manuel des Lois de la Guerre Maritimee."

In the preparation of these rules all of the authorities mentioned in the abbreviations were consulted, and many others. Every effort was made to give credit, and this was done wherever possible. Especial use was made of The Rules of Land Warfare, prepared by officers of the English Army and Prof. L. Oppenheim, LL. D., and of Prof. Nagao Ariga's book, "La Guerre Russo-Japonaise," which deals so carefully and thoroughly with the laws and usages of war during one of the greatest wars of recent times.

ABBREVIATIONS OF TITLES OF BOOKS, ETC., REFERRED TO IN THE TEXT.

Ariga	La Guerre Russo-Japonaise au point de vue continental et le droit International. By N. Ariga, 1908.
Birkhimer	Military Government and Martial Law, second edition, 1904.
Bonfils	Manuel de Droit International Public.
Crunch	Reports of the Supreme Court of the United States.
Dig. Op. J. A. G.	Digest of Opinions of the Judge Advocate General of the United States Army.
F. S. R.	Field Service Regulations of the United States, 1914.
French Manual	Conventions internationales concernant la Guerre sur terre. Publiees ensuite de decision du Conseil federal du 31 octobre, 1910.
Gall	Gallison, United States Supreme Court Reporter.
Genève Conference Actes	Convention de Genève. Actes de la Conference de Revision. Geneve, 1906.
G. C.	The Geneva Convention of 1906.
G. O. 100, 1863	Instructions for the Government of the Armies of the United States in the Field, 1863.
H. III	Hague Convention No. III of October 18, 1907.
H. IV	Hague Convention No. IV of October 18, 1907.
H. V	Hague Convention No. V of October 18, 1907.
H. VIII	Hague Convention No. VIII of October 18, 1907.
H. IX	Hague Convention No. IX of October 18, 1907.
H. XI	Hague Convention No. XI of October 18, 1907.
H. D.	Hague Declaration of 1899.
H. R.	The Rules of Land Warfare contained in annex to Hague Convention No. IV of October 18, 1907.
Hall	International Law, fifth edition.
Higgins	The Hague Peace Conference. 1909.
Holland	The Laws of War on Land. 1908.
Holls	The Peace Conference at the Hague. 1910.
Inst. Int. Law	Conventions Internationales concernant La Guerre sur Terre, Publiees ensuite de decision du Conseil federal du, octobre, 1910.
Int. Peace Conf. Actes	Deuxieme Conference International de la Paix. Actes et documents. The Hague, 1907.
Jour. Int. Law	The Journal of the Institute of International Law.
Kriegsbrauch	Kriegsbrauch im Landkriege. Edited by the German Great General Staff (Military Historical Section). Berlin, 1902.
Les Lois	Les Lois de La Guerre Continentale. Lieut. Robert Jacomet. Preface de M. Louis Renault, second edition, 1913.
Magoon	The Law of Civil Government under Military Occupation, third edition, 1903.
Moore's Digest	A Digest of International Law. By J. B. Moore, Washington, 1906.

Op-----	Opinions of the Attorney General of the United States.
P. H. IV-----	Preamble to The Hague Convention No. IV Respecting the Laws and Customs of War on Land.
Pet-----	Peters, United States Supreme Court Reporter.
Spaight-----	War Rights on Land. 1911.
Takahashi-----	International Law applied to the Russo-Japanese War. By S. Takahashi. (English edition.)
U. S.-----	United States Supreme Court Reports.
Wall-----	Wallace, Reports of the Supreme Court of the United States.
Westlake-----	International Law, part 2, War, 1913.
Wilson-----	Wilson on International Law, H. S. edition, 1910.

CHAPTER I.

THE LAWS OF WAR ON LAND.

INTRODUCTION.

1. *How regulated.*—The conduct of war is regulated by certain well-established and recognized rules that are usually designated as “the laws of war,” which comprise the rules, both written and unwritten, for the carrying on of war, both on land and at sea.

THE WRITTEN RULES.

2. *Conventions and treaties.*—During the past 50 years many of these rules have been reduced to writing by means of conventions or treaties entered into by the principal civilized nations of the world after full discussion at The Hague, Geneva, Brussels, and St. Petersburg.

3. *Those relating to war on land.*—The rules contained herein relate to war on land, and the principal written agreements relating to the conduct of war on land are the following, viz: ¹

¹ For full text of these conventions, see appendices.

(a) The Declaration of St. Petersburg of the 11th of December, 1868, forbidding in time of war the use of explosive projectiles under 400 grams weight.²

² This has never been ratified by the United States, but see paragraph “e,” Article XXIII, convention IV, Hague Rules, 1907, *infra*, par. 184.

(b) The Declaration of The Hague of the 29th of July, 1899, forbidding the employment of projectiles which have for their only object the diffusion of asphyxiating or deleterious gases.²

(c) The Declaration of The Hague of the 29th of July, 1899, preventing the employment of bullets which expand or flatten in the human body.²

(d) The Geneva convention of the 6th of July, 1906, for the “Amelioration of the condition of the sick and wounded of armies in the field.”³

³ Those States which have not acceded to or ratified the Geneva convention of 1906 but who are signatories of the Geneva convention of 1864 for “The amelioration of the condition of the wounded and sick of armies in the field” are bound by the provisions of this latter.

(e) Convention No. III of The Hague of the 18th of October, 1907, with regard to the opening of hostilities.

(f) Convention No. IV of The Hague of the 18th of October, 1907, concerning the laws and customs of war on land.⁴

⁴ The Hague convention of 1899 "Concerning the laws and customs of war on land" are still binding on those signatory States who have not acceded to or ratified the convention of 1907.

(g) Convention No. V of The Hague of the 18th of October, 1907, concerning the rights and duties of neutral powers and persons in war on land.⁵

⁵ Vide Ch. XI and Appendix 3.

(h) A portion of the Convention No. IX of The Hague of the 18th of October, 1907, concerning the bombardment by naval forces in time of war.⁶

⁶ Vide infra, Ch. VI, Sec. IV, pars. 212, note 1, and 227.

(i) Convention No. VIII of The Hague of the 18th of October, 1907, relative to the laying of submarine mines.⁷

⁷ Vide infra, Ch. XII, p. 147.

(j) A portion of Convention No. XI of The Hague of the 18th of October, 1907, relative to the right of capture in naval warfare.⁸

⁸ Vide infra, Appendix 6, p. 177.

(k) The declaration of The Hague of the 18th of October, 1907, prohibiting the discharge of projectiles and explosives from balloons.⁹

⁹ Vide infra, Ch. VI, Sec. I, pars. 174-175, p. 56.

4. The foregoing do not constitute a complete code as appears from the preamble of Convention IV of October 18, 1907:

According to the views of the high contracting parties, these provisions, the preparation of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to prepare regulations covering all the circumstances which may arise in practice.

On the other hand, the high contracting parties clearly do not intend that unforeseen cases should, in the absence of written undertaking, be left to the arbitrary judgment of military commanders.

Until a more complete code of the laws of war has been formulated, the high contracting parties deem it expedient to declare that, in cases not covered by the regulations adopted by

them, the inhabitants and belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of public conscience.

5. *Publication of rules.*—H. IV, Art. 1. The contracting powers shall issue instructions to their armed land forces which shall be in conformity with the regulations respecting the laws and customs of war on land, annexed to the present convention.¹

¹ Vide Bulletin No. 6; W. D., Feb. 19, 1913, and appendices.

6. *To whom applicable.*—H. IV, Art. II. The provisions contained in the regulations referred to in article 1, as well as in the present convention, do not apply except between contracting powers, and then only if all the belligerents are parties to the convention.

7. *Nature and binding force.*—These declarations and conventions, freely signed and ratified by a very great number of the civilized powers of the world, constitute true rules of international law that are binding upon those who are parties thereto in a war in which all belligerents engaged are parties. In case one power, who is a party to the war, has not agreed to these conventions, or having been a party has denounced the same, or has made reservations as to one or more articles, then and in that case the other parties belligerent will not be bound by the convention or by the reserved articles.¹

¹ "The observance by the French Army of the rules announced is implicitly subordinated to the condition of reciprocity on the part of the opposing belligerent, for if France imposes certain limitations upon her means of action against future enemies, it is naturally upon the condition that they impose upon themselves the same restrictions." (Les Lois de La Guerre Continentale, by Lieut. Jacomet, p. 26.)

THE UNWRITTEN RULES.

8. *Usage.*—In addition to the written rules there exist certain other well-recognized usages and customs that have developed into, and have become recognized as, rules of warfare. These usages and customs are still in process of development.

9. *How developed.*—The development of the laws and usages of war is determined by three principles. *First*, that a belligerent is justified in applying any amount and any kind of force which is necessary for the purpose of the war; that is, the complete submission of the enemy at the earliest possible moment with the least expenditure of men and money. *Second*, the principle of humanity, which says that all such kinds and degrees of violence as are not necessary for the purpose of war are not permitted to a belligerent. *Third*, the principle of chivalry, which demands a certain amount of fairness in offense and defense and a certain mutual respect between opposing forces.¹

¹ Land Warfare, Opp., C. I., par. 3.

GENERAL PRINCIPLES.

10. *The object of war.*—The object of war is to bring about the complete submission of the enemy as soon as possible by means of regulated violence.¹

¹G. O. 100, 1863, art. 20. "Public war is a state of armed hostility between sovereign nations or governments. It is a law and requisite of civilized existence that men live in political, continuous societies, forming organized units called States or nations, whose constituents bear, enjoy, and suffer, advance and retrograde together, in peace and in war."

Von Moltke said: "The greatest kindness in war is to bring it to a speedy conclusion. It should be allowable, with that view, to employ all methods save those which are absolutely objectionable. I can by no means profess agreement with the Declaration of St. Petersburg, when it asserts that the weakening of the military forces of the enemy is the only lawful procedure in war. No; you must attack all the resources of the enemy's government—its finances, its railways, its stores, and even its prestige." Letter to Professor Bluntschli, Dec. 11, 1880, cited Holland, *War on Land*, p. 12.

11. *Military necessity.*—Military necessity justifies a resort to all the measures which are indispensable for securing this object and which are not forbidden by the modern laws and customs of war.

12. *What military necessity admits of.*—Military necessity admits of all direct destruction of life or limb of *armed* enemies, and of other persons whose destruction is incidentally *unavoidable* in the armed contests of war; it allows of the capturing of every armed enemy, and of every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever the enemy's country affords that is necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith, either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist.¹

¹G. O. 100, 1863, art. 15.

13. *What military necessity does not admit of.*—Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.¹

¹G. O. 100, 1863, art. 16.

14. *Martial law*.—Martial law is simply military authority exercised in accordance with the laws and usages of war.¹

¹G. O. 100, 1863, art. 4.
In the case of *ex parte Milligan* (4 Wall., 2), Chief Justice Chase, in a dissenting opinion, which did not affect the merits of the case under consideration, drew a distinction in military jurisdiction as follows: "There are under the Constitution three kinds of military jurisdiction—one to be exercised in both peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion or civil war within States or districts occupied by rebels treated as belligerents; and, third, to be exercised in time of invasion or insurrection within the limits of the United States, or during rebellion within the limits of States maintaining adhesion to the National Government, when the public danger requires its exercise. The first of these may be called jurisdiction under *military law*, and is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national forces; the second may be distinguished as *military government*, superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the President, with the express or implied sanction of Congress; while the third may be denominated *martial law proper*, and is called into action by Congress, or temporarily, when the action of Congress can not be invited, and in the case of justifying or excusing peril, by the President, in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights." This distinction has never since been sustained by the Supreme Court, although military writers have made use of the term "*military government*" to designate the jurisdiction exercised over enemy territory by the military, regarding enemy territory to include that of a foreign state and also that part of the belligerent state that has been accorded recognition of belligerency, and "*martial law*" to designate the jurisdiction exercised by the military power over parts of the dominant state that is in rebellion or insurrection without being recognized as belligerents, or, in a word, treating "*martial law*" as a domestic fact. (Vide *Military government and Martial law*, Birkhimer, p. 21, 2d ed.)

The term "*martial law*" as defined in the text conforms with that given in Great Britain, where the same distinction is made between "*military law*," "*martial law*," and "*martial law in the home territory*." (Vide *Law of War on Land*, Holland, pp. 14–17; vide also *Jour. Mil. Ser. Inst.*, Vol. XV, article by Carbaugh.)

15. *Extends to property and persons*.—Martial law extends to property and to all persons in the occupied territory; whether they are subjects of the enemy or aliens to that government.¹

¹G. O. 100, 1863, art. 7. Vide also *infra* Chaps. VIII and IX.

16. *Military jurisdiction*.—Military jurisdiction is of two kinds: First, that which is conferred and defined by statute; second, that which is derived from the common law of war. Military offenses under the statute law must be tried in the manner therein directed, but military offenses which do not come within the statute must be tried and punished under the common law of war. The character of the courts which exercise these jurisdictions depends upon the local laws of each particular country. In the armies of the United States the first is exercised by courts-martial, while cases which do not come within the Rules and Articles of War, or the jurisdiction con-

ferred by statute on courts-martial, are tried by military commissions.¹

¹ Vide Justification of Martial Law, by G. Norman Lieber, p. 3, who says:

"Military jurisdiction is of four kinds, viz:

"1. Military law, which is the legal system that regulates the government of the military establishment. Military law is a branch of municipal law, and in the United States derives its existence from special constitutional grants.

"2. The law of hostile occupation, or military government, as it is sometimes called; that is, military power exercised by a belligerent over the inhabitants and property of an enemy's territory, occupied by him. This belongs to the law of war, and, therefore, to the law of nations.

"3. Martial law applied to the army; that is, military power extended in time of war, insurrection, or rebellion over persons in the military service, as to obligations arising out of such emergency, and not falling within the domain of military law, nor otherwise regulated by law. It is an application of the doctrine of necessity, founded on the right of national self-preservation.

"4. Martial law at home, or as a domestic fact; by which is meant military power exercised in time of war, insurrection, or rebellion, in parts of the country retaining allegiance, and over persons and things not ordinarily subjected to it."

17. *In cases of individual offenders.*—Whenever feasible, martial law is carried out in cases of individual offenders by military courts; but sentences of death shall be executed only with the approval of the Chief Executive, provided the urgency of the case does not require a speedier execution, and then only with the approval of the commander of the occupying forces.¹

¹ G. O. 100, 1863, art. 12.

18. *Cruelty, bad faith, extortion, revenge, etc., prohibited.*—The law of war not only disclaims all cruelty and bad faith concerning engagements concluded with the enemy during the war, but also the breaking of treaty obligations entered into by belligerents in time of peace and avowedly intended to remain in force in case of war between the contracting powers. It disclaims all extortion and other transactions for individual gain; all acts of private revenge, or connivance at such acts. Offenses to the contrary shall be severely punished, and especially so if committed by officers.¹

¹ G. O. 100, 1863, art. 11.

CHAPTER II.

HOSTILITIES.

THE COMMENCEMENT OF HOSTILITIES.

19. *Declaration of war required.*—H. Con. III, Art. 1. The contracting parties recognize that hostilities between themselves must not commence without previous and explicit warning in the form either of a reasoned declaration of war or of an ultimatum accompanied by a conditional declaration of war.¹

¹The framers of the Hague Rules were agreed to one rule, namely, that "an attack which nothing foreshadowed would be infamous." A gross violation of international law would be committed by the commencement of hostilities in time of peace without a previous controversy and negotiations with a view to a peaceful settlement. (Vide Hague Peace Conferences, Higgins, p. 203.)

20. *Surprise still possible.*—Nothing in the foregoing rule requires that any time shall elapse between the actual declaration of war and the commencement of hostilities. It is still possible, therefore, to make a sudden and unexpected declaration of war and thus surprise an unprepared enemy.¹

¹The French proposal to The Hague Peace Conference of 1907, based substantially on resolutions of the Inst. Int. Law at Ghent in September, 1906, consisted of three articles. The first two were embodied substantially as in the text above, while the third, "Hostilities should not begin till after the expiry of a delay sufficient to insure that the rule of previous and unequivocal notice may not be considered as evaded," was rejected.

21. *Notification to neutrals.*—H. Con. III, Art. II. The existence of a state of war must be notified to the neutral powers without delay, but shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral powers, nevertheless, can not rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.¹

¹See Chap. XI on "The rights and duties of neutral powers," *infra*, p. 135, par. 389.

22. *It is binding between parties.*—H. Con. III, Art. III. Article I of the present convention shall take effect in case of war between two or more of the contracting powers. Article II is binding as between a belligerent power which is a party to the convention and neutral powers which are also parties to the convention.

23. *Importance, both legal and commercial.*—This convention is important from both the legal and commercial point of view since it requires belligerents themselves to publicly announce a definite date for the commencement of hostilities, from which date they become entitled to exercise the rights of belligerency, and are themselves required to comply with and to exact from neutrals the obligations of neutrality.

TREATMENT OF RESIDENT ENEMY SUBJECTS.

24. *Legal status.*—"Public war is a state of armed hostility between sovereign nations or governments."¹ So that the first effect of war between two states is to cause every subject of the one to become an enemy of every subject of the other, since it is impossible to sever the subjects from their state.²

¹ G. O. 100, 1863, art. 20.

² G. O. 100, 1863, art. 21. "The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile state or nation, and as such is subjected to the hardships of the war." The foregoing is both the American and English view. (Vide Land Warfare, Opp., p. 15.)

25. *Right of control.*—Every belligerent state possesses the inherent right to take such steps as it may deem necessary for the control of all persons whose conduct or presence appears dangerous to its safety.¹ In strict law enemy subjects located or resident in hostile territory may be detained, interned in designated localities, or expelled from the country.²

¹ Int. Law Dig. Moore, sec. 1116. "Various measures have been adopted by governments in relation to alien enemies residing within their territory. Such persons may, says Rivier, be detained, especially those subject to military service; or they may be interned in determinate places; or yet may be expelled; a brief delay being allowed them to settle up their affairs. But such measures, although justified by the right of self-preservation, are less and less practiced, and are often criticized as not being in harmony with the spirit of modern war."

² Act July 6, 1798; 1 Stat., 577; R. S., sec. 4067. "Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President makes public proclamation of the event, all male natives, citizens, denizens, or subjects of the hostile nation or government, who are 14 years old and upward, and who are not actually naturalized, may be liable for removal as alien enemies; and the President is authorized to direct the conduct to be observed, on the part of the United States toward aliens who are liable to removal, the manner and degree of restraint to which they may be subjected, and the security upon which their residence may be permitted." Sec. 4069: The courts of the United States having criminal jurisdiction are authorized to enforce such proclamations.

The President need not call in the judiciary to enforce these provisions. (Lockington v. Smith, Pet. C. C., 466.)

"The Government may prescribe the conditions under which its executive officers are to deal with its alien enemies." (C. & O. R. R. v. U. S., 20, C. Cls., 49.)

26. *Modern practice as to status.*—It is now universally recognized that hostilities are restricted to the armed forces of bel-

ligerents, and that the unarmed citizens who refrain from acts of hostility and pursue their ordinary avocations must be distinguished from the armed forces of the belligerent, must be treated leniently, must not be injured in their lives or liberty, except for cause or after due trial, and must not, as a rule, be deprived of their private property.¹

¹ G. O. 100, 1863, art. 22. "Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit." As to what is meant by "armed forces," see *infra*, Ch. III, pp. 21-24.

27. *Practice as to detention and internment.*—Enemy subjects are not made prisoners *en masse*¹ on the breaking out of hostilities.² Persons known to be active or reserve officers, or reservists, of the hostile army, as well as persons suspected of communicating with the enemy, will be detained and, if deemed advisable, interned on the ground of self-preservation, in the exercise of the *right of control*.³

¹ Napoleon based his action in making prisoners of war of all British subjects between 18 and 60 years of age in 1803 (the last case of the kind) on the ground of retaliation or reprisal.

² Hague Convention, 1907, *Actes*, Vol. III, p. 109, discussed the following proposition: "Subjects of a belligerent residing in the territory of the adverse party will not be placed in confinement unless the exigencies of war render it necessary." It was suggested that the words "nor expelled," be inserted after the word "confined," but no action was taken. (Vide also pp. 9, 10, and 110.)

³ Vide notes 1 and 2, par. 25, *supra*; also Land Warfare, *Opp.*, pp. 15-16.

28. *Practice as to expulsion.*—In modern practice the expulsion of the citizens or subjects of the enemy is generally decreed from seaports, fortresses, defended areas, and the actual or contemplated theaters of operation.¹ From other territory the practice is not uniform, expulsion being resorted to usually for grave reasons of state only.² When decreed, the persons expelled should be given such reasonable notice, consistent with public safety, as will enable them to arrange for the collection, disposal, and removal of their goods and property.³

¹ During the Crimean War British subjects were expelled from the Russian seaports of Cronstadt, Odessa, and Sevastopol.

Japanese subjects were expelled from Siberia, Vladivostok, and Port Arthur in 1904. (Ariga, pp. 363-4.)

In 1905 the Japanese expelled all foreigners from Port Arthur, except about 20, as soon as the defenses were completed.

In 1870 every German in Paris and Department of The Seine was ordered to leave.

² In the Crimean War Russian subjects were allowed to reside without molestation in Great Britain and France.

In 1870 Frenchmen were permitted to remain in Germany. On the contrary, German citizens were at first permitted to remain in France,

but afterwards were required to leave, on the ground of personal safety and public defense.

In 1877 Turkish subjects in Russia were permitted to remain and continue their business, subject to the laws.

In the Spanish-American War the subjects of both belligerents were permitted to remain or withdraw.

In the Russo-Japanese War Russian subjects were authorized to remain in Japan and were assured of the protection of their lives, honor, and property, although a reservation was made as to surveillance or other measures taken by military or naval authorities for military purposes, and limitations were placed as to change of domicile or journeys in case the Government saw fit. (Ariga, p. 43.)

Japanese subjects were allowed to continue, under the protection of the Russian laws, their sojourn and the exercise of peaceful occupations in the Russian Empire, except in territories which are under the control of the Imperial viceroy in the Far East.

In 1879 Chileans were expelled from Bolivia and their goods confiscated.

^a U. S. R. Stat., sec. 4068: "When an alien who becomes liable to removal as an enemy is not chargeable with actual hostility or other crimes against public safety, he must be allowed for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which may be stipulated in any treaty; and where no such treaty exists the President may fix such reasonable time as may be consistent with public safety and according to the dictates of humanity and national hospitality."

CHAPTER III.

THE ARMED FORCES OF BELLIGERENTS.

29. *General division of enemy population.*—The enemy population is divided in war into two general classes, known as *the armed forces* and *the peaceful population*. Both classes have distinct rights, duties, and disabilities, and no person can belong to both classes at one and the same time.¹

¹ Vide H. Con. V, Art. XVII (b), "Rights and duties of neutral powers and persons in war on land," Ch. XI.

30. *Who are lawful belligerents.*—H. R. Art. I. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;

2. To have a fixed distinctive emblem recognizable at a distance;

3. To carry arms openly; and

4. To conduct their operations in accordance with the laws and usages of war. In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

31. *The army.*—The members of the army as above defined are entitled to recognition as belligerent forces whether they have joined voluntarily, or have been compelled to do so, by state law, and whether they joined before or after war is declared, and whether they are nationals of the enemy or of a neutral state.¹

¹Two classes of militia and volunteer corps are referred to—the one which forms part of or the entire army and includes territorial forces; the other which must fulfil the four conditions mentioned.

32. *The first condition for militia and volunteer corps.*—This condition is satisfied if commanded by a regularly or temporarily commissioned officer, or by a person of position and authority, or if the officers, noncommissioned officers, and men are furnished with certificates or badges, granted by the government of the state, that will distinguish them from persons acting on their own responsibility.¹

¹The German rule in 1870 that "every prisoner of war must prove his status as a French soldier by the production of an order issued by a competent authority and addressed to himself showing that he has been summoned to the colors and is borne on the rolls of a military unit raised by the French Government," and their apparent refusal to recognize individual irregulars and small bands unless they can prove that they have state authorization, is not now legal under The Hague Rules.

33. *The distinctive sign.*—This requirement will be satisfied by the wearing of a uniform, or even less than a complete uniform. The distance that the sign must be visible is left vague and undetermined and the practice is not uniform. This requirement will be satisfied certainly if this sign is "easily distinguishable by the naked eye of ordinary people" at a distance at which the form of an individual can be determined.¹ Every nation making use of these troops should adopt, before hostilities commence, either a uniform or a distinctive sign which will fulfill the required conditions and give notice of the same to the enemy, although this notification is not required.²

¹ Ariga, pp. 85-86: "The Japanese Government will not consider as belligerents the free corps of the national army referred to in the Russian note unless they can be easily distinguished by the naked eye of ordinary people, or unless they fulfill the conditions required of the militia and volunteer corps by The Hague rule."

"As encounters now take place at long ranges, at which it is impossible to distinguish the color or the cut of the clothing, it would seem advisable to provide irregulars with a helmet, slouch hat, or forage cap, as being completely different in outline from the ordinary civilian dress. It may be objected, however, that a headdress does not legally fulfill the condition that the sign must be fixed. Something of the nature of a badge sewn on the clothing should therefore be worn in addition." (Land Warfare Opp., pp. 19-20.)

In 1870 the French mobile national guard and Franc tireurs wore blue or gray blouses with a red arm band. The former wore, in addition, a forage cap (*kepis*). The Germans refused to recognize this as sufficient, because the blouse was the native costume and the red band could be seen at so short a distance, besides being readily removed, so that it was impossible to distinguish these troops from the ordinary citizen.

Ariga, p. 82. At Ping-yang Japanese civilians wore a white helmet and European clothes, with a flower embroidered in red thread on their coats.

² Ariga, pp. 85-87. The Russians at Saghalien wore no uniform, but had a cross with the letters M. P. (*Manchurian Regiment*) on their caps, on their sleeves a red band about two-thirds of an inch broad, with a red edging on their overcoats. Some of these troops were executed for violation of the laws of war. The author gives the impression that this was because they did not wear the distinctive marks, not having been issued, or, if issued, were thrown away.

The Russians notified the Japanese of the uniform adopted for the irregular troops in Saghalien.

34. *Carrying arms openly.*—This condition is imposed to prevent making use of arms for active opposition and afterwards discarding or concealing them on the approach of the enemy, and will not be satisfied by carrying concealed weapons, such as pistols, daggers, sword sticks, etc.

35. *Compliance with the laws of war.*—When such troops are utilized they must be instructed in and be required to conform to the laws of war, and especially as to certain essentials, such as the use of treachery, maltreatment of prisoners, the wounded and dead, violations of or improper conduct toward flags of truce, pillage, unnecessary violence, and destruction of property, etc.

36. *Levee en masse*.—H. R., Art. II. The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article I, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.¹

¹Note that the first two requirements for militia and volunteer corps are not required, i. e., no responsible commander and no distinctive sign is required. The American rule, from which the above was taken, is contained in G. O. 100, 1863, art. 51. "If the people of that portion of an invaded country which is not yet occupied by the enemy, or of the whole country, at the approach of a hostile army, rise, under a duly authorized levy, *en masse* to resist the invader, they are now treated as public enemies, and, if captured, are prisoners of war." The new rule actually "duly authorizes" the levy, and omits, including specifically "or of the whole country," making use of the words "the inhabitants of a territory."

Mr. Oppenheim, in *Land Warfare*, p. 21, art. 31, says: "The word 'territory' in this relation is not intended to mean the whole extent of a belligerent state, but refers to any part of it which is not yet invaded."

37. *Can not be treated as brigands, etc.*—No belligerent has the right to declare that he will treat every captured man in arms of a levy *en masse* as a brigand or bandit.¹

¹G. O. 100, 1863, art. 52, par. 1.

38. *Deserters, etc., do not enjoy immunity*.—Certain classes of those forming part of a *levee en masse* can not claim the privileges accorded in the preceding paragraph. Among these are deserters, subjects of the invading belligerent, and those who are known to have violated the laws and customs of war.¹

¹G. O. 100, 1863, art. 48. "Deserters from the American Army, having entered the service of the enemy, suffer death if they fall again into the hands of the United States, whether by capture or being delivered up to the American Army; and if a deserter from the enemy, having taken service in the Army of the United States, is captured by the enemy, and punished by them with death or otherwise, it is not a breach against the law and usages of war, requiring redress or retaliation."

39. *Uprisings in occupied territory*.—If the people of a country, or any portion of the same, already occupied by an army, rise against it, they are violators of the laws of war, and are not entitled to their protection.¹

¹G. O. 100, 1863, art. 52, par. 2, *vide infra*, Chps. VIII and X.

40. *Duty of officers as to status of troops*.—The determination of the status of captured troops is to be left to courts organized for the purpose. Summary executions are no longer contemplated under the laws of war. The officers' duty is to hold the persons of those captured, and leave the question of their being regulars, irregulars, deserters, etc., to the determination of competent authority.¹

¹Land Warfare, Opp., par. 37.

41. *Colored troops.*—The law of nations knows no distinction of color, so that the enrolling of individuals belonging to civilized colored races and the employment of whole regiments of colored troops is duly authorized. The employment of savage tribes or barbarous races should not be resorted to in wars between civilized nations.¹

¹G. O. 100, 1863, art. 57. "So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity, he is a belligerent; his killing, wounding, or other warlike acts are not individual crimes or offenses. No belligerent has a right to declare that enemies of a certain class, color, or condition when properly organized as soldiers, will not be treated by him as public enemies."

42. *Armed forces consist of combatants and noncombatants.*—**H. R., Art. III.** The armed forces of the belligerent parties may consist of combatants and noncombatants. In case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER IV.

PRISONERS OF WAR.

43. *Definition.*—A prisoner of war is an individual whom the enemy, upon capture, temporarily deprives of his personal liberty on account of his participation directly or indirectly in the hostilities, and whom the laws of war prescribe shall be treated with certain considerations.¹

¹ Vide G. O. 100, 1863, art. 49.

44. *Treatment.*—The law of nations allows every sovereign Government to make war upon another sovereign State, and, therefore, admits of no rules or laws different from those of regular warfare, regarding the treatment of prisoners of war, although they may belong to the army of a Government which the captor may consider as a wanton and unjust assailant.¹

¹ G. O. 100, 1863, art. 67.

45. *Who can claim the status of prisoners of war.*—H. R., Art. III. The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.¹

¹ As to persons enjoying special exemptions when captured or upon falling into the hands of the enemy, vide infra, Geneva Convention, arts. 6 to 13, infra, secs. 118 et seq.; as to persons not directly attached to the army, see infra, secs. 46 et seq.; as to persons who can not claim the rights of prisoners of war when captured, see sec. 82 and secs. 367 et seq.

46. *Individuals who follow an army without belonging to it.*—H. R., Art. XIII. Individuals who follow an army without directly belonging to it, such as newspaper correspondents, and reporters, sutlers, and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they accompanied.¹

¹ F. S. R. 1914, Art. VIII, pars. 426-431, pp. 168-9, Ariga, pp. 123-124. Certain newspaper correspondents, subjects of the United States, attached to the Russian Army, also a medical officer missionary captured by the Japanese at Lio Yang, were sent under guard to Japan. For forms of certificate, vide appendices A and B, this chapter.

47. *What civilians made prisoners of war.*—In addition to the armed forces, both combatant and noncombatant, and civilians authorized to accompany armies, the following may be made prisoners of war:

(a) The sovereign and members of the royal family, the President or head of a republican State, and the ministers who direct the policy of a State.¹

¹ G. O. 100, 1863, art. 50, par. 2.

(b) Civil officials and diplomatic agents attached to the army;

(c) Persons whose services are of particular use and benefit to the hostile army or its government, such as the higher civil officials, diplomatic agents, couriers, guides, etc.; also all persons who may be harmful to the opposing state while at liberty, such as prominent and influential political leaders, journalists, local authorities, clergymen, and teachers, in case they incite the people to resistance;²

² G. O. 100, 1863, art. 50, par. 2.

(d) The citizens who rise en masse to defend their territory or district from invasion by the enemy.³

³ Vide supra, art. 36, and infra, art. 369; also G. O. 100, 1863, arts. 49 and 51.

48. *Military attachés and agents of neutrals.*—Military attachés and diplomatic agents of neutral powers accompanying an army in the field, or found within a captured fortress, are not ordinarily held as prisoners, provided they have proper papers of identification in their possession and take no part in the hostilities. They may, however, be ordered out of the theater of war, and, if necessary, handed over by the captor to the ministers of their respective countries.¹

¹ Ariga, p. 122. One foreign naval officer and two officers, military attachés, with the Russian army captured at Mukden by the Japanese were treated with consideration, and sent to Kobe, Japan, where they were turned over to their respective delegations.

49. *Wounded and sick prisoners.*—G. C., art. 2, par. 1. Subject to the care that must be taken of them under the preceding article (G. C., Art. I), the sick and wounded of an army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.¹

¹ Vide infra, par. 107. As to treatment to be accorded to medical personnel and chaplains, vide G. C., art. 9, infra, par. 130.

50. H. R., Art. IV. Prisoners of war are in the power of the hostile government, but not of the individuals or corps who capture them. They must be humanely treated.

51. *Subject to military jurisdiction.*—All physical suffering, all brutality which is not necessitated as an indispensable measure for guarding prisoners, are formally prohibited. If prisoners commit crimes or acts punishable according to the ordinary penal or military laws, they are subjected to the military jurisdiction of the state of the captor.¹

¹ Lois de la Guerre Continentale, Jacomet, p. 31, art. 8.

52. *Personal belongings retained.*—H. R., Art. IV, par. 3. All their personal belongings, except arms, horses, and military papers, remain their property.

53. *Can not retain large sums of money.*—This rule does not authorize prisoners to retain large sums of money, or other articles which might facilitate their escape. Such money and articles are usually taken from them, receipts are given, and they are returned at the end of the war.¹

¹Holland, *Laws of War on Land*, p. 21, art. 24; *Opp. Land Warfare*, par. 70 and note. They should be made to prove ownership of such money and articles to determine that they are not state property. Such property is subject to requisition as other property. Vide *infra*, arts. 345 et seq.

54. *Belongings not transportable.*—This rule does not compel the captor to be responsible for such personal belongings of prisoners as they are unable to transport with them.¹

¹Ariga, p. 325.

55. *Includes uniform, etc.*—In practice personal belongings are understood to include military uniform, clothing, and kit required for personal use, although technically they may belong to their Government.¹

¹*Opp. Land Warfare*, par. 69 and note. Ariga, p. 161.

56. *Booty.*—All captures and booty, except personal belongings of prisoners, become the property of the belligerent Government and not of individuals or units capturing them.¹

¹G. O. 100, 1863, art. 45. Vide *infra*, art. 337.

57. H. R., Art. IX. Every prisoner of war, if he is questioned on the subject, is bound to give his true name and rank, and if he infringes this rule he is liable to have the advantages accorded to prisoners of his class curtailed.

58. Although a prisoner of war is bound, under the penalties named, to state truthfully his name and rank, yet he is not bound to reply to other questions. The captor is entitled to take advantage of every means, humane and not coercive, in order to obtain all information possible from a prisoner with regard to the numbers, movements, and location of the enemy, but the prisoner can not be punished for giving false information about his own army.¹

¹Kriegsbrauch, p. 16. *Opp. Land Warfare*, par. 68.

59. *Internment.*—H. R., Art. V. Prisoners of war may be interned in a town, fortress, camp, or other place, and bound not to go beyond certain fixed limits; but they can not be confined except as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist.

60. *Not criminals.*—The distinction herein intended is between restriction to a specified locality and close confinement. Prisoners of war must not be regarded as criminals or convicts.

They are guarded as a measure of security and not of punishment.¹

¹ Holland, *Laws of War on Land*, par. 25. *Opp. Land Warfare*, pars. 86, 87.

61. *Internment*.—The object of internment is solely to prevent prisoners from further participation in the war. Anything, therefore, may be done that is necessary to secure this end, but nothing more. Restrictions and inconveniences are unavoidable, freedom of movement within the area of internment should be permitted unless there are special reasons to the contrary. The place selected for internment should not possess an injurious climate.¹

¹ Prisoners of war will usually be interned in some town, fortress, camp, or other place. Certain limits will be fixed, beyond which they are not permitted to go, and may be required to respond to certain roll calls and subjected to other surveillance to prevent their return to their own army. *Opp. Land Warfare*, par. 90.

62. *Where confined*.—Prisoners of war when confined for security should not be placed in prisons, penitentiaries, or other places for the imprisonment of convicts, but should be confined in rooms that are clean, sanitary, and as decent as possible.¹

¹ For disciplinary measures, vide H. R., Art. VIII *infra*, par. 67.

63. *Maintained by captor*.—H. R., Art. VII. The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated, as regards board, lodging, and clothing, on the same footing as the troops of the Government who captured them.¹

¹ The Japanese granted 60 yen (30 cents) per day to officers and 30 yen (15 cents) to noncommissioned officers and soldiers—Russian prisoners of war—during captivity, which was nearly double the amount allowed for their own troops. (Ariga, p. 113.)

At the close of the Russo-Japanese War it was agreed in the treaty of peace that each belligerent should pay the cost of maintenance of its soldiers while prisoners of war.

64. *Captured supplies used*.—Prisoners are only entitled to what is customarily used in the captor's country, but due allowance should, if possible, be made for differences of habits, and captured supplies should be used if they are available.

65. *Can utilize services*.—H. R., Art. VI. The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account. Work done for the State is paid at the rates in force for work of a similar kind done by soldiers of the national army, or, if there are none in force, at a rate according to the work executed.

When the work is for other branches of the public service or for private persons the conditions are settled in agreement with the military authorities. The wages of the prisoners shall go toward improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance.

66. Work, even upon fortifications, at a distance from the scene of operations, would not seem to be prohibited by this article. That the excess of money earned by prisoners, over that paid for purchasing comforts and small luxuries, can be retained by the captor in compensation for cost of maintenance, in case their Government fails to provide for their maintenance in the treaty of peace, is well settled. The practice, however, is against such retention.¹

¹Such is the practice of Great Britain. Mr. Holland says that she expects reciprocity of treatment in this regard. (Laws of War on Land, p. 22, par. 26.)

ATTEMPTS TO ESCAPE.

67. H. R., Art. VIII. Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the state in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary.

68. *Execution of.*—Prisoners of war may be fired upon and may be shot down while attempting to escape, or if they resist their guard, or attempt to assist their own army in any way.¹ They may be executed by sentence of a proper court for any offense punishable with death under the laws of the captor, after due trial and conviction. It may well be doubted whether such extreme necessity can ever arise that will compel or warrant a commander to kill his prisoners on the ground of self-preservation.²

¹ They should be summoned to halt or surrender before firing. (Hague Con., 1899, Pt. I, pp. 86, 87.)

² G. O. 100, 1863, art. 60, in referring to giving of quarter, says: "But a commander is permitted to direct his troops to give no quarter in great straits, when his own salvation makes it impossible to cumber himself with prisoners." The German Kriegsbrauch of 1902 says: "Prisoners can be killed * * * in case of extreme necessity, when other means of security are not available and the presence of the prisoners is a danger to one's own existence. * * * Exigencies of war and the safety of the state come first, and not the consideration that prisoners of war must at any cost remain unmolested." No instance of resort to such executions have occurred since 1799, when Napoleon bayoneted the Arabs at Jaffa.

69. *Trial and punishment.*—For all crimes and misdemeanors, including conspiracy, mutiny, revolt, or insubordination, prisoners of war are subject to trial and punishment in the same way as soldiers of the army which captured them.

70. *Conspiracy.*—If a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators may be rigorously punished, even with death; and capital punishment may also be inflicted upon prisoners of war who are found to have plotted rebellion against the authority of the captors, whether in union with fellow prisoners or other persons.¹

¹ G. O. 100, 1863, art. 77.

71. *Crimes committed before capture.*—A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own army.¹

¹ G. O. 100, 1863, art. 59. Vide *infra*, Ch. X.

72. *Parole.*—H. R., Art. X. Prisoners of war may be set at liberty on parole if the laws of their country allow, and, in such cases, they are bound, on their personal honor, scrupulously to fulfill, both towards their own government and the government by whom they were made prisoners, the engagements they have contracted.

In such cases their own government is bound neither to require nor accept from them any service incompatible with the parole given.

73. The parole should be in writing and be signed by the prisoners.¹ The conditions thereof should be distinctly stated, so as to fix as definitely as possible exactly what acts the prisoner must refrain from doing; that is, whether he is bound to refrain from all acts against the captor or whether he must refrain only from taking part directly in military operations against the captor, and may accept office and render indirect aid or assistance to his own government.²

¹ It is customary to make out paroles in duplicate, one of which is sent to the enemy. G. O. 100, 1863, art. 125, "When paroles are given and received there must be an exchange of two written documents, in which the name and rank of the paroled individuals are accurately and truthfully stated."

² Ariga, p. 115. "C'est l'article 7 de la capitulation qui réglementa la procédure de la libération sur parole. Cet article de la capitulation disait que 'la parole sera donnée par écrit de ne pas reprendre les armes contre le Japon et de n'agir en aucune façon contre les intérêts de ce pays jusqu'à la fin de la guerre actuelle.'"

74. No noncommissioned officer or private can give his parole except through an officer. Individual paroles not given through an officer are not only void, but subject the individuals giving them to the punishment of death as deserters. The only admissible exception is where individuals properly separated from their commands have suffered long confinement without the possibility of being paroled through an officer.¹

¹ G. O. 100, 1863, art. 127. The parole is essentially an individual act. The agreement executed by an officer for his subordinates is valid as to each only after his adherence. Vide G. O. 100, 1863, art. 121.

75. Commissioned officers can give their parole only with the permission of a military superior, as long as such superior in rank is within reach.¹

¹G. O. 100, 1863, art. 126. As to paroling of officers interned in neutral territory vide infra, art. 414, Ch. XI.

76. No paroling on the battle field, no paroling of entire bodies of troops after a battle, and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted or of any value.¹

¹G. O. 100, 1863, art. 128.

77. A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.¹

¹G. O. 100, 1863, art. 132. But vide *Les Lois de la Guerre Continentale*, by Jacomet, par. 17, p. 36. "It is understood that the reserve formulated above in regard to the legislation of one of the belligerents, will be binding only on the nationals of the belligerent and not the government of the adverse State.

"The belligerent who grants liberty on parole to prisoners of war is not bound to know if the laws of the country authorize them to accept their liberty.

"Their government is bound by these obligations (par. 2, H. R.) even if its laws and regulations prohibit freedom on parole, but it has the right to inflict upon its nationals who may have accepted their freedom on parole authorized punishments for violations of laws in force or else make them return to the enemy.

"If liberty on parole is disavowed by his government his duty is to return himself to captivity, but if the enemy refuse to receive him or to relieve him of his parole, the prisoner is bound to conform to the agreements he has entered into."

78. H. R., Art. VIII, par. 2. Escaped prisoners who are retaken before being able to rejoin their own army or before leaving the territory occupied by the army which captured them are liable to disciplinary punishment.

79. The words "disciplinary punishment" are intended to exclude a sentence of death. The usual punishment for attempts to escape consist in curtailment of privileges or closer confinement or detention.¹

¹Hague Conference, 1899, pt. 1, p. 86 et seq.

80. *Not punishable for previous escape.*—H. R., Art. VIII, par. 3. Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of the previous flight.

81. *Can not force to accept parole.*—H. R., Art. XI. A prisoner of war can not be compelled to accept his liberty on parole; similarly the hostile government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

82. *Violation of parole.*—H. R., Art. XII. Prisoners of war liberated on parole and recaptured bearing arms against the government to whom they had pledged their honor, or against

the allies of that government, forfeit their right to be treated as prisoners of war, and can be brought before the courts.¹

¹The courts referred to are the military courts contemplated under first paragraph of H. R. XII. According to the French Military Code, art. 204, sec. 2, "Every prisoner of war who, having broken his parole, is recaptured with arms in hand, is punished with death." *Les Lois Jacquet*, art. 20, p. 37.

BUREAU OF INFORMATION.

83. *Function of prisoners' information bureau.*—H. R., Art. XIV, par. 1. A bureau of information for prisoners of war is instituted on the commencement of hostilities in each of the belligerent states, and, when necessary, in neutral countries which have received belligerents in their territory. It is the function of this office to reply to all inquiries about the prisoners. It receives from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return¹ for each prisoner of war. The office must state in this return¹ the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.²

¹The word "card" is perhaps a better translation than the word "return."

²See G. C., art. 4. It appears that some regulations should be formulated by the United States Government for carrying into effect this article, as also article 4 of the Geneva convention, in view of the requirement to keep each other informed even during the continuance of the war with information about the sick and wounded prisoners.

84. *Valuables on battle field.*—H. R., Art. XIV, par. 2. It is likewise the function of the bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned.

85. *Bureaus enjoy free postage, etc.*—H. R., Art. XVI, par. 1. Bureaus of information enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.¹

¹Vide note 2, par. 83, supra. This article will require postal conventions and additional legislation for full compliance.

85a. *Free import duties.*—H. R., Art. XVI, par. 2. Presents and relief in kind for prisoners of war shall be admitted free of

all import or other duties, as well as of payments for carriage by the State railways.¹

¹No special legislation has been passed by Congress but regulations have been formulated by the Treasury Department for giving effect to this treaty stipulation.

86. *Censorship.*—The foregoing rule does not preclude censorship and regulations which the belligerent holding the prisoners may decide to establish with regard to receipt and dispatch of letters and other articles referred to:

PRISONERS' RELIEF SOCIETIES.

87. *Duties of.*—H. R., Art. XV. Relief societies for prisoners of war which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. For the purpose of distributing relief, agents of these societies may be admitted to the places of interment, as also to the halting place of repatriated prisoners, if furnished with a personal permit by the military authorities and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

PAY OF OFFICERS.—RELIGIOUS PRIVILEGES.—WILLS.

88. *Pay of officers.*—H. R., Art. XVII. Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained, the amount to be ultimately refunded by their own Government.¹

¹But see G. C., art. 13, par. 142, which prescribes that the medical personnel shall receive the "same pay and allowances" as persons of corresponding rank in the enemy's army.

89. *Religious freedom.*—H. R., Art. XVIII. Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of the church to which they may belong, on the sole condition that they comply with the measures of order and police issued by the military authorities.¹

¹The simplest method for carrying out this obligation is to allow ministers of their religion to have access to the prisoners at the usual times of service. Chaplains attached to armies, so long as they confine themselves to their spiritual duties, can not be made prisoners of war, but they should be permitted to accompany prisoners of war into captivity if they desire to do so.

90. *Prisoners' wills.*—H. R., Art. XIX. The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.¹

¹ Vide H. R. 14, supra, and G. C., art. 4, infra.

EXCHANGES.

91. *Exchange can not be demanded.*—The exchange of prisoners is an act of convenience to both belligerents. If no general cartel has been concluded, it can not be demanded by either of them. No belligerent is obliged to exchange prisoners of war.¹

¹ G. O. 100, 1863, art. 109.

92. *When exchange made.*—No exchange of prisoners shall be made except after complete capture, and after an accurate account of them and a list of the captured officers has been taken.¹

¹ G. O. 100, 1863, art. 110.

93. *Exchange of prisoners.*—Exchanges of prisoners take place, number for number, rank for rank, disability for disability, with added condition for added condition—such, for instance, as not to serve for a certain period.¹

¹ G. O. 100, 1863, art. 105.

94. *Substitutions.*—In exchanging prisoners of war such numbers of persons of inferior rank may be substituted as an equivalent for one of superior rank as may be agreed upon by cartel, which requires the sanction of the Government or of the commander of the army in the field.¹

¹ G. O. 100, 1863, art. 106.

95. *Surplus.*—The surplus number of prisoners of war remaining after an exchange has taken place is sometimes released either for the payment of a stipulated sum of money or, in urgent cases, of provision, clothing, or other necessaries. Such arrangement, however, requires the sanction of the highest authority.¹

¹ G. O. 100, 1863, art. 108.

96. *Persons not entitled to demand treatment of prisoners of war.*—“Spies, war traitors, and war rebels, are not exchanged according to the common law of war. The exchange of such persons would require a special cartel, authorized by the Government, or, at a great distance from it, by the chief commander of the army in the field.¹

¹ G. O. 100, 1863, art. 103.

97. In modern wars, exchange of prisoners has not been common, but the foregoing rules state accurately the practice of nations in this regard.

98. *Repatriation.*—H. R., Art. XX. After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

99. *When repatriation delayed.*—The immediate repatriation of prisoners of war is not always possible, due to the following causes:

1. Insufficiency of transport;
2. Obvious risk to captor State in restoring to the vanquished power troops of which it has been deprived; and
3. Some prisoners of war may be undergoing punishment for offenses committed during their imprisonment.

APPENDIX A.

Correspondent's Pass.

WAR DEPARTMENT,
Washington, _____, 191___.

The Bearer, Mr. _____, whose photograph and signature are hereto attached, is hereby accredited to the Commanding General, _____, United States Army, as news correspondent of the _____ with permission to accompany said troops, subject to the Regulations governing Correspondents with Troops in the Field and the orders of the commander of said troops.

This pass entitles the correspondent to passage on military railways and, when accommodations are available, on Army transports, with the privileges of a commissioned officer, including purchase of subsistence, forage and indispensable supplies when they can be spared.

LINDLEY M. GARRISON,
Secretary of War.

Official:

The Adjutant General.

[Signature of the correspondent.]

HEADQUARTERS _____,
_____ 191___.

Commanding.

APPENDIX B.

[Front.]

.....19..	No....	THE UNITED STATES OF AMERICA, .....19..
Issued to:	The bearer of this.....	(Name.)
(Name.)	is a civilian employee of the Army of the United States and is employed as a.....	
Employed as	He is entitled under the laws of war, if captured, to the privi- leges of a prisoner of war.	
(Status.)	.....	(Name.)
(Date.)	.....	(Rank of officer.)
(Issued by.)	.....	(Reverse side completed before signature.)

To be four by eight inches, perforated as indicated, bound in books to retain stubs, and numbered consecutively. To be printed on a light-weight bond paper; the certificate to be folded to about the size of a postage stamp and carried in a small aluminum container suspended by a tape around the neck; container to have stamped on it the same number as the certificate issued.

[Reverse side.]

Remarks.

Description of individual:

Height.....

Weight.....

Color hair.....

Color eyes.....

Age.....

Sex.....

Finger print.

(Signature of employee.)

Identification

(Name.)

(Status.)

Remarks.

Height.....

Weight.....

Color hair.....

Color eyes.....

Age.....

Finger print.....

CHAPTER V.

THE SICK, WOUNDED, AND DEAD.

100. *Regulations concerning, where found.*—H. R., Art. XXI. The duties of belligerents with regard to the wounded and sick are governed by the Geneva Convention (of 1906).¹

¹The convention for the amelioration of the condition of the sick and wounded of armies in the field, July 6, 1906, became operative six months after signature (art. 30). When duly ratified it replaced the convention at Geneva of Aug. 22, 1864, between the contracting states. The latter convention remains operative between those signatories who did not ratify the subsequent convention of 1906 (art. 31). Other powers were authorized to subsequently ratify the convention of 1906, and it became operative as to them within one year from date of ratification in case no one of the parties filed an objection thereto (art. 32). Any party to this convention can denounce the same by written notice. Such denunciation becomes operative one year after receipt of such written notice (art. 33).

101. *Duties of neutral powers.*—The duties of neutral powers as regards wounded and sick, who are permitted to enter their territories, are dealt with in the "Convention concerning the rights and duties of neutral powers and persons" at The Hague in 1907.¹

¹Convention V of The Hague relates to "The rights and duties of neutral persons in warfare on land." Convention XIII relates to neutral rights and duties in maritime war.

THE SICK AND WOUNDED.

102. *Care of, obligatory.*—G. C., Art. I, par. 1. Officers, soldiers, and other persons officially attached to armies, who are sick or wounded, shall be respected and cared for, without distinction of nationality, by the belligerent in whose power they are.

103. *What persons included.*—This provision extends to all belligerents, as previously defined, who may be described as all those persons who may demand the treatment and privileges accorded to prisoners of war.¹

¹Vide ante, Ch. III, pars. 42 and Ch. IV.

104. *Inhabitants not included.*—It does not impose obligations to aid inhabitants or other persons not officially attached to armies who may be wounded by chance or accident as a result of the hostilities in progress. But the dictates of humanity demand that inhabitants so wounded be aided if the other inhabitants are without facilities to give them proper care, and

they can be so aided without neglecting the sick and wounded of either belligerent.¹

¹ Opp., Land Warfare, art. 177 and note.

105. *Sick and wounded abandoned.*—G. C., art. 1, par. 2. A belligerent, however, when compelled to leave his sick or wounded in the hands of his adversary, shall leave with them, so far as military conditions permit, a portion of the personnel and matériel of his sanitary service to assist in caring for them.

¹ The omission of the words "sick or" in the official translation is clearly a typographical error. Vide original French and translation, Appendix 9, p. 186.

106. *Determination of the exigency.*—Necessarily the commander of the army, who is compelled by the military situation to abandon his wounded, must determine what the precise exigencies of the situation permit him to do with regard to leaving his medical personnel and matériel behind for the care of his wounded and sick; but it is clearly intended by this article that he shall relieve the victor left in possession of the battle field, as far as practicable, of the additional burdens involved in the care of the enemy sick and wounded as well as his own.¹

¹ Holland, War on Land, p. 28, par. 42.

107. *Prisoners of war.*—G. C., art. 2, par. 1. Subject to the care that must be taken of them under the preceding article, the sick and wounded of an army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.¹

¹ Vide Hague Con. V, Art. XIII post, Chap. XI, pars. 417-418 and 422.

108. *Agreements, exceptions, and mitigations.*—G. C., art. 2, par. 2. The belligerents remain free, however, to mutually agree upon such clauses, by way of exception or favor, in relation to the wounded or sick as they may deem proper. They shall especially have authority to agree—

(a) To mutually return the sick and wounded left on the field of battle after an engagement.

(b) To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported and whom they do not desire to retain as prisoners.

(c) To send the sick and wounded of the enemy to a neutral State, with the consent of the latter and on condition that it shall charge itself with their internment until the close of hostilities.

109. *Suggestions merely.*—These must be regarded purely as suggestions to commanders as proper relaxations of the rigor of the rules applicable to the wounded or sick, since commanders are "free to agree" as to the foregoing, as well as to many

other questions not suggested by these rules, regardless of this article of the convention.¹

¹ Holland, War on Land, p. 28, art. 43.

110. *Search of battle field.*—G. C., art. 3, par. 1. After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and to protect the wounded and dead from robbery and ill-treatment.

111. *Police of battle field.*—The foregoing duty of policing the field of battle imposed upon the victor after the fight contemplates that he shall take every means in his power to comply therewith.¹

¹ For regulations governing this subject see F. S. R., 1914, pars. 231, 349; vide also, Ariga, pp. 153-158, Takahashi, pp. 152, 154.

112. *Punishment of violations of article.*—The obligations imposed upon commanders as to protection of the wounded and sick from pillage and maltreatment contemplate that all guilty persons, whether subject to military law or civilians, shall be severely punished for acts of pillage and maltreatment of the wounded and dead. No statute has been passed by Congress specifically applicable to the punishment of violators of this article since the convention was agreed to and as contemplated by article 28 of the same convention. In the absence of such legislation, however, offenders, both military and civilian, will be proceeded against as marauders by commanding officers in the field.¹

¹ Vide Chap. X, pars. 171, 374, and notes. *Curry v. Collins*, 37 Mo., 324, 328.

113. *Rolls to be sent to enemy.*—G. C., art. 4, par. 1. As soon as possible each belligerent shall forward to the authorities of their country or army * * * a list of names of the sick and wounded taken in charge by him.¹

¹ Vide post, par. 166.

114. *Internments, changes, and admissions must be mutually noticed.*—G. C., art. 4, par. 2. Belligerents will keep each other mutually advised of internments and transfers, together with admissions to hospitals and deaths which occur among the sick and wounded in their hands.

115. The foregoing provisions relate obviously to the wounded and sick of the enemy, since the duties referred to with regard to wounded, sick, and dead of his own army will be regulated by the internal laws of the belligerent. The proper channel of communication of such information to the enemy is through the Prisoner's Bureau of Information.

116. *Appeals to inhabitants in behalf of wounded, etc.*—G. C., art. 5. Military authority may make an appeal to the charitable zeal of the inhabitants to receive and, under its supervi-

sion, to care for the sick and wounded of the armies, granting to persons responding to such appeals special protection and certain immunities.¹

¹ Art. 5, Gen. Con., 1864. "Inhabitants of the country who may bring help to the wounded shall be respected and shall remain free. The generals of the belligerent powers shall make it their duty to inform the inhabitants of the appeal addressed to their humanity and of the neutrality which will be the consequence of it. Any wounded man entertained and taken care of in a house shall be considered as a protection thereto. Any inhabitant who shall have received wounded men into his house shall be exempted from the quartering of troops, as well as from a part of the contributions of war which may be imposed."

117. *Modification of convention of 1864.*—The corresponding article of the Geneva convention of 1864 is so modified in this that commanders in the field are relieved of the suggested obligation of informing the inhabitants of the appeal addressed to their humanity. It also withdraws the privileges contained in the convention of 1864, and very properly places the entire subject under military supervision. The collection and removal of the wounded are best performed under military supervision, even when the labor must be requisitioned, because it is only under such supervision that it can be properly regulated and controlled.¹

¹ The modification of the article of 1864 was due to the fact that, in the absence of military supervision, opportunities were afforded for pillage and maltreatment of the dead and wounded. It was also found that the effect of the article was not to ameliorate the condition of the wounded, but to encourage the inhabitants to move wounded men who should not be removed and to prevent them from receiving proper medical treatment when most needed. Vide Opp., Land Warfare, pars. 182-183.

SANITARY FORMATIONS AND ESTABLISHMENTS.

118. *Privileges of the sanitary formations.*—G. C., art. 6. Mobile sanitary formations (i. e., those which are intended to accompany armies in the field) and the fixed establishments belonging to the sanitary service shall be protected and respected by belligerents.

119. *What are mobile sanitary formations.*—By mobile sanitary formations must be understood all organizations which follow the troops on the field of battle. In our service is included the following: (1) Regimental equipment; (2) Ambulance companies; (3) Field hospitals; (4) The reserve medical supply; (5) The sanitary column, including (a) Ambulance column, (b) Evacuation hospital; (6) Hospital trains; (7) Hospital boats; (8) Red Cross transport column.¹

¹ Vide Medical Manual, pars. 601, 626, 651, 681, 688, 697, 726.

120. *Fixed establishments.*—The term "fixed establishments" is clearly intended to cover stationary or general hospitals, whether actually movable or located on the line of communi-

cations, or at a base, and in our service would include: (1) The base medical supply depot; (2) Base hospitals; (3) Casual camps; (4) Convalescent camps; and (5) Red Cross hospital columns.¹

¹ Vide Medical Manual, pars. 713, 720-722, also Cir. 8, S. G. O., 1912.

121. *What meant by respect and protection.*—By "respect and protection" it is intended that they shall not be fired upon and shall be protected in the discharge of their duties, and this is applicable to both classes, irrespective of the fact of the actual presence therein of the sick or wounded. They are protected from deliberate attack.¹

¹ Vide post, G. C., art. 9, par. 130. Land Warfare, Opp., par. 184, and note 1.

122. *Must not commit harmful acts.*—G. C., art. 7. The protection due to sanitary formations and establishments ceases if they are used to commit acts injurious to the enemy.

123. *Cessation of immunity for harmful acts.*—By cessation of protection is understood that these units may be fired on and the personnel taken prisoners and in a proper case reprisals may be resorted to. As examples of harmful acts may be cited—taking part in the campaign, sheltering spies or combatants, placing these units directly in the line of fire of the enemy, or in a strategic position, where they restrict military operations or conceal guns, or making use of sanitary trains to transport effectives, etc. Since sanitary formations should be placed in concealed points where protected from the enemy's fire, the placing of such units as indicated may excuse their being fired upon and the detention of their personnel, but before firing upon them it is best, if possible, to direct them to withdraw.¹

¹ In the French Conventions Internationales concernant La Guerre sur Terre, p. 65, art. 7, note, it is stated, in explanation of what is meant by "protection ceases," that "in such case it is permitted to fire upon these formations and make them prisoners. Under certain circumstances where there is a manifest abuse of the immunity reprisals may be resorted to." And in explanation of the injurious acts referred to says: "Whether in a direct manner, by taking part in the combat or indirectly, for example, when the sanitary trains are used for the transport of effective combatants," etc. "A distinction must be drawn between an act intentionally injurious and where, by its presence only, a sanitary establishment interferes with a military operation, or again, where the sanitary personnel is found in the midst of the enemy troops, could give information of the dispositions made. In such case the respect due to the personnel ceases to be obligatory, but only to the extent demanded by the conduct and security of the operations. In other words, the sanitary service can be ordered to retire, and, if it is necessary, this personnel can be forcibly detained." Vide, also, Ariga, pp. 207 et seq.

124. *Acts which will not forfeit protection.*—G. C., art. 8. A sanitary formation or establishment shall not be deprived of the protection accorded by article 6 by the fact:

1. That the personnel of a formation or establishment is armed and uses its arms in self-defense or in defense of its sick and wounded.

125. *What meant by self-defense.*—Although the sanitary personnel may carry arms for self-defense, they should not resist with such arms their being captured by the enemy. These arms are for their personal defense and for protection of the sick and wounded under their charge against marauders and the like.¹

¹ Vide Land Warfare, Opp., p. 45, par. 188.

126. *Pickets and sentinels.*—G. C., art. 8, par. 2. That in the absence of armed hospital attendants, the formation is guarded by an armed detachment or by sentinels acting under competent orders.

127. *Guard for medical unit protected.*—Due to the fact that in some armies trained soldiers are used as medical orderlies, it is expressly provided that a picket or sentinel taken from a combatant arm may be used as a guard to a sanitary formation. Such guard, when furnished with authority in due form, is entitled to the same privileges as those of the medical personnel while so employed.

128. *Written order indispensable.*—It is indispensable, however, that such picket or sentinel be provided with a written order that he can show to the adversary.¹ Such pickets or guards will not be made prisoners of war.²

¹ The original French of the article is "d'un mandat regulier," which contemplates an order or written authority duly authenticated by proper authority. Nothing is said about such guard being obliged to wear the brassard.

² Vide, also, G. C., art. 9, par. 2, post par. 130.

129. *Weapons and cartridges.*—G. C., art. 8, par. 3. That arms or cartridges, taken from the wounded and not yet turned over to the proper authorities, are found in the formation or establishment.¹

¹ These arms and ammunition should be turned in as soon as practicable, and, in any event, are subject to confiscation.

PERSONNEL.

130. *Privileges of personnel.*—G. C., art. 9. The personnel charged exclusively with the removal, transportation, and treatment of the sick and wounded, as well as with the administration of sanitary formations and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be considered as prisoners of war.

These provisions apply to the guards of sanitary formations and establishments in the case provided for in section 2 of article 8.

131. *Personnel contemplated.*—The personnel here intended by the words “charged exclusively” is clearly the officers and men of the army service corps, including drivers of transports attached to the medical service for the entire campaign, so that musicians and other soldiers, temporarily employed as litter bearers, are not placed under the protection of the convention. These latter should be supplied with a special brassard or certificate.

132. *Protection afforded.*—The medical personnel above referred to, chaplains, and guards are protected from deliberate attack. There is no just cause for complaint, as a violation of the convention, if they are accidentally killed or wounded in the execution of their duties.¹

¹ Land Warfare, Opp., art. 184, and note 1. “It [medical personnel] can not, naturally, be made immune from the effects of shell and bullet fired at ranges at which badges and uniform are not distinguishable.”

133. *Voluntary aid societies.*—G. C., art. 10. The personnel of voluntary aid societies, duly recognized and authorized by their own Governments, who are employed in the sanitary formations and establishments of armies, are assimilated to the personnel contemplated in the preceding article, upon condition that the said personnel shall be subject to military laws and regulations.

Each State shall make known to the other, either in time of peace or at the opening or during the progress of hostilities, and in any case before actual employment, the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies.²

¹ The *American National Red Cross*, duly incorporated under the laws of the United States, Jan. 5, 1905 (vide 33 Stat., 600, and amendment, 36 Stat., 604), is, under the proclamation of the President, published in G. O. 170, W. D., Dec. 27, 1911, the only volunteer society now authorized by this Government to render aid to its land and naval forces in time of war, and any other society desiring to render similar assistance can do so only through the American National Red Cross.

Such portion of the society as may render aid to the land and naval forces will constitute a part of the sanitary services thereof.

The War and Navy Departments are duly authorized to communicate directly with the president of the society, arranging for and specifying the character of services required, and designating where the personnel and matériel will be assembled.

It is prescribed that any member of the American National Red Cross when on duty with the land and naval forces of the United States, pursuant to a proper call, will be subject to the military laws and regulations as provided in article 10 of the International Red Cross Convention of 1906 (Geneva), and will be provided with the necessary brassard and certificate of identity.

Except in cases of great emergency, the personnel of the American National Red Cross will not be assigned to duty at the front, but will be confined to hospitals in the home country, at the base of operations, on hospital ships, and along lines of communication of the land and naval forces of the United States.

134. *The National Red Cross.*—The National Red Cross of America is the only volunteer aid society that can be employed by the land and naval forces of the United States in future

wars to aid the medical personnel, and their employment must be under the responsibility of the Government as part of the medical personnel and establishments of its Army, and they must be assigned to duties in localities designated by competent military authority.

135. *Conditions prescribed for employment.*—The personnel and establishments of voluntary aid societies, while so employed, are entitled to the same privileges and protection as that to which the Army Medical Service is entitled under certain conditions, which are:

(a) That the societies are duly recognized and authorized by their Government.¹

¹ In this country the society is recognized by the statutes (vide note 1, par. 133). The personnel must be provided with the emblem (brassard) and also with a certificate as prescribed. The certificate should give a reasonably accurate description of the person employed, i. e., the age, color, sex, race, height, weight, color of eyes, hair, and complexion. In addition should be added the finger print of the index finger of the right hand with distinguishing marks. The certificate should also contain the number of the brassard issued to each person. For form of certificate, vide Appendix A, this chapter. This certificate should always be on the person and might properly be inclosed in a light metallic case stamped with the same number as the certificate, which would serve as an identification tag.

The employment of a distinctive uniform consisting of a blouse and shirt of blue and a cap of designated design would prevent confusion and injury on the part of the enemy.

(b) That the names of the societies to be employed must be notified to the enemy before any of the personnel is actually employed.²

² This will be done by the Government at the outbreak of hostilities, of which notice will be had by commanders.

(c) That the personnel is subject to military law.³

³ Vide statute cited in note 1, par. 133.

136. *Reasons for conditions imposed.*—In past wars so many irregularities and even acts of hostility have been committed by members of volunteer aid societies that the conditions above mentioned have been found necessary. Commanders, before permitting their employment, should therefore assure themselves that these conditions have been strictly complied with.¹

¹ Land Warfare, Opp., p. 46, par. 192.

137. *Volunteer societies of neutrals.*—G. C., art. 11. A recognized society of a neutral State can only lend the services of its sanitary personnel and formations to a belligerent with the prior consent of its own Government and the authority of such belligerent. The belligerent who has accepted such assistance is required to notify the enemy before making any use thereof.

138. *Conditions of employment.*—It is necessary to secure the consent of the neutral government, as well, as that of the

belligerent into whose service it proposes to enter, but it is not necessary to obtain the consent of the other belligerent who is notified of the fact of employment.¹ Such employment in this country must be accomplished through the American National Red Cross.²

¹ Vide Geneva Conference Actes, p. 115.

² Vide G. O. 170, Dec. 27, 1911, W. D., par. 2; proclamation of President.

CAPTURED MEDICAL PERSONNEL.

139. *Privileges and duties.*—G. C., art. 12. Persons described in articles 9, 10, and 11 will continue in the exercise of their functions, under the direction of the enemy, after they have fallen into his power.

When their assistance is no longer indispensable they will be sent back to their army or country, within such period and by such route as may accord with military necessity. They will carry with them such effects, instruments, arms, and horses as are their private property.

140. *Interpretation of these obligations.*—In interpreting the foregoing obligations two things, among others, must be carefully considered: (1) That the sanitary formations must not be placed in position to take back useful information to their army, and (2) that these rules are not meant to justify depriving the enemy of the services of his medical personnel for an indefinite period of time. The former clearly precludes the absolute freedom of movement of this medical personnel in the theater of war, even though claiming to be engaged in collecting, aiding, or removing the wounded and sick. Medical personnel of the enemy persisting in approaching places after being ordered to halt may be fired on as an extreme measure. There is nothing in the Geneva convention conferring immunity from search of its medical personnel and units, and they may be stopped by the same means as a ship.

141. *Détention and route of return.*—The medical personnel of a force which capitulates may be detained to attend the sick and wounded included in the surrender and sent back gradually. It is not left to this captured personnel to choose its own route, or the time of its return, both of which are determined by the captor in conformity to military exigencies.¹

¹ Under the convention of 1864 medical personnel (arts. 3 and 4) might and did demand to be sent back to the outposts of their own army. The manifest impracticability of this rule and forced non-compliance at times caused the modification adopted in 1906. Vide Opp., Land Warfare, p. 46, par. 196 and note; Ariga, pp. 197, 206, 207, where instances are set forth.

142. *Pay and allowances.*—G. C., art. 13. While they remain in his power, the enemy will secure to the personnel mentioned in article 9 the same pay and allowances to which persons of the same grade in his own army are entitled.

143. *Personnel of aid societies not included.*—The foregoing article has no application to the personnel of voluntary aid societies, since it is limited exclusively to those of article 9.

MEDICAL MATÉRIEL.

144. *Mobile formations.*—G. C., art. 14. If mobile sanitary formations fall into the power of the enemy, they shall retain their matériel, including the teams, whatever may be the means of transportation, and the conducting personnel. Competent military authority, however, shall have the right to employ it in caring for the sick and wounded. The restitution of the matériel shall take place in accordance with the conditions prescribed for the sanitary personnel, and, as far as possible, at the same time.

145. *Limit on obligation.*—The obligation to return the teams of mobile sanitary formations is applicable to teams secured by requisition, but there is no obligation to provide teams to facilitate the return of the matériel of captured mobile sanitary formations should they have lost all or part of their own animals by casualties.¹

¹Ariga, pp. 206, 207, relates that after the Battle of Mukden the Japanese provided sufficient transport for 60 Russian personnel to return direct to their army, but sent the remaining 710 persons through Chinese territory. Vide also Opp., Land Warfare, par. 204 and note. Every assistance practicable should be rendered for the return in such cases on account of the sick and wounded.

146. *Fixed establishments.*—G. C., art. 15. Buildings and matériel pertaining to fixed establishments shall remain subject to the laws of war, but can not be diverted from their use so long as they are necessary for the sick and wounded. Commanders of troops engaged in operations, however, may use them, in case of important military necessity, if, before such use, the sick and wounded who are in them have been provided for.¹

¹“This article applies only to military hospitals. In conformity with art. 56, R. G. T., there is no authority for taking possession of hospitals which are utilized in time of peace for civilian sick. These hospitals must be maintained for their ordinary purposes. Although they can not be diverted from their primitive object, they can, however, be used by the military under requisition.” Vide Conventions Internationales concernant La Guerre Sur Terre, p. 70. Also “Les Lois,” etc., by Jacomet, p. 51, art. 45.

147. *Disposition of buildings and material.*—The buildings of fixed medical establishments, hospitals, and depots can not, from their nature, be sent back to the enemy. It is contemplated that they shall be used for medical purposes so long as necessary for the wounded and sick, except in cases of urgent military necessity; but if other arrangements are made for the welfare of the wounded and sick found in them, there is nothing to prohibit the fortification and use of such buildings by the

captor. The matériel in such hospital or other fixed sanitary establishment follows the fate of the buildings and becomes the property of the captor.

148. *Matériel of volunteer aid societies.*—G. C., art. 16. The matériel of aid societies admitted to the benefits of this convention, in conformity to the conditions therein established, is regarded as private property and, as such, will be respected under all circumstances, save that it is subject to the recognized right of requisition by belligerents in conformity to the laws and usages of war.

149. *Uncertainty as to the rule.*—There is a marked distinction as to treatment accorded to matériel of mobile sanitary formations, of fixed establishments, and of convoys for the evacuation of the sick and wounded; and since volunteer aid societies employ matériel in the same units, it is uncertain what treatment should be accorded it when found in fixed establishments and with convoys. It is believed that this matériel should be treated under all circumstances as private property; but, wherever found, it is subject to requisition.¹

¹ Land Warfare, Opp., p. 48, par. 209 and note e. "The difficulties of applying this clause will be great, for in some armies, notably the Austro-Hungarian, the Red Cross societies provide a considerable portion of the transport and other matériel of the regular field medical units. Although not so stated in the convention, the medical matériel of voluntary aid societies should only be requisitioned for the needs of the Army medical service and not for those of the fighting units."

Mr. Holland, in his *War on Land*, p. 34, par. 57, says: "The matériel of aid societies, when employed in mobile units, would of course be restored in pursuance of Art. XIV, G. C. The treatment which it should receive when employed in fixed military establishments is not so obvious. Should it share the fate of such establishments under Art. XV, G. C.? This might be a discouragement to voluntary aid. Or should it be exempt from confiscation? The latter alternative is accepted in this article, although belligerents may thus be tempted to protect matériel properly belonging to their medical service, by assigning it over to volunteer societies."

The French, in *La Guerre Sur Terre*, p. 71, says: "Nothing has been definitely decided as to the juridical situation of fixed establishments and formations of aid societies. By analogy to Arts. XV and XVI, G. C., and to Art. 56, R. G. T., it must be respected in the same manner as private property. Possession can be taken of it, but always on condition of not defecting it from its primitive purposes as soon as it may be needed."

Vide G. C., Arts. 14, 15, and 17, pars. 144, 146, 147, and Appendix 9.

150. *Convoys of evacuation.*—G. C., art. 17. Convoys of evacuation shall be treated as mobile sanitary formations subject to the following special provisions:

1. A belligerent intercepting a convoy may, if required by military necessity, break up such convoy, charging himself with the care of the sick and wounded whom it contains.

2. In this case the obligation to return the sanitary personnel, as provided for in article 12, shall be extended to include the entire military personnel employed, under competent orders, in the transportation and protection of the convoy.

The obligation to return the sanitary matériel, as provided for in article 14, shall apply to railway trains and vessels intended for interior navigation which have been especially equipped for evacuation purposes, as well as to the ordinary vehicles, trains, and vessels which belong to the sanitary service.

Military vehicles, with their teams, other than those belonging to the sanitary service, may be captured.

The civil personnel and the various means of transportation obtained by requisition, including railway matériel and vessels utilized for convoys, are subject to the general rules of international law.¹

¹ There is no signal, or generally recognized method, for stopping these transports, but the practice is to fire across their front as is done in stopping naval vessels. Vide ante par. 140.

151. *Power of belligerent over convoy.*—The belligerent can not only break up the convoy but can also detain it for a definite period of time, confine it to a certain route, or designate the place where it is to report. This was not authorized under the G. C. of 1864.¹

¹ La Guerre Sur Terre, p. 72.

CONVOY OF EVACUATION

152. *Means of conveyance.*—Conveyance may take place by road, by railway, or by water, but to enjoy the benefit of this article must not be combined with or used for the transportation of troops, of supplies, or employed in any other connection with any military operation.

153. *The personnel.*—The personnel of the convoy may be—

1. *Medical*, such as those mentioned in articles 9, 10, and 11, which should be restored in accordance with article 12; or,

2. *Railway*, loaned for transport purposes, which should be restored under article 14; or,

3. *Military guards*, which should be restored under article 9; or,

4. *Civil requisitioned*, which should be released, if not again requisitioned by the captor, under article 14.

154. *The matériel.*—The matériel may belong to—

1. The regular medical service of the enemy, or to aid societies recognized by him, in either of which cases it should be restored under article 14; or,

2. May consist of things requisitioned; that is, carriages, boats, etc., which must be restored in accordance with article 14; or,

3. May consist of carriages, with their teams, borrowed from military units, which are then subject to capture.¹

¹ Holland, War on Land, p. 35, art. 58.

THE DISTINCTIVE EMBLEM.

155. *The red cross.*—G. C., art. 18. Out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by the reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.¹

¹ Turkey acceded to the Geneva Convention of 1906 on August 24, 1907, making the reservation, however, "that its armies will use the emblem of the red crescent for the protection of its ambulances"; adding: "It is nevertheless well understood that the Imperial Government will scrupulously respect the inviolability of the Red Cross flag."

Persia adopted in lieu of the red cross a red lion combined with a red sun. Vide Spaight, *War Rights on Land*, p. 456. Opp., *Land Warfare*, par. 210 and note. Holland, *War on Land*, par. 59, p. 36. Les Lois, Jacomet, art. 48.

156. *Where employed.*—G. C., art. 19. This emblem appears on flags and brassards as well as upon all matériel appertaining to the sanitary service, with the permission of the competent military authority.

157. *The brassard.*—G. C., art. 20. The personnel protected in virtue of the first paragraph of article 9, and articles 10 and 11, will wear attached to the left arm a brassard bearing a red cross on a white ground, which will be issued and stamped by competent military authority, and accompanied by a certificate of identity in the case of persons attached to the sanitary service of armies who do not have military uniform.¹

¹ For dimensions of brassards, see General Orders, No. 84, War Department, May 6, 1906.

158. *Brassard to be fixed.*—The convention of 1864 with regard to the use of the brassard differs from that of 1906 in that the latter requires that it shall be fixed to the arm and shall be permanently worn.

159. *Precautions in issue of brassards.*—For the protection of persons to whom brassards are issued and to prevent their improper use by spies and others, as well as to conform to the requirements of the above article, a register should be kept showing the names and description of the persons to whom brassards have been issued. The brassard should be stamped with a special mark or number by the War Department. In the case of persons not wearing a military uniform a certificate must be issued containing the name, description, and number of the person to whom issued.¹

¹ For form of this certificate, see Appendix A, this chapter.

The Medical Department is charged with the duty of providing, stamping, and delivering brassards to all persons entitled to neutrality (protection) by virtue of the first paragraph of article 9 and articles 10 and 11 of the Geneva Convention (1906). and of providing and delivering necessary certificates of identity to persons attached to the sanitary service who do not have a military uniform.²

² G. O., No. 27, W. D., 1909, par. 1.

160. *The distinctive flag.*—G. C., art. 21. The distinctive flag of the convention can only be displayed over the sanitary formations and establishments which the convention provides shall be respected, and with the consent of the military authorities. It shall be accompanied by the national flag of the belligerent to whose service the formation or establishment is attached.

Sanitary formations which have fallen into the power of the enemy, however, shall fly no other flag than that of the Red Cross so long as they continue in that situation.¹

¹No regulation has been prescribed for flying this flag with the national flag.

161. *Flags designated.*—"The flag of the Geneva Convention, to be used in connection with the national flag in time of war with a signatory of the convention, will be as follows:

"For general hospitals, white bunting, 9 by 5 feet, with a red cross of bunting 4 feet high and 4 feet wide in the center; arms of cross to be 16 inches wide.

"For field hospitals, white bunting, 6 by 4 feet, with a red cross of bunting 3 feet high and 3 feet wide in the center; arms of cross to be 12 inches wide.

"For ambulances and for guidons to mark the way to field hospitals, white bunting, 28 by 16 inches, with a red cross of bunting 12 inches high and 12 inches wide in the center; arms of cross to be 4 inches wide."¹

¹A. R., 1913, par. 225.

At night every sanitary formation, fixed or movable, is designated by means of lights (lanterns). The lights used in this country are green. F. S. R., 1914, Appendix 5.

There seems to be no fixed rule among nations in regard to this designation at night. In France they are designated by two lights—red and white—the one above the other. In Great Britain by two white lights. In some other countries by one or more red lights.

162. *Military hospital ships.*—Convention X, Hague, 1907, Article V. Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

The ships mentioned in articles 2 and 3 (i. e., hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized relief societies) shall be distinguished by being painted white outside, with a horizontal band of red about a meter and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and, further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent under whose control they are placed.

Hospital ships which, in the terms of article 4, are detained by the enemy, must haul down the national flag of the belligerent to whom they belong.

The ships and boats above mentioned which wish to insure by night the freedom from interference to which they are entitled must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their special painting sufficiently plain.

163. *Sanitary formations of neutral countries.*—G. C., art. 22. The sanitary formations of neutral countries which, under the conditions set forth in article 11, have been authorized to render their services, shall fly, with the flag of the convention, the national flag of the belligerent to which they are attached. The provisions of the second paragraph of the preceding article are applicable to them.

164. *Protection and use of the flag.*—G. C., art. 23. The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and matériel protected by the convention.¹

¹ Since the "Geneva" or "Red Cross" is the distinctive mark of the medical service of armies, some additional mark, such as the name of the society, should be added to it in order to secure proper protection for the matériel of such volunteer aid societies. The "Geneva" or "Red Cross" alone is not sufficient to distinguish such matériel from that of the regular medical service.

THE DEAD.

165. *Protection of the dead.*—G. C., art. 3. After each engagement the commander in possession of the field shall take measures * * * to insure protection against pillage and maltreatment * * * for the dead.

He will see that a careful examination is made of the bodies of the dead prior to their interment or incineration.¹

¹ The evident intent of this article is to insure that life is extinct before burial or cremation.

There is no express statement in the Geneva Convention that the dead shall be buried or cremated, although this is the practice of the majority of civilized States. For rules prescribed by the U. S. for clearing the battle field see F. S. R., 1914, pars. 231, 349, 350.

166. *Disposition of marks, tokens, letters of the dead.*—G. C., art. 4. As soon as possible each belligerent shall forward to the authorities of their country or army the marks or military papers of identification found upon the bodies of the dead. They (the belligerents) will collect all objects of personal use, valuables, letters, etc., which are found upon the field of battle, or have been left by the sick or wounded who have died in sanitary formations or other establishments, for transmission to persons in interest through the authorities of their own country.

167. *Application and carrying out of the convention.*—G. C., art. 24. The provisions of the present convention are obligatory only on the contracting powers, in case of war between two or more of them. The said provisions shall cease to be obligatory if one of the belligerent powers should not be signatory to the convention.¹

¹ Vide ante, par. 100 and note.

168. *Commanders to carry out details and provide for unforeseen cases.*—G. C., art. 25. It shall be the duty of the commanders in chief of the belligerent armies to provide for the details of execution of the foregoing articles, as well as for unforeseen cases, in accordance with the instructions of their respective Governments, and conformably to the general principles of this convention.

169. *Must instruct troops and notify inhabitants.*—G. C., art. 26. The signatory Governments shall take the necessary steps to acquaint their troops, and particularly the protected personnel, with the provisions of this convention and to make them known to the people at large.

170. *Prevention of abuses and infractions.*—G. C., art. 27. Signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.¹

¹ The American National Red Cross was incorporated under act approved Jan. 5, 1905, and amended by Ch. 372, June 23, 1910 (36 Stat., 604).

171. *Repression of acts of pillage.*—G. C., art. 28. In the event of their military penal laws being insufficient, the signatory Governments also engage to take, or to recommend to their legislatures, the necessary measures to repress, in time of war, individual acts of robbery and illtreatment of the sick and wounded of the armies, as well as to punish, as usurpations of military insignia, the wrongful use of the flag and brassard of the Red Cross by military persons or private individuals not protected by the present convention.¹

¹ Aside from the legislation referred to in note, par. 133, no special legislation has been enacted by Congress. Vide ante, par. 112 and note, also post, par. 374 and note.

APPENDIX A.

[Front.]

Name.....	No.....	In accordance with the provisions of the International Red Cross Convention (1906), I certify that the bearer	
Organization.....	.....	(Christian name.)	(Surname.)
Capacity.....	.....	ized to accompany the	(see over) is author-
.....	.....	in the capacity of.....	(State organization to which attached.)
.....	.....	(State function.)	.....
Place.....	.....	He (she) has been issued a brassard, numbered to correspond to the number on this certificate, and is entitled to the privileges and immunities provided by the Red Cross convention.	
Date.....	.....	.....	.....
Issued by.....	.....	Place.....	Date.....

To be 4 by 8 inches, perforated as indicated, bound in books to retain stubs, and numbered consecutively. To be printed on a light-weight bond paper; the certificate issued to be folded to about the size of a postage stamp and carried in a small aluminum container suspended by a tape around the neck like the Army identification tag; container to have stamped on it the same number borne by the certificate and brassard.

[Back.]

Identification.

.....
 (Name.)

 (Status.)

 (Age.) (Height.) (Weight.) (Race.)

 (Color of eyes.) (Color of hair.)

 Finger print.

 Right index finger.

 Remarks.

United States Army.

Identification.

.....
 (Christian name.) (Surname.)

 (Status.)

 (Age.) (Height.)¹ (Weight.)¹

 (Color of eyes.) (Color of hair.)

 Finger print.¹

 Right index finger.

 Remarks.²

¹ These approximately.

² Include here notation of scars, etc., which will aid in identification.

CHAPTER VI, SECTION I. THE CONDUCT OF HOSTILITIES.

172. *Means of conducting hostilities.*—H. R. XXII. The right of belligerents to adopt means of injuring the enemy is not unlimited.

173. *Limitations on means of carrying on war.*—On general principles it is permissible to destroy your enemy and it is immaterial how this is accomplished. But in practice the means employed are definitely restricted by international declarations and conventions, and by the laws and usages of war. Generally speaking, the means to be employed include both force and stratagem, and there is included therein the killing and disabling the enemy, forcing him by defeat and exhaustion to surrender, the investment, bombardment, or siege of his fortresses and defended places, the damage, destruction, and appropriation of property, and injury to the general resources of the country.¹

¹ Flad Oyen. (1 Rob., 184); G. O. 100, 1863, art. 17. "War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy."

174. *Discharging explosives from balloons.*—H. D. XIV, 1907. The contracting powers agree to prohibit, for a period extending to the close of the third peace conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature.

175. There were three declarations included in The Hague Conference of 1899 with reference to the improper use of projectiles, but the above is the only one of the three to which the United States was a party. This may be said to be of comparatively little value since it has only ten signatories and the United States and Great Britain are the only two of the great powers who have ratified the same, and then, too, the same object is substantially accomplished under H. R. XXV.¹

¹ For other conventions, see declarations 2 and 3 at The Hague, of 1899, as follows: 2. "The contracting powers renounce the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases." 3. "The contracting powers renounce the use of bullets which expand in the human body, such as bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions."

The United States refused to adhere to these provisions, and its representatives presented as a substitute the following:

"The use of bullets which inflict unnecessarily cruel wounds—such as explosive bullets, and, in general, every kind of bullet which exceeds the limit necessary for placing a man immediately *hors de combat*—should be forbidden."

The United States has, however, by convention or otherwise, adhered in its war to the principle announced in the proposed amendment. *Vide Am. Jour. Int. Law* (Gen. G. B. Davis, vol. 2, pp. 74-76).

The following Declarations of the St. Petersburg Convention were never ratified by the United States, and are now considered as limiting too much the legitimate methods of making war:

"Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

"That the only legitimate object which States should set before themselves during war is to weaken the military forces of the enemy;

"That for this purpose it is sufficient to disable the greatest possible number of men;

"That this object would be exceeded by the employment of arms which would uselessly aggravate the sufferings of disabled men, or render their death inevitable; and

"That the employment of such arms would, therefore, be contrary to the laws of humanity."

176. *The use of poison.*—H. R. XXIII, par. (a). In addition to the prohibitions provided by special conventions, it is especially forbidden * * * to employ poison or poisoned weapons.

177. *Application of rule.*—This prohibition extends to the use of means calculated to spread contagious diseases, and includes the deliberate contamination of sources of water by throwing into same dead animals and all poisonous substances of any kind, but does not prohibit measures being taken to dry up springs or to divert rivers and aqueducts from their courses.¹

¹The original or base of this prohibition is found in G. O. 100, of 1863, art. 70, as follows: "The use of poison in any manner, be it to poison wells, or food, or arms, is wholly excluded from modern warfare. He that uses it puts himself out of the pale of the laws and usages of war."

178. *The use of treachery.*—H. R. XXIII, par. (b). It is especially forbidden * * * to kill or wound treacherously individuals belonging to the hostile nation or army.¹

¹It would be treacherous to call out, "Do not fire: we are friends," and then fire a volley. To feign death and then fire at an enemy. *Land Warfare, Opp., p. 37; note (b).*

179. *Assassination and outlawry.*—Civilized nations look with horror upon offers of rewards for the assassination of enemies, and the perpetrator of such an act has no claim to be treated as a combatant, but should be treated as a criminal. So, too, the proclaiming of an individual belonging to the hostile army, or a citizen or subject of the hostile government, an outlaw, who may be slain without trial by a captor. The article includes not only assaults upon individuals, but as well any offer for an individual "dead or alive."¹

¹Vide *Laws of War on Land, Holland, p. 43; Land Warfare, Opp., arts. 46 and 47; Les Lois, Jacomet, p. 58, art. 5; G. O. 100, 1863, par. 148.* "The law of war does not allow proclaiming either an individual belonging to the hostile army or a citizen or a subject of the hostile government an outlaw who may be slain without trial by any captor, any more than the modern law of peace allows such intentional outlawry; on the contrary it abhors such outrage. The sternest retaliation should follow the murder committed in consequence of such proclamation, made by whatever authority. Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism."

180. *Injuring an enemy who has surrendered.*—H. R. XXIII, par. (c). It is especially forbidden * * * to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion.

181. *Penalty for violation.*—War is for the purpose of overcoming armed resistance, and no vengeance can be taken because an individual has done his duty to the last. And "whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States or is an enemy captured after having committed the misdeed."¹

¹ G. O. 100, 1863, art. 71. Vide also G. C., arts. 3 and 28, pars. 110, 165, and 171, *supra*.

182. *Refusal of quarter.*—H. R. XXIII, par. (d). It is especially forbidden * * * to declare that no quarter will be given.

183. It is no longer contemplated that quarter will be refused to the garrison of a fortress carried by assault, to the defenders of an undefended place who did not surrender when threatened with bombardment, or to a weak garrison which obstinately and unhesitatingly persevered in defending a fortified place against overwhelming odds.¹

¹ Land Warfare, Opp., p. 24, par. 49. But see G. O. 100, 1863, art. 62: "All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none."

ART. 60. "It is against the usage of modern warfare to resolve, in hatred and revenge, to give no quarter. No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it *impossible* to cumber himself with prisoners."

ART. 63. "Troops who fight in the uniform of their enemies, without any plain, striking, and uniform mark of distinction of their own, can expect no quarter." See also arts. 63 and 66.

All of the foregoing rules are now superseded by The Hague rule. Vide par. 368 *infra*.

184. *Employment of arms, etc., causing unnecessary injury.*—H. R. XXIII, par. (e). It is especially forbidden * * * to employ arms, projectiles, or material, of a nature to cause unnecessary injury.

185. *What included in prohibition.*—The foregoing prohibition is not intended to apply to the use of explosives contained in artillery projectiles, mines, aerial torpedoes, or hand grenades; but it does include the use of lances with barbed heads, irregular-shaped bullets, projectiles filled with glass, etc., and the use of any substance on these bullets that would tend to unnecessarily inflame a wound inflicted by them, and the scoring of the surface or fling off the ends of the hard case of such bullets. It is believed that this prohibition extends to the use of soft-nosed and explosive bullets, mentioned in paragraph 175 and note.

186. *Train wrecking, etc.*—Train wrecking and setting on fire camps or military depots are legitimate means of injuring the enemy when carried out by the members of the armed forces. Wrecking of trains should be limited strictly to cases which tend directly to weaken the enemy's military forces.¹

¹ Opp. Land Warfare, p. 24, par. 45. Mr. Spaight, War Rights on Land, on p. 127, says: "Though railway breaking is a legitimate act of warfare, designedly to wreck a hospital train, or a train which is known to be conveying peaceable inhabitants, would not be legitimate, for it would lack the essential requirement of being intended to weaken the enemy's military forces. But, generally speaking, railroads being to-day an all-important means of warfare such design would have to be clearly proved against a belligerent to condemn him for exercising his broad war right to interrupt his enemy's communications. It is a very sad but inevitable consequence of a lawful act that it may endanger or kill persons who are strangers to hostilities. * * * A belligerent has a war right, not only to stop a train, but to blow it sky high, if it carries fighting troops or war material or supplies, and this war right he will hardly forego for humanitarian reasons. The strategic use of railways is so important that they must be regarded, in a country where active hostilities are going on, as a specific means of warfare, and only secondarily as fulfilling the ordinary functions of railways in peace time. As I have said before, noncombatants must travel by train at their risk when there is war in the land, and the only practical method of insuring their safety appears to be the sending ahead of a herald engine to test the line."

187. *Subjects not to be compelled to take part in operations against their own country.*—H. R. XXIII, last par. A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

188. *Interpretation of this article.*—This article was introduced by Germany for the purpose of extending the principles of article 44 of The Hague Conference of 1899, which it was intended to replace, to all persons over whom a State exercised jurisdiction. The Austro-Hungarian amendment to insert the words "as combatants" after the words "take part" was rejected and the article passed substantially as proposed. The language used is still ambiguous, since it is uncertain whether it is unlawful to compel inhabitants of occupied territory to work on certain works that may be urgently required, such as roads and bridges which may be of ultimate military service, or whether these inhabitants can be compelled to act as guides by the enemy. This practice is still considered as admissible by Germany.

¹ Vide War on Land, Holland, p. 44, art. 77. The Hague Peace Conferences, by Higgins, pp. 265-269, for further discussion. Kriegsbrauch, p. 48. Vide post discussion of H. R. 44, pars. 321-323 and notes.

CHAPTER VI, SECTION II.

STRATAGEMS.

189. H. R. XXIV. Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

190. *Good faith.*—Absolute good faith with the enemy must be observed as a rule of conduct. Without it war will degenerate into excesses and violences, ending only in the total destruction of one or both of the belligerents.¹

¹ G. O. 100, 1863, art 16. "It (military necessity) admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes return to peace unnecessarily difficult." Land Warfare, Opp., par. 140, 141; "Should it be found impossible to count on the loyalty of the adversary, there is grave danger of war degenerating into excesses and violence, to avoid which has been the aim of modern wars."

191. In general, belligerents may resort to such measures for mystifying or misleading the enemy, which the enemy ought to take measures to secure himself against, such as the employment of spies, inducing soldiers to desert, to surrender, to rebel, or to give false information to the enemy.

192. *Must not involve treachery or perfidy.*—The ruses of war are, however, legitimate so long as they do not involve treachery or perfidy on the part of the belligerent resorting to them. They are forbidden if they contravene any generally accepted rule.¹

¹ "To demand a suspension of arms and break it by surprise, or to violate a safe conduct or any other agreement in order to gain an advantage is an act of perfidy." (Land Warfare, Opp., par. 148.) Vide par. 232 infra.

The line of demarcation, however, between legitimate ruses and forbidden acts of treachery and perfidy is sometimes rather indistinct, and with regard to same, the writers of authority have disagreed. For example: It would be an improper practice to secure an advantage of the enemy by deliberate lying which involves a breach of faith, or when there is a moral obligation to speak the truth, such as declaring that an armistice had been agreed upon when such was not the case. On the other hand, it is a perfectly proper ruse to summon a force to surrender on the ground that it is surrounded, and thereby induce such surrender with a small force.²

² H. R. XXIII, par. (b). Ante par. 178, G. O. 100, 1863, art. 101: "While deception in war is admitted as a just and necessary means of hostility, and is consistent with honorable warfare, the common law of war allows even capital punishment for clandestine or treacherous attempts to injure an enemy, because they are so dangerous, and it is so difficult to guard against them."

Vide also Hague Conference, 1899, p. 146.

193. *Legitimate ruses.*—“Among legitimate ruses may be counted surprises; ambushes; feigning attacks, retreats, or flights; simulating quiet and inactivity; giving large outposts or a strong advanced guard to a small force; constructing works, bridges, etc., which it is not intended to use; transmitting false or misleading signals and telegraph messages, and sending false dispatches and newspapers, with a view to their being intercepted by the enemy; lighting camp fires where there are no troops; making use of the enemy's signals, bugle and trumpet calls, watchwords, and words of command; pretending to communicate with troops or reinforcements which have no existence; moving landmarks; putting up dummy guns or laying dummy mines; removing badges from uniforms; clothing the men of a single unit in the uniform of several different units so that prisoners and dead may give the idea of a large force.”¹

¹ Land Warfare, Opp., par. 144.

194. *Use of flags, insignia, military uniforms of the enemy.*—H. R. XXIII, par. (f). It is especially forbidden * * * to make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as of the distinctive badges of the Geneva Convention.

195. *Flags of truce.*—Flags of truce must not be used surreptitiously to obtain military information or merely to obtain time to effect a retreat or secure reinforcements or to feign a surrender in order to surprise an enemy. An officer receiving them is not on this account absolved from the duty of exercising proper precautions with regard to them.¹

¹ Ariga, p. 255 et seq., cites an example of the use of the flag of truce combined with the Red Cross flag at Tang-tsiatoun, near Mukden, and during the battle, which he considers as legitimate. March 7, about 1 o'clock p. m., some Russians hoisted the two flags and advanced toward the Japanese First Army and asked for a suspension of arms for several hours to remove the wounded and dead. Both armies were actually engaged in this work, so that the request was assented to without any defined agreement. When the Japanese resumed fire in the evening the Russians had withdrawn.

This informal suspension of arms was taken advantage of to retire unseen by the enemy, and it was upon this ground that it is considered lawful; that is, they can be taken advantage of to effect movements unseen by the enemy.

Vide, G. O. 100, 1863, art. 114. “If it be discovered and fairly proved that a flag of truce has been abused for surreptitiously obtaining military knowledge, the bearer of the flag thus abusing his sacred character is deemed a spy.

“So sacred is the character of a flag of truce, and so necessary is its sacredness, that while its abuse is an especially heinous offense, great caution is requisite, on the other hand, in convicting the bearer of a flag of truce as a spy.”

196. *National flags, insignia, and uniforms as a ruse.*—In practice it has been authorized to make use of these as a ruse. The foregoing rule does not prohibit such use, but does prohibit their *improper use*. It is certainly forbidden to make use

of them during a combat. Before opening fire upon the enemy they must be discarded. Whether the enemy flag can be displayed and his uniform worn to effect an advance or to withdraw is not settled.¹

¹ The Germans hold that The Hague Rules forbid absolutely the use of the enemy's flag and uniforms. (Kriegsbrauch, p. 24.) The French manual (La Guerre Sur Terre) says: "In all the wars since 1866 belligerents have made many complaints upon this subject." (p. 25, note). The English rule is as stated in the text. (Land Warfare, Opp., par. 152.)

G. O. 100, 1863, art. 65. "The use of the enemy's national standard, flag, or other emblem of nationality, for the purpose of deceiving the enemy in battle is an act of perfidy, by which they lose all claim to protection of the laws of war."

G. O. 100, 1863, art. 63. "Troops who fight in the uniform of their enemies, without any plain, striking, and uniform mark of distinction of their own, can expect no quarter."

197. *Practice as to enemy uniform in this country.*—In this country it has always been authorized to utilize uniforms captured from the enemy, provided some striking mark or sign is attached to distinguish the American soldier from the enemy. All distinctive badges or marks of the enemy should be removed before making use of them. It is believed that such uniforms should not be used except in case of absolute necessity.¹

¹ G. O. 100, 1863, art. 64. "If American troops capture a train containing uniforms of the enemy, and the commander considers it advisable to distribute them for use among his men, some striking mark or sign must be adopted to distinguish the American soldier from the enemy."

198. *Improper use of distinctive badges of Geneva Convention.*—The Red Cross flag must be limited to the protection of units and material provided for in the Geneva Convention. As examples of the improper use may be cited covering wagons containing ammunition or nonmedical stores, a hospital train used to facilitate the escape of combatants, firing from a tent or building flying the Red Cross flag, using a hospital or other building accorded such protection as an observatory or military office or store, or generally for committing acts of hostility.¹

¹ G. O. 100, 1863, art. 117. "It is justly considered an act of bad faith, of infamy, or fiendishness, to deceive the enemy by flags of protection. Such act of bad faith may be good cause for refusing to respect such flags."

CHAPTER VI, SECTION III.

ESPIONAGE AND TREASON.

199. *Spies.*—H. R. XXIX. A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.¹

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies; similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, intrusted with the delivery of dispatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between different parts of an army or a territory.²

¹ Compare this definition with G. O. 100, 1863, art. 88. "A spy is a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy."

² The fact of being in the enemy's lines dressed as a civilian, or wearing the enemy's uniform, is presumed to constitute a spy, but it is possible to rebut this presumption by proof of no intention to obtain military information. On the other hand, the fact that a person charged with being a spy is in the uniform of his State does not render it impossible for him to be a spy in fact, since he may have gained admission into the enemy's lines under the privileges of the Red Cross and have taken advantage of the opportunity afforded him for obtaining information.

Likewise the article does not preclude in any sense the use of balloons for espionage and the persons so using them from being treated as spies. Dissimulation of the object sought is the principal characteristic of the offense of the spy. Vide Land Warfare, Opp., pars. 162-165. War Rights on Land, Spaight, pp. 203-215. War on Land, Holland, pp. 47-48. Les Lois, Jacomet, pp. 65-66.

200. *Recognition of necessity for obtaining information.*—In the foregoing rule and in H. R. XXIV is distinct recognition of the necessity for employing spies and other secret agents for obtaining information about the enemy, so that the acquirement of such information by secret methods is regulated by the laws and usages of war.

201. *Who included in definition.*—The definition above comprehends all classes whether officer, soldier, or civilian, and, like the criminal law, makes no distinction as to sex.¹ As to the offense, it limits the same to securing information clandestinely or on false pretences in the zone of operations. It does not include all cases in which a person makes or endeavors to make

unauthorized or secret communications to the enemy. These latter cases must therefore be dealt with under the laws relating to treason and espionage.²

¹G. O. 100, 1863, art. 102: "The law of war, like the criminal law regarding other offenses, makes no difference on account of the difference of sexes concerning the spy, the war traitor, or the war rebel."

²In occupied territory offenses relating to communication with the enemy will be punished as treason by the occupying forces. If committed in the home country, the laws relating to that subject or internal laws will govern. Land Warfare, Opp., par. 167 and note.

202. *Treason.*—All unauthorized or secret communication with the enemy is considered treasonable by the law of war. Foreign residents in an invaded or occupied territory, or foreign visitors in the same, can claim no immunity from this law. They may communicate with foreign parts or with the inhabitants of the hostile country so far as military authority permits, but no further.¹

¹G. O. 100, 1863, art. 98.

203. *War traitor.*—A traitor under the law, or a war traitor, is a person in a place or district under martial law (military government), who, unauthorized by the military commander, gives information of any kind to the enemy or holds intercourse with him.¹

¹G. O. 100, 1863, art. 90.

204. *Subject giving information to own government.*—If the citizen or subject of a country or place invaded or conquered gives information to his own Government, from which he is separated by the hostile army, or to the army of his Government, he is a war traitor.¹

¹G. O. 100, 1863, art. 92.

205. *Guide as.*—If a citizen of a hostile and invaded district voluntarily serves as a guide to the enemy, or offers to do so, he is deemed a war traitor.¹

¹G. O. 100, 1863, art. 95.

206. *Punishment of spies.*—The spy is punishable with death, whether or not he succeed in obtaining the information or in conveying it to the enemy.¹

¹G. O. 100, 1863, art. 88, par. 2. See also Rev. Stat. U. S., 1343: "All persons who, in times of war or rebellion against the supreme authority of the United States, shall be found lurking or acting as spies in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be triable by a general court-martial or by a military commission, and shall on conviction thereof suffer death."

207. *Punishment of treason.*—The war traitor is always severely punished. If his offense consists in betraying to the

enemy anything concerning the condition, safety, operations, or plans of the troops holding or occupying the place or district, his punishment is death.¹

¹ G. O. 100, 1863, art. 91.

208. *Spy must be tried.*—H. R. XXX: A spy taken in the act should not be punished without previous trial.¹

¹ No one else should be punished for this offense of espionage or treason without previous trial. (Vide Hague Conference, 1899, p. 146.)

209. *Spy immune from punishment after joining his own army.*—H. R. XXXI: A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.¹

¹ This immunity extends only to previous acts of espionage, but does not extend to other offenses he may have committed, such as murder, etc. Hague Conference, 1899, p. 146.

210. *Immunity not applicable to treason.*—This immunity does not extend to persons guilty of treason who may be arrested at any place or any time within the jurisdiction. And it is not necessary for traitors to be caught in the act in order that they may be punished.¹

¹ For practice of the Japanese Army, which is in accord with the text, see Ariga, pp. 395-397.

211. *Assisting espionage punishable.*—Assisting or favoring espionage or treason and knowingly concealing a spy may be made the subject of charges; and such acts are by the customary laws of war equally punishable.¹

¹ Ariga, pp. 396-397, and Land Warfare, Opp., par. 172.

CHAPTER VI, SECTION IV.

BOMBARDMENTS, ASSAULTS, AND SIEGES.

212. *Bombardment of undefended places forbidden.*—H. R. XXV: The attack or bombardment by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.¹

¹ Compare this article with the following from Convention IX of The Hague, 1907. "Bombardment by naval forces in time of war:

"ART. I: The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

"A place can not be bombarded solely because automatic submarine contact mines are anchored off the harbor.

"ART. II: Military works, military or naval establishments, depots of arms or war matériel, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbor, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable time, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

"He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

"If for military reasons immediate action is necessary, and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the case given in paragraph 1, and that the commander shall take all due measures in order that the town may suffer as little harm as possible.

"ART. III. After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the local authorities, after a formal summons has been made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

"These requisitions shall be in proportion to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in cash; if not, they shall be evidenced by receipts.

"ART. IV. The bombardment of undefended ports, towns, villages, dwellings, or buildings for the nonpayment of money contributions is forbidden."

Holland, War on Land, says: "A place, although not fortified, may be bombarded if it is defended. This article is not to be taken to prohibit the use of any means for the destruction of buildings for military reasons. A place must not be bombarded with a view merely to the exaction from it of a ransom." (Art. 80, note.) Mr. Oppenheim, Land Warfare, art. 118, says: "It is not sufficient reason for bombardment that a town contains supplies of value to the enemy, or railway establishments, telegraphs, or bridges. They must, if it is necessary to do so, be destroyed by other means."

213. *The use of balloons.*—The addition of the words “by whatever means” was for the purpose of making it clear that the bombardment of these undefended localities from balloons or aeroplanes is prohibited.¹

¹The French Manual, by Lieut. Jacomet, art. 63, says: “It is forbidden therefore to throw projectiles from a balloon or aeroplane upon towns, villages, dwellings, or buildings which are undefended, unless it is a question of immovable property of immediate use to the enemy’s army.”

214. *Defended place defined.*—Investment, bombardment, assault and siege have always been recognized as legitimate means of warfare, but under the foregoing rule their use is limited to defended places, which certainly will include the following:

(a) A fort or fortified place.

(b) A town surrounded by detached forts is considered jointly with such forts as an indivisible whole, as a defended place.

(c) A place that is occupied by a military force or through which such force is passing is a defended place. The occupation of such place by sanitary troops alone is not sufficient to consider it a defended place.

215. *Throwing projectiles from balloons on forts and fortified places.*—There is no prohibition in The Hague Rules or in other conventions against throwing authorized projectiles from balloons or aeroplanes into forts and fortified places.¹

¹Les Lois, Jacomet, art. 59. But see ante, pars. 174–175, and note; also H. D. I. 1907, appendix 7, p. 181.

216. *Notice of bombardment.*—H. R. XXVI. The officer in command of an attacking force must, before commencing a bombardment, except in case of assault, do all in his power to warn the authorities.

217. *The American rule.*—Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.¹

¹G. O. 100, 1863, art. 19.

Mr. Oppenheim (Land Warfare, par. 124 and note) thus states the rule in Great Britain: “If military exigencies permit, the commander of an attacking force must do all in his power to warn the authorities before commencing a bombardment, unless surprise is considered an essential element of success. There is, however, no obligation to give notice of an intended assault.” No notice was given of the bombardment of Paris in 1870.

218. *No rule compelling belligerent to authorize population to leave besieged place.*—There is no rule of law which compels the commander of an investing force to authorize the population, including women, children, aged, sick, wounded, subjects of neutral powers, or temporary residents, to leave the besieged

locality, even when a bombardment is about to commence. It is entirely within the discretion of the besieging commander whether he will permit them to leave or not and under what conditions.¹

¹ For action of Gen. Scott in refusing further truce to consuls at Vera Cruz, see Dig. Int. Law, Moore, sec. 1112. Scott Autobiography, II, pp. 426-428.

The following are the conditions proposed by the Japanese at Port Arthur:

AUGUST 16, 1904.

From General Headquarters of the Japanese Army investing Port Arthur.

To the General and Admiral highest in rank, commanding the Imperial Russian Army and Navy at Port Arthur.

YOUR EXCELLENCIES: We have the honor to inform you herewith that it is the humane and magnanimous intention of H. M. the Emperor of Japan, to save from danger and accord protection to the women, children, priests, diplomats, military and naval attachés of neutral powers who are in Port Arthur and wish to avoid the dangers of the bombardment and assault.

In order to carry out the kind solicitation of H. M. the Emperor of Japan, we propose the following:

1. In case you should have the intention of taking advantage of the well-meaning offer of H. M. the Emperor of Japan, you will inform us as to the approximate number of persons who among the above mentioned ought to benefit thereby, and after having divided them into classes; youths of sixteen years or above are excluded from this privilege.
2. Your bearer of the flag of truce bringing the reply must arrive at the first line of the Japanese army, north of Chouet-si-ying, on the main route leading from Port Arthur to Kin-tcheou, to-morrow, August 17, 1904, before one minute after 6 a. m.
3. The persons specified above will, under the protection of a white flag, repair to the same place where they must arrive on August 17, 1904, before one minute after two o'clock in the afternoon.
4. A troop of our infantry will also go with a white flag and at the time stated to the same place to await the arrival of the persons already mentioned.
5. The persons so stated will each have the right to carry away a single pack of ordinary size, the contents of which can be examined if it is thought necessary.
6. These packs must not contain letters, documents or other written or printed matter relating directly to the war, under pain of confiscation.
7. The persons before specified will be protected and escorted by our troops stated in article 4, as far as Dalny, where arrangements will be made for their departure.

You are requested to accept or refuse the above propositions in a lump, no modifications can be brought about. If the bearer of the flag of truce referred to in article 2, does not arrive at the specified time, we shall consider our proposals rejected.

We avail ourselves of the opportunity to express to you the assurance of our respectful sentiments.

(S.) GENERAL BARON NOGHI,

Commanding the Japanese Army Investing Port Arthur.

(S.) ADMIRAL TOGO,

Commanding the Japanese Fleet Blockading the Liao-tong Peninsula.

219. *Diplomatic agents of neutrals.*—Diplomatic agents of a neutral power should not be prevented from leaving a besieged place before hostilities commence. This privilege can not be claimed while hostilities are in progress. The same privileges

should properly be accorded to a consular officer of a neutral power. Should they voluntarily decide to remain, they must undergo the same treatment as other inhabitants.

¹ See G. O. 100, 1863, art. 87, post art. 233.

220. *Persons in zone between troops.*—Persons dwelling in the zone between the opposing forces in the first stages of a siege are treated as inhabitants of the invaded locality.

221. *Individuals leaving without permission.*—Individuals who attempt to leave or enter a besieged place without obtaining the necessary permission are liable to be fired on and may be sent back into the besieged place or detained and put on trial as suspects.

222. *Persons expelled may be sent back.*—When a commander of a besieged place expels the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten the surrender.¹

¹ G. O. 100, 1863, art. 18.

223. *Not compelled to cease fire when expelled.*—It is not necessary to cease or relax fire because the enemy sends women and children out of his lines in order to get them to a place of safety, or to employ compassion, but fire must not be intentionally opened in their direction.

224. *Can forbid communication with besieged place.*—The commander of the investing force has the absolute right to forbid all communication between the besieged place and the outside. The application of this rule to diplomatic envoys of neutral powers is unsettled.¹

¹ On the 28th Sept., 1870, Count Bismarck, in reply to a request of diplomatic representatives of neutral States, shut up in Paris, to send out a courier once a week, said:

“The authorization of exchange of correspondence with a besieged fortress is not, in general, in accordance with the customs of war; although we willingly authorize the transmission of open letters of diplomatic agents, provided their contents are unobjectionable from a military viewpoint, I can not admit that the opinion of those who consider the interior of the fortifications of Paris as a suitable center for diplomatic relations has a good foundation.”

Mr. Fish, in dispatch to Baron Gerolt, Nov. 21, 1870, said:

“Paris, however, is the capital of France. There the diplomatic representatives of neutral States had their residence prior to the investment. If they think proper to stay there while it lasts, they must expect to put up with the inconveniences necessarily incident to their choice. Among these, however, the stopping of communication with their Governments can not be recognized. * * * The undersigned is consequently directed to claim that the right of correspondence between the representatives of neutral powers at Paris and their Governments is a right sanctioned by public law.” See Moore’s Dig. Int. Law, sec. 675.

225. *Buildings dedicated to religious works, etc., to be spared.*—H. R. XXVII. In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings

dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided that they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

226. *Use of Geneva flag limited to hospitals, etc.*—Only hospitals and places where the sick and wounded are located can be indicated by means of the red cross on a white ground. It is certainly desirable, in order to avoid injury from actual or erratic shots, that the sick and wounded in besieged places should be concentrated in some safe place, preferably in neutral territory, if possible to arrange.

227. *Hague Convention IX, Art. V, par. 2, 1907.* It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two colored triangular portions, the upper portion black, the lower portion white.¹

¹The foregoing rule adopted in this convention for naval warfare should be adopted for protecting buildings under bombardment in land warfare.

228. *Buildings protected can not be used for military purposes.*—The besieging forces are not required to observe the signs indicating inviolability of buildings that are known to be used for military purposes, such as quarters for officers and men, as observatories, or signaling stations.

229. *Pillage forbidden.*—H. R. XXVIII. The pillage of a town or place, even when taken by assault, is prohibited.¹

¹Vide infra, par. 339 and note.

CHAPTER VII, SECTION I.

INTERCOURSE BETWEEN BELLIGERENTS.

230. *Nonintercourse the rule.*—All intercourse between the territories occupied by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases. This is the general rule, to be observed without special proclamation.¹

¹G. O. 100, 1863, art. 86, par. 1. See also the following cases: *The Rapid* (8 Cranch, 155); *The Julia* (8 Cranch, 181); *Montgomery v. U. S.* (8 Wall., 185); *McKee v. U. S.* (8 Wall., 163); *Hamilton v. Dillin* (21 Wall., 73); *Griggs* (22 Op. Att. Gen., 268).

231. *Exceptions to rule.*—Exceptions to this rule, whether by safe-conduct, or permission to trade on a small or large scale, or by exchanging mails, or by travel from one territory into the other, can take place only according to agreement approved by the government or by the highest military authority. Contraventions of this rule are highly punishable.¹

¹G. O. 100, 1863, art. 86, par. 2. *Hamilton v. Dillin* (21 Wall., 73).

232. *Good faith essential.*—It is absolutely essential in all non-hostile relations that the most scrupulous good faith shall be observed by both parties, and that no advantage not intended to be given by the adversary shall be taken.¹

¹Vide, ante, par. 190.

233. *Ambassadors and diplomatic agents.*—Ambassadors and other diplomatic agents of neutral powers, accredited to the enemy, may receive safe-conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary, and unless they may reach the place of their destination conveniently by another route. It implies no international affront if the safe-conduct is declined. Such passes are usually given by the supreme authority of the state, and not by the subordinates.¹

¹G. O. 100, 1863, art. 87. Vide par. 219, supra.

234. *Rules, where found.*—These non-hostile relations are usually comprised under the headings of parlementaires, and flags of truce, armistices, capitulations, passports, and safe-conducts, safeguards, and cartels.¹

¹Vide pars. 83-85a and 166, ante, for intercourse in re prisoners of war, sick, and wounded.

PARLEMENTAIRES AND FLAGS OF TRUCE.

235. *Parlementaires.*—Parlementaires are ordinarily agents in the non-hostile intercourse of belligerent armies.¹ Their duties

include every form of communication with the enemy in the field.

¹The adoption of the word "parlementaire" to designate and distinguish the agent or envoy seems absolutely essential in order to avoid confusion and because all other nations, including Great Britain, utilize the word. In the past this word has been translated at times to mean the agent or envoy only, at other times the agent and emblem, or both. To call the parlementaire "the bearer of a flag of truce" is not in reality correct, because he seldom, if ever, actually carries it.

236. H. R. XXXII. A person is regarded as a parlementaire (bearing a flag of truce) who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag bearer, and interpreter who may accompany him.

237. *Soldiers acquainted with privileges of, etc.*—All soldiers, of whatever grade, should be thoroughly acquainted with the qualifications and privileges accorded parlementaires and with the proper method of receiving them when they present themselves.¹

¹Vide, F. S. R., 1914, par. 48.

Bearers of flags of truce and their escorts are halted and required to face outwards; they are then blindfolded and disposed of in accordance with instructions from the support commander; if they fail to obey, they are fired upon. No conversation with them is permitted.

Deserters are required to lay down their arms, and a patrol is sent out to bring them in. Deserters pursued by the enemy are ordered to drop their arms and an alarm is given; if they fail to obey they are fired upon.

238. *Signification of white flag.*—The white flag, when used by troops, indicates a desire to communicate with the enemy. The hoisting of a white flag has no other signification in international law. It may indicate that the party hoisting it desires to open communication with a view to an armistice or a surrender. If hoisted in action by individual soldiers or a small party, it has come to signify surrender. It is essential, therefore, to determine whether the flag was actually hoisted by authority of the commander.

239. *Fire need not cease when white flag is hoisted.*—The enemy is not required to cease firing when a white flag is raised. To indicate that the hoisting is authorized, the belligerent should cease firing. He should also send a parlementaire.¹

¹G. O. 100, 1863. "Firing is not required to cease on the appearance of a flag of truce in battle."

Ariga, p. 274. "There are several hypotheses in which an enemy may hoist the white flag and the conduct to be pursued in each case.

"1. If a soldier hoists a white flag (he can use a handkerchief, etc.), indicating that he surrenders, make him a prisoner of war.

"2. During the bombardment of a fortress, although a particular fort hoist the white flag, there is no necessity to cease firing on that fort. Bombardment must be continued until an agreement is come to by the arrival of a parlementaire. Special order to cease fire will then be given by the commander of the army.

"3. The same course will be pursued if all the forts hoist a white flag; but in this case a report will be made as soon as possible to headquarters. Whilst awaiting orders fire will continue.

"4. If during a bombardment a parlementaire is seen leaving the enemy's lines, fire must not on any account be stopped or relaxed in the direction from which he comes, but he must not be fired on intentionally."

Vide also Land Warfare, Opp., p. 52 and note 2.

240. *Fire not to be directed on the parlementaire.*—The fire should not be intentionally directed on the person carrying the flag or upon those with him; if, however, the parlementaire or those near him present themselves during an engagement and are killed or wounded, it furnishes no ground for complaint. It is the duty of the parlementaire to select a propitious moment for displaying his flag, such as during the intervals of active operations, and to avoid the dangerous zone by making a detour.¹

¹"If the bearer of a flag of truce, presenting himself during an engagement, is killed or wounded, it furnishes no ground of complaint whatever." G. O. 100, 1863, art. 113.

241. *Must be duly authorized.*—The parlementaire, in addition to presenting himself under cover of a white flag, must be duly authorized in a written instrument signed by the commander of the forces.¹

¹Ariga, pp. 302–304, gives the correspondence covering the capitulation of Port Arthur, including the terms of the capitulation. The usual form of authorization was "I authorize by these presents _____ to negotiate, etc.," which was signed by the commander in chief.

242. *No communication at night.*—No provision is made for opening communication with an enemy during the hours of darkness, when a white flag can not be seen. An attempt to send a parlementaire at night is very dangerous, and at best uncertain.

243. **H. R. XXXIII.** The commander to whom a parlementaire is sent is not obliged to receive him under all circumstances. He may take all the necessary steps to prevent the parlementaire from taking advantage of his mission to obtain information. In case of abuse, he has the right to detain the envoy temporarily.

244. *May prescribe formalities.*—The commander may declare the formalities and conditions upon which he will receive a parlementaire and fix the hour and place at which he must appear.¹ The present rule is that a belligerent may not declare beforehand, even for a specified period—except in case of reprisal for abuses of the flag of truce—that he will not receive parlementaires.² An unnecessary repetition of visits need not be allowed.³

¹Ariga, pp. 277 and 303, gives two instances in which Gen. Baron Nogi fixed definitely the hour and place for the parlementaire to report.

²The old rule, announced at the Brussels conference of 1874, was as follows: "He (the commander) may equally declare beforehand that he will not receive bearers of flags of truce during a certain period. Envoys presenting themselves after such notification from the side to which it has been given forfeit their inviolability." This rule is still

adhered to by Germany and some others, but was rejected by The Hague Convention of 1899, and again in 1907. Vide Higgins, *The Hague Peace Conferences*, p. 279, and Holls, *The Peace Conferences at The Hague*, p. 154. Mr. Oppenheim, *Land Warfare*, p. 53, art. 234 considers that this action may be taken as matter of reprisal for abuses of flags of truce. Vide par. 249 and note:

³G. O. 100, 1863, art. 111. "The bearer of a flag of truce can not insist upon being admitted. He must always be admitted with great caution. Unnecessary frequency is carefully to be avoided." Vide also *Land Warfare*, Opp., par. 236.

245. *Who may accompany the parlementaire.*—Only three persons are authorized to accompany the parlementaire. These, under the rule, are entitled to the same immunity. In case he is to have more than these, authority for the same should be previously obtained.¹ He may be accompanied by a less number, and may even go alone with the flag of truce. It is advisable to have at least a trumpeter, bugler, or drummer with him in order to more readily and surely make known his status, thereby avoiding danger as much as possible.²

¹The Germans add *horseholders* to these three authorized attendants, but there is no authority for adding anyone or to expect immunity to be granted to any others. *Kriegsbrauch*, p. 26.

²Hague conference, 1899, p. 147, clearly authorizes a parlementaire to proceed alone. *Kriegsbrauch*, p. 26, "The bearer of a flag ought to be externally recognizable as such, and especially by signs which catch the sight and hearing from a distance and which are used and which are well known everywhere, the flag of truce (in case of necessity, a white handkerchief, etc.), calls on the bugle or trumpet, roll of the drum."

246. *Formalities in the reception of parlementaires.*—1. The parlementaire, with necessary authorization and with his duly authorized attendants, should approach the enemy's outpost or lines at a slow pace. When he arrives near enough to be recognized—that is, seen and heard—he causes his trumpet or bugle to be sounded or drum to be beaten and his flag to be waved.

2. He then advances at a slow pace toward the line, carefully obeying all instructions signaled or given him by any party of the enemy sent out to meet or conduct him.

3. He will then proceed to the point and by the route designated for receiving him. He may be furnished an escort for this by the enemy.

4. On arriving at the post of admittance the bearer and his escort dismount, and, leaving the escort at a convenient distance in rear, he proceeds on foot to the commander or senior officer of the post and states his mission.

5. The escort should not attempt to enter the lines with the parlementaire, and must obey all instructions or signals given them.

6. Marked courtesy must be observed on both sides. Conversation should be prudent and not touch upon the military operations. Great care will be exercised not to ask for nor to impart information.

7. The parlementaire will be treated with all the honors due to his rank and station and furnished an escort or guard in case of necessity.

8. A parlementaire can not of strict right claim to pass the outposts, nor can he demand to be conducted into the presence of the commanding officer. His message, if written, may be transmitted to the commanding officer; if verbal, he may be required to reduce it to writing or deliver it orally to such person as may be designated to receive it. If he is sent to the rear for any reason whatever, he should be blindfolded and sent by a circuitous route.

9. In cases where resort is had to a decision from higher authority, the parlementaire must wait until same is returned.

10. The parlementaire will be permitted to retire and return with the same formalities and precautions as upon arrival.¹

¹ Vide par. 236 and note 1, par. 237. Also F. S. R., 1914, par. 83. See Land Warfare, Opp., pp. 52-55. Kriegsbrauch, pp. 25 et seq.

247. *Detention of parlementaire.*—In addition to right of detention for abuse of his position, a parlementaire may be detained in case he has seen anything, or obtained knowledge which may be detrimental to the enemy, or if his departure should reveal information of the movement of troops. He should be detained only so long as circumstances imperatively demand, and information should be sent at once to his commander as to such detention, as well as of any other action taken against him or against his party.

248. *Inviolability; loss of.*—H. R. XXXIV. The parlementaire loses his right of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery.¹

¹The original French word used is "trahisen," in The Hague rule. It was translated "treachery," probably because a parlementaire can not, strictly speaking, be guilty of treason.

249. *Abuse of flag of truce.*—It constitutes an abuse of the flag of truce, forbidden as an improper use under Hague Rule XXIII (f), for an enemy not to halt and cease firing while the parlementaire sent by him is advancing and being received by the other party. Likewise, if the flag of truce is made use of for the purpose of inducing the enemy to believe that a parlementaire is going to be sent when no such intention exists. It is also an abuse of a flag of truce to carry out operations under the protection granted by the enemy to the pretended flag of truce. An abuse of a flag of truce may authorize a resort to reprisals.¹

¹See infra as to reprisals, pars. 379 et seq. Land Warfare, Opp., par. 255. "Every abuse of the flag of truce entitles the injured party to reprisals."

CHAPTER VII, SECTION II.

CAPITULATIONS.

250. *Military honor in.*—H. R. Art. XXXV. Capitulations agreed upon between the contracting powers must take into account the rules of military honor.

Once settled, they must be scrupulously observed by both parties.¹

¹The foregoing is the only article on the subject of capitulations in The Hague Rules. It will be observed that it refers solely to the question of military honor in such conventions. The rules concerning such capitulations must therefore be sought for outside of The Hague Conventions. For forms of capitulation see Appendices A, B, C, D; this chapter.

251. *Definition.*—A capitulation is an agreement entered into between commanders of belligerent forces for the surrender of a body of troops, a fortress, or other defended locality, or of a district of the theater of operations.

Capitulations are essentially military agreements, which involve the cessation of further resistance by the force of the enemy which capitulates. The surrender of a territory is frequently spoken of as an evacuation.

252. *Powers of commanders.*—The commander of a fort or place and the commander in chief of an army are presumed to be duly authorized to enter into capitulations, being responsible to their respective governments for any excess of power in stipulations entered into by them.¹ His powers do not extend beyond what is necessary for the exercise of his command.² He does not possess power to treat for a permanent cession of the place under his command, for the surrender of a territory, for the cessation of hostilities in a district beyond his command,³ or generally to make or agree to terms of a political nature or such as will take effect after the termination of hostilities.⁴

¹Marshall Blanco and the Spanish Government both disputed the right of Gen. Toral to capitulate at Santiago in 1898. "But the Spanish Government was forced to recognize the validity of the capitulation, for a governor of a fortress may capitulate under his personal responsibility, without any authorization from his Government." War Rights on Land, Spaight, p. 249.

For abuse of powers such as surrendering upon too lenient terms or when he should not do so he is subject to trial under the laws or articles of war of his own country. Vide A. W., art. 42.

²Vide Hague Convention, 1907, Actes, p. 25. "The competence of a commander to accept conditions of capitulation is limited to the troops immediately under his command, and does not necessarily extend to detached forts or to all the forts of a fortress." Land Warfare, Opp., par. 306.

The surrender of Gen. Lee did not include the other Confederate Armies, although subsequent surrenders were made in accordance with its terms.

³The capitulation of Verdun Nov. 8, 1870, stipulated that the surrender was made on the express condition of the retrocession of the fortress and town to France on the conclusion of peace. This exceeded the powers of the contracting commanders and created no obligation for their governments. Land Warfare, p. 67, par. 304 and notes.

⁴In reply to a letter from Gen. Lee to Gen. Grant, 1865, proposing to "submit the subjects of controversy between the belligerents to a military convention," President Lincoln, to whom the letter had been referred by Gen. Grant, replied:

"The President directs me to say to you that he wishes you to have no conference with Gen. Lee, unless it be for the capitulation of Lee's army, or on solely minor or purely military matters. He instructs me to say that you are not to decide, discuss, or confer upon any political question. Such questions the President holds in his own hands and will submit them to no military conferences or conventions. Meantime you are to press to the utmost your military advantage." Draper, Am. Civil War, Vol. III, p. 561, cited by Spaight, p. 250.

253. *Forms of capitulations.*—There is no specified form for capitulations. They may be concluded either orally or in writing, but in order to avoid disputes which may arise as to the terms thereof it is best, whenever possible, that they be reduced to writing. The convention should contain in precise terms every condition to be imposed; the time, manner, and execution should be laid down in the most precise and unequivocal terms. In case of an unconditional surrender following an assault the terms might be oral, but should be reduced to writing if practicable.

254. *Subjects usually regulated.*—In the terms of capitulation the following subjects are usually determined:

(a) *The fate of the garrison, including those persons who may have assisted them.*

These are usually declared to be prisoners of war, but it frequently occurs that on account of their valorous resistance they are authorized to march out from the garrison with the "honors of war."¹

¹For examples see Surrender of Belfort, in 1871; Bellair's Transvaal War, 1880-81, p. 272. At Potchefstrom, in 1881, the troops were allowed the honors of war. In 1855 the garrison at Kars marched out with the honors of war, but became prisoners.

(b) *The disarming of the place and of the defenders:*

It frequently occurs that the officers are allowed to retain their arms, equipment, and certain specified articles of personal property.²

²The officers are not usually allowed to take their horses, although sometimes permitted to retain private mounts.

Mr. Spaight, in his Laws of War on Land, pp. 258-259, gives a table showing the disposition of certain property at Kars (1855), Vicksburg (1863), Appomattox (1865), Sedan (1870), Strasburg (1870), Metz (1870), Belfort (1871), Bitsche (1871), Avliar (1877), Wei-hai-wei (1895), Santiago (1898), Manila (1898), Verliesfontein (1900), and Port Arthur (1905), as follows: War matériel, etc., surrendered entirely in every case but two, when only partially; arms and troops, surrendered in all cases except three; officers' swords, retained in all

cases except at Wei-hai-wei; officers' private property, retained (at Sedan by paroled officers only); troops' private property, retained (at Appomattox clothing only retained); officers' horses, surrendered in 8 cases, retained in 4 cases, private owned in 1 case, and 1 horse each in 1 case; troops' horses, surrendered in 10 cases, retained in 3 cases.

(c) *The turning over of the arms and matériel, and, in a proper case, the locating of the mine defenses, etc.:*

The French, Russian, and other Governments require that in every case the commander of the place must not surrender until he has destroyed all flags, but this should be done before signing the capitulation.³

³ Gen. Stoessel destroyed all Russian flags at Port Arthur. (Ariga, 309-310.)

(d) *Provisions relative to private property of prisoners, including personal belongings and valuables:*

Usually prisoners retain the ownership of their effects, personal belongings and valuables. However, they can be deprived temporarily of the possession of them as a measure of safety.⁴

⁴ Gen. Grant declined to permit Confederate officers at Vicksburg to take their servants (slaves) as private property. (Draper, Vol III, p. 52.) The Japanese permitted the men to take with them their tents and necessary personal belongings, the officers to take baggage within the limits of weights fixed for corresponding ranks in the Japanese Army, though reasonable excesses were not objected to. (Ariga, p. 312.) The Japanese declined to assume any responsibility for the private property of Russian officers. (Ariga, p. 325.) Vide ante as to prisoners, pars. 52-55.

(e) *The evacuation of and taking possession of the surrendered place.*

The provisions relative to the withdrawal of the defenders and the entering into possession by the besiegers are fixed in advance with absolute precision, according to the circumstances of each case.

Commissions are named for the delivery and taking possession, respectively.⁵

⁵ The details for the evacuation and taking possession of Port Arthur were incorporated in an annex to the convention. For latter see Appendix D, this chapter.

(f) *Provisions relative to the medical personnel, sick, and wounded.*⁶

⁶ The provision with regard to the medical personnel, sick, and wounded is contained in Art. IX of the treaty of Port Arthur, Appendix D, this chapter, and conforms to the provisions of The Hague and Geneva Conventions.

(g) *Provisions for taking over the civil government and property of the place, with regard to the peaceable population.*

These, together with the preparation of the lists of prisoners, repatriation of prisoners, etc., may be arranged in what is known as the appendix to the original terms of the convention.⁷

⁷ The civil and military archives may be left in the hands of the officials of the vanquished party. Land Warfare, Opp., par. 319.

(h) *Stipulations with regard to the immediate handing over to the besiegers of certain forts or places, or other similar provisions, as a pledge for the fulfillment of the capitulation.*⁸

⁸ This was done at Paris and likewise at Port Arthur. See treaties, Appendix D, this chapter.

255. *Damage or destruction of property prohibited after capitulation.*—So soon as a capitulation is signed, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition in his possession during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in same.¹

¹ "Nothing, however, prevents a commander who intends to surrender from destroying fortifications, war material, and stores, the possession of which might assist the enemy, providing he does so before signing the capitulation."

Marshal Bazaine was tried for surrendering Metz and was sentenced to death and military degradation for treating with the enemy "without having previously done all that duty and honor required." He was charged, among other things, with *failing to destroy his arms and ammunition before surrendering.* Cassell's History, Vol. I, p. 296. Hozier, Franco-Prussian War, Vol. II, p. 121. Cited in Spaight, War on Land, p. 252.

256. *Denunciation of capitulation.*—A capitulation can be denounced and hostilities immediately resumed for failure to execute any clause which has been agreed upon, or in case it was obtained through a breach of faith.¹

¹ Land Warfare, Opp, p. 324. "It may not, however, be annulled, because one of the parties has been induced to agree to it by ruse, or from motives for which there is no justification, or by his own incapacity or feebleness."

In 1898 the Spanish Government contended that the capitulation of Manila, which occurred on the 14th, was null and void, because the protocol which was signed two days before, on August 12, stipulated that the hostilities should cease. The United States claimed that by the terms of the protocol it was to take effect upon receipt of notice of same; that notice had been immediately dispatched, but was not received in Manila before the capitulation, and added further that "as to the nature of the right by which the United States holds the city, bay, and harbor of Manila, it is the opinion of this Government that it is immaterial whether the occupation is to be considered as existing by virtue of the capitulation or by virtue of the protocol, since in either case the powers of the military occupant are the same. Vide Dig. Int. Law, Moore, sec. 1160. Mr. Oppenheim says in this connection: "A capitulation which took place after a general armistice has been agreed upon, and of which the parties to the capitulation had had no knowledge, is null and void, unless the armistice stipulated cessation of hostilities from the time when notification reaches the different forces concerned, and not from the date of signature." Land Warfare, par. 325.

APPENDIX A.

CAPITULATION AT METZ, 1870.

PROTOCOL.

Between the undersigned, the chief of the staff of the Prussian Army before Metz, and the chief of the staff of the French Army in Metz, both being delegated with full powers by H. R. H. General of Cavalry Prince Frederick Charles of Prussia, and by H. E. the Commander in Chief, Marshal Bazaine, the following agreement has been ratified:

ARTICLE I. The French Army under the orders of Marshal Bazaine are prisoners of war.

ART. II. The fortress and the town of Metz, with all the forts, matériel of war, stores of all kinds, and all public property will be handed over to the Prussian Army in the same condition in which it stands at the time of signing this agreement. Forts St. Quentin, Plappeville, St. Julien, Queuleu, and St. Privat, as well as the Mazelle Gate (Strassburg Road) will be handed over on Saturday, the 29th of October, at noon to the Prussian troops. At 10 a. m. that day artillery and engineer officers, with some noncommissioned officers, will be admitted into the above-mentioned forts for the purpose of taking over the powder magazines and rendering harmless any mines that might exist.

ART. III. The arms, as well as the whole of the war matériel of the army, consisting of the colors, eagles, cannon, mitrailleuses, horses, money chests, military wagons, ammunition, etc., will be handed over, in Metz and in the forts, to a commission appointed by Marshal Bazaine, for the purpose of being transferred immediately after to Prussian commissaries.

The troops, disarmed, will be drawn up by regiment or by corps, and will be brought in parade order to the places which shall be indicated for each corps.

The officers will then return to the lines of the intrenched camp or to Metz, but on the condition that they are hereby bound on their word of honor not to quit Metz without orders from the Prussian commandant.

The troops will then be conducted by their noncommissioned officers to their places of bivouac.

The soldiers will retain their knapsacks, effects, and camp equipment (tents, blankets, cooking utensils, etc.).

ART. IV. All generals and other officers, in addition to those military officials holding the relative rank of officers, who give their word of honor in writing not to serve against Germany during the present war, nor to act against its interests in any other manner, will cease to be prisoners of war.

The officers and officials who accept this condition will retain their arms and personal property.

In consideration of the valor displayed by both the army and the garrison during the campaign, those officers who elect to be prisoners of war will be permitted, in addition, to take with them their swords and their personal property.

ART. V. All army doctors will remain at Metz in order to look after the wounded; they will receive the privileges in conformity with the Geneva Convention. The same is to apply to the personnel of the hospitals.

ART. VI. Explanations with regard to certain points, more particularly with regard to local interests, are treated in an appendix hereto annexed, which has the same authority as the present protocol.

ART. VII. Any article which might admit of doubt will always be interpreted in favor of the French Army.

Done at Chateau Frescaty, 27th October, 1870.

(Signed) V. STIEHLE.

(Signed) JARRAS.

[Appendix.]

ARTICLE 1. The civil officials, superior and inferior, belonging to the army or the fortress, now present at Metz, may proceed whither they desire and take all their property with them.

ART. 2. No one, whether he belong to the national guard or be he an inhabitant of the town, or a fugitive therein, shall be liable to punishment, either on account of political or religious views, or for any share that he may have taken in the defense, or on account of any assistance he may have rendered to the army or to the garrison.

ART. 3. Sick and wounded left in the town shall receive every care which their condition may require.

ART. 4. Families which may be left in Metz by the garrison shall not be molested, and, like the civil officials, may likewise depart without let or hindrance with all that belongs to them.

The furniture and effects which the members of the garrison are compelled to leave in Metz shall neither be plundered nor confiscated, but shall remain their property. It will be optional with them to cause this property to be fetched away within a period of six months from the conclusion of peace or their release from captivity.

ART. 5. The commander in chief of the Prussian Army undertakes the duty of preventing any damage being done either to the persons or goods of the inhabitants.

In the same manner the property of the Department, of the parishes, of trade or other unions, of civil or spiritual or other corporations, of workhouses or charitable institutions, shall remain uninjured.

The privileges which on the day of the capitulation the corporations and societies, as also private persons, may mutually exercise, according to French law, shall in nowise be interfered with.

ART. 6. To this end it is especially arranged that all local administrations, as also the above-mentioned societies or corporations, shall retain those archives, books, papers, collections, and documents of every kind which may be in their possession.

The notaries, advocates, and other judicial officials shall retain their archives and deeds or deposits.

ART. 7. The archives, books, and papers belonging to the state shall remain generally in the fortress, and at the conclusion of peace all such documents as refer to those districts reverting to France shall be returned to France.

The outstanding amounts which are necessary for the adjustment of the accounts, or which might give rise to lawsuits, to reclamations on the part of third persons, shall remain in the hands of those officials or agents to whom they are at present intrusted; the provisions of the preceding paragraph in this respect undergo amendment.

ART. 8. With regard to the movement of the French troops from their bivouacs as prescribed by Article III of the protocol, the following course will be adopted: The officers will lead their troops to the points and in the directions as below prescribed. On arrival at their destinations they will deliver to the Prussian commander of troops a statement of the effective of the troops under their orders, after which they will hand over the command to the noncommissioned officers and withdraw.

The Sixth Corps and Forton's Cavalry Division will follow the road from Thionville to Ladonchamps.

The Fourth Corps, moving between Forts St. Quentin and Plappeville along the Amanvillers Road, will be led as far as the Prussian lines.

The guard, the general artillery reserve, the engineers, and equipage train of the headquarters, passing along the railway embankment, will take the road to Nancy as far as Tournebride.

The Second Corps, with Laveaucoupet's Division and Lapsset's Brigade, which belong to it, will move along the road to Magny-sur-Seille, and will halt at St. Thiebault farm.

The Gardes Mobiles of Metz and other troops of the garrison, except Laveaucoupet's Division, will move along the Strassburg Road as far as Grigy.

Lastly, the Third Corps will move along the Saarbrücken Road as far as Bellecroix farm.

Done at Château Fréscaty, 27th October, 1870.

(Signed)

V. STIEHLE.

(Signed)

JARRAS.

APPENDIX B.

CAPITULATION OF SANTIAGO, 1898.

Terms of the military convention for the capitulation of the Spanish forces occupying the territory which constitutes the division of Santiago de Cuba, and described as follows: All that portion of the island of Cuba east of a line passing through Aserradero, Dos Palmas, Cauto Abajo, Escondida, Tanamo, and Aguidora, said troops being in command of Gen. José Toral, agreed upon by the undersigned commissioners: Brig. Gen. Don Federico Escario, Lieut. Col. of Staff Don Ventura Fontan, and, as interpreter, Mr. Robert Mason, of the city of Santiago de Cuba, appointed by Gen. Toral, commanding the Spanish forces, on behalf of the Kingdom of Spain, and Maj. Gen. Joseph Wheeler, United States Volunteers; Maj. Gen. H. W. Lawton, United States Volunteers; and First Lieut. J. D. Miley, Second Artillery, aid-de-camp, appointed by Gen. Shafter, commanding the American forces, on behalf of the United States:

1. That all hostilities between American and Spanish forces in this district absolutely and unequivocally cease.

2. That this capitulation includes all the forces and war material in said territory.

3. That the United States agrees with as little delay as possible to transport all the Spanish troops in said district to the Kingdom of Spain; the troops being embarked, as far as possible, at the port nearest the garrisons they now occupy.

4. That the officers of the Spanish Army be permitted to retain their side arms and both officers and private soldiers their personal property.

5. That the Spanish authorities agree to remove, or assist the American Navy in removing, all mines or other obstructions to navigation now in the harbor of Santiago and its mouth.

6. That the commander of the Spanish forces deliver, without delay, a complete inventory of all arms and munitions of war of the Spanish forces in above-described district to the commander of the American forces; also a roster of said forces now in said district.

7. That the commander of the Spanish forces, in leaving said district, is authorized to carry with him all military archives and records pertaining to the Spanish Army now in said district.

8. That all that portion of the Spanish forces known as volunteers, mobilizados, and guerrillas who wish to remain in the island of Cuba are permitted to do so upon condition of delivering up their arms and taking a parole not to bear arms against the United States during the continuance of the present war between Spain and the United States.

9. That the Spanish forces will march out of Santiago de Cuba with honors of war, depositing their arms thereafter at

a point mutually agreed upon, to await their disposition by the United States Government, it being understood that the United States commissioners will recommend that the Spanish soldier return to Spain with the arms he so bravely defended.

10. That the provisions of the foregoing instrument become operative immediately upon its being signed.

Entered into this 16th day of July, 1898, by the undersigned commissioners, acting under instructions from their respective commanding generals and with the approbation of their respective Governments.

JOSEPH WHEELER,
Major General, United States Volunteers.

H. W. LAWTON,
Major General, United States Volunteers.

J. D. MILEY,
*First Lieutenant, Second Artillery,
Aid-de-Camp to General Shafter.*

FEDERICO ESCARIO.

VENTURA FONTAN.

ROBT. MASON.

APPENDIX C.

CAPITULATION OF MANILA.

MANILA, *August 14, 1898.*

The undersigned having been appointed a commission to determine the details of the capitulation of the city and defenses of Manila and its suburbs, and the Spanish forces stationed therein, in accordance with the agreement entered into the previous day by Maj. Gen. Wesley Merritt, United States Army, American commander in chief in the Philippines, and his excellency Don Fermin Jaudenes, acting general in chief of the Spanish Army in the Philippines, have agreed upon the following:

1. The Spanish troops, European and native, capitulate with the city and its defenses, with all the honors of war, depositing their arms in the places designated by the authorities of the United States, and remaining in the quarters designated and under the orders of their officers and subject to control of the aforesaid United States authorities, until the conclusion of a treaty of peace between the two belligerent nations.

All persons included in the capitulation remain at liberty, the officers remaining in their respective homes, which shall be respected as long as they observe the regulations prescribed for their Government and the laws in force.

2. Officers shall retain their side arms, horses, and private property.

3. All public horses and public property of all kinds shall be turned over to staff officers designated by the United States.

4. Complete returns in duplicate of men by organizations, and full lists of public property and stores, shall be rendered to the United States within 10 days from this date.

5. All questions relating to the repatriation of officers and men of the Spanish forces and of their families and of the expenses which said repatriation may occasion, shall be referred to the Government of the United States at Washington.

Spanish families may leave Manila at any time convenient to them.

The return of the arms surrendered by the Spanish forces shall take place when they evacuate the city or when the American Army evacuates.

6. Officers and men included in the capitulation shall be supplied by the United States, according to their rank, with rations and necessary aid as though they were prisoners of war, until the conclusion of a treaty of peace between the United States and Spain.

All the funds in the Spanish treasury, and all other public funds, shall be turned over to the authorities of the United States.

7. This city, its inhabitants, its churches and religious worship, its educational establishments, and its private property of all descriptions are placed under the special safeguard of the faith and honor of the American Army.

F. V. GREENE,

Brigadier General of Volunteers, United States Army.

P. B. LAMBERTON,

Captain, United States Navy.

CHAS. A. WHITTIER,

Lieutenant Colonel and Inspector General.

E. H. CROWDER,

Lieutenant Colonel and Judge Advocate.

NICHOLAS DE LA PENA,

Auditor General, Excmo.

CARLOS REGES,

Colonel de Ingenieros.

JOSÉ MA^A. DE OLAGURO FELIN,

Colonel de Estado Major.

APPENDIX D.

THE TERMS OF THE CAPITULATION OF PORT ARTHUR, 1904.

ARTICLE I. The military and naval forces of Russia in the fortress and harbor of Port Arthur, as well as the volunteers and the officials, shall all become prisoners.

ART. II. The forts and fortifications of Port Arthur, the warships and other craft, including torpedo craft, the arms, the ammunition, the horses, all and every material for warlike use, shall be handed over as they are to the Japanese Army.

ART. III. When the above two articles are agreed to, the following steps shall be taken by way of guaranty, namely, by noon on the 3d instant all garrisons shall be withdrawn from fortifications and forts at I-zu-shan, Hsiao-an-tzu-shan, Ta-an-tzu-shan, and all the highlands on the southeast of these, and the said fortifications and forts shall be handed over to the Japanese Army.

ART. IV. Should it be recognized that the Russian military or naval forces destroy or take any other steps to alter the condition of the things enumerated in Article II and actually existing at the time of the signature of this agreement, these negotiations shall be broken off and the Japanese Army will break off negotiation and resume freedom of action.

ART. V. The officers of the Russian military and naval forces of Port Arthur shall compile and hand to the Japanese Army maps showing the arrangement of the defenses, the positions of mines and torpedoes or other dangerous objects, as well as lists of the organization of the naval and military forces in Port Arthur, nominal rolls of the military and naval officers, their ranks or grades, similar rolls relating to the warships, lists of the ships of all descriptions and their crews, and tables of the noncombatants, male and female, their nationalities and their occupations.

ART. VI. The arms (including those in the hands of the forces), the ammunition, and all material for war uses (except private property) shall be all left in their present positions. Rules relating to the handing over and receipt of these objects shall be arranged by commissioners from the Russian and Japanese Armies.

ART. VII. The Japanese Army, as an honor to the brave defense made by the Russian Army, will allow the officers of the Russian military and naval forces and the officials attached to the said forces to retain their swords, together with all privately owned articles directly necessary for daily existence. Further, with regard to the said officers, officials, and volunteers, such of them as solemnly pledge themselves in writing, not to bear arms again until the close of the present war, and not to perform any act of whatsoever kind detrimental to the interests of Japan, shall be permitted to return to their country, and one soldier shall be allowed to accompany each officer of the army or navy. These soldiers shall be required to give a similar pledge.

ART. VIII. The disarmed noncommissioned officers and men of the army and navy, as well as of the volunteers, wearing

their uniforms, carrying their tents and all privately owned necessaries of daily life, shall under the command of their respective officers assemble at places indicated by the Japanese Army. The details of this arrangement will be shown by the commissioners of the Japanese Army.

ART. IX. The officials of the sanitary and paymaster's departments of the Russian military and naval forces in Port Arthur shall remain and continue to discharge their duties under the control of the Japanese sanitary and paymaster's departments so long as the Japanese Army deems it necessary for ministering and affording sustenance to the sick, the wounded, and the prisoners.

ART. X. Detailed regulations with reference to the management of the noncombatants, the administration of the town, the performance of financial duties, the transfer of documents relating to these matters, and with reference to the carrying out of the agreement in other respects shall be entered in an appendix to this agreement. Such appendix shall have the force of the agreement itself.

ART. XI. Each of the contracting parties shall receive one copy of this agreement, and it shall become operative from the time of its signature.

CHAPTER VII, SECTION III.

ARMISTICES.

256a. *Armistice defined.*—An armistice is the cessation of active hostilities for a period agreed on between belligerents. It must be agreed upon in writing and duly ratified by the highest authorities of the contending parties.¹

¹G. O. 100, 1863, art. 135.

257. *Effect of armistice.*—H. R. Art XXXVI. An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

258. *Nature of.*—An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.¹

¹G. O. 100, 1863, art. 142. A treaty of peace, after signature, but before ratification, operates as a general armistice. It acts as an armistice if no separate armistice is concluded. Hall, Int. Law, 5th ed., 559.

259. *When binding.*—An armistice is binding upon the belligerents from the day of the agreed commencement, but the officers of the armies are responsible from the day only when they receive official information of its existence.¹

¹G. O. 100, 1863, art. 139.

260. *Importance of fixing time of.*—In all armistices it is of the utmost importance that the exact moment for the commencement and for the termination of same shall be fixed in the terms thereof beyond any possibility of mistake or misconception.¹

¹Hostile relations are too far-reaching in their results not to furnish cause for complaints, recriminations, and even reprisals in case of violations, or supposed violations, of the time for passing from the actual hostilities to peaceable relations or the reverse. In case of a short armistice, as for a few hours, no difficulty appears. If the term be for a designated number of days, questions arise as to whether the first or last day is inclusive or exclusive. In case an armistice is for an indefinite period, good faith requires that notice must be given of intention to resume hostilities.

A good example of an indefinite period in an armistice which was to terminate upon reasonable notice given by either party is that between Gen. Sherman and Gen. J. E. Johnston near Durham, N. C., in April, 1865. The armistice agreed upon was disapproved at Washington as containing political stipulations, whereupon Gen. Sherman was instructed to notify Gen. Johnston of the termination of the armistice and to resume hostilities "at the earliest moment, acting in good faith." Whereupon Sherman sent the following notice to Johnston:

"You will take notice that the truce or suspension of hostilities agreed to between us will cease in 48 hours after this is received in your lines, under the first of the articles of agreement." (Sherman's memoirs, pp. 346, 358, 367.)

261. *What may be done during an armistice.*—An armistice need not in terms prohibit actual hostilities.¹ Anything else may be done during an armistice that is not in express terms prohibited by the agreement.²

¹ Actual hostilities will provide, of course, that firing shall cease; that the belligerents must not gain ground to the front; and, during siege operations, "that the besieger must cease all extension, perfection, or advance of his attacking works, as much so as from attacks by main force." (G. O. 100, 1863, art. 142.)

² In modern practice the principle has been followed that what is not expressly prohibited is allowed. The principle "that a belligerent must abstain from everything which the other could have prevented had there been no armistice," is rejected by continental armies. (See Spaight, *War Rights on Land*, pp. 235-238; Ariga, p. 560; *Les Lois*, Jacomet, p. 90.)

262. *Form of armistice.*—No special form for an armistice is prescribed. It should, whenever practicable, be reduced to writing, in order to avoid misunderstandings and for purposes of reference should differences of opinion arise. It should be drafted with the greatest precision and with absolute clearness as to statements.¹

¹ For forms of armistice, see appendices, this section.

263. *Kinds of armistice.*—H. R. Art. XXXVII. An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.¹

¹ The following names have been applied to armistices, viz: *general* and *local* as in the text (the term *special* is used in G. O. 100, 1863, art. 137), *truce*, *local truce*, *cessation of hostilities*, *cessation of arms*, and *suspension of arms*. The continental writers still make use of the terms *armistice* and *suspension of arms*. As a matter of fact, there is no essential difference between *truces*, *suspensions of arms*, and *armistices*.

264. *General armistice.*—General armistices are of a combined political and military character. They usually precede the negotiations for peace, but may be concluded for other purposes.¹ Due to its political importance, a general armistice is concluded by the Governments concerned or by their commanders in chief, and are ratified in all cases. General armistices are frequently arranged by diplomatic representatives.²

¹ A general armistice may not apply to all of the forces in the field. The armistice executed in Paris on the 28th of January, 1871, which preceded the peace, was called a "general armistice," and yet it excluded the Departments of Doubs, Jura, and Cote D'or and the town of Belfort.

² The armistice at the close of the Franco-German War in 1870 was concluded between Count von Bismarck and Jules Favre, and the armistice which closed the Russo-Japanese War was concluded at Portsmouth, N. H., by diplomatic representatives. In the latter case the detailed conditions were settled by the military authorities in Manchuria.

265. *Local armistice*.—A local armistice suspends operations between certain portions of the belligerent forces, or within a designated district of the theater of operations. A local armistice may be concluded by the military forces only, or by the naval forces only, or between a less number than all of the belligerents at war.¹

¹ G. O. 100, 1863, art. 137, par. 1: "An armistice may be general and valid for all points and lines of the belligerents; or special, that is, referring to certain troops or certain localities only."

266. *Suspension of arms*.—A suspension of arms is a form of armistice concluded between commanders of armies, or even of detachments, for some local military purpose: such as to bury the dead, to collect the wounded, to arrange for exchange of prisoners, to enable a commander to communicate with his Government or superior officer.¹

¹ The above distinction as stated is not absolutely essential, although Mr. Oppenheim still draws the distinction between the three forms mentioned in the above text, (Land Warfare, pp. 56-57). But see Westlake, War, part 2, p. 92, and Spaight, War on Land, pp. 233-234. A suspension of arms was asked for by the governor of Manila of Admiral Dewey on Aug. 9, 1898, which would allow him to communicate with his Government and receive instructions.

267. *Notification of armistice*.—H. R. Art. XXXVIII. An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after notification, or on the date fixed.¹

¹ Vide par. 259.

268. *Intercourse in theater of operations*.—H. R. Art. XXXIX. It rests with the contracting parties to settle, in the terms of the armistice, what intercourse may be held in the theater of war with and between the populations.¹

¹ This translation of the text is copied from that of Messrs. Westlake and Spaight, and is believed to more accurately express the intent of the framers. The original from which this article was probably taken is in G. O. 100 of 1863, art. 141: "It is incumbent upon the contracting parties of an armistice to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, if any. If nothing is stipulated the intercourse remains suspended, as during actual hostilities."

Our own official translation is as follows:

"It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theater of war with the inhabitants and between the inhabitants of one belligerent State and those of the other."

The British official translation is as follows:

"It is for the contracting parties to settle, in the terms of the armistice, what communications may be held, on the theater of war, with the populations and with each other."

Of course, what is intended to be regulated is the intercourse of the population of the occupied territory with the population of the country still held by the enemy (in both cases nationals of the enemy State), and also between each belligerent force and the inhabitants of the localities held by the other.

269. *Rule in absence of stipulation.*—If nothing is stipulated, the intercourse remains suspended, as during actual hostilities.¹

¹ G. O. 100, 1863, art. 141, par. 2. The French manual, p. 61, states: "If the contracting parties have omitted to arrange as to the mutual relations of the population during the armistice, each belligerent preserves the absolute right to settle the question as he chooses on the territory held by him. An armistice is not a temporary peace; it leaves the state of war in existence; consequently the comings and goings of the inhabitants about the respective positions or within the neutral zone may offer inconveniences and facilitate spying."

270. *What stipulations armistice should contain.*—The following stipulations should be incorporated in an armistice:

(a) *The precise date, day, and hour of the commencement of the armistice.*—The date of commencement of an armistice may be different for different parts of an army.¹

¹ Vide par. 260, supra.

(b) *The duration of the armistice.*—The duration may be for a definite or indefinite period, and may terminate with or without notice of expiration. In case it is indefinite, a belligerent may resume operations at any time, with due notice given. If the term is fixed and no agreement has been made for prolonging same, hostilities may be resumed without notice in the absence of positive terms to the contrary. An armistice commences, in the absence of express mention to the contrary, at the moment it is signed.²

² In 1898 Spain protested against hostilities being continued during the negotiations for an armistice in Washington. The United States replied that it was a belligerent's strict right to continue operations so long as an armistice had not been concluded.

In 1865 Gen. Wilson captured Macon, Ga., during an armistice between Gens. Sherman and Johnston, of which Gen. Wilson had been informed by Gen. Cobb, but not by his own commander. Gen. Sherman directed him to release the captured Confederate generals (Cobb, G. W. Smith, and McCall) and to occupy ground outside of Macon.

(c) *The principal lines and all other marks or signs necessary to determine the locations of the belligerent troops should be fixed.*—Belligerents frequently make use of maps with the lines indicated shown thereon, which maps are made part of the convention. A neutral zone is frequently determined upon between the two armies. These lines are not to be crossed or the zone entered except by parlementaires or other parties by special agreement for specified purposes, such as to bury the dead and collect the wounded.³

³ It is customary to designate the roads that are to be used by all parties entering or passing through a neutral zone. Vide general form armistice, Appendix A, this section.

(d) *The relation of the armies with the people.*—In the absence of stipulations to the contrary, each belligerent will exercise toward the inhabitants the rights of belligerents over

occupied territory, such as billeting troops, requisitioning supplies, etc., as well as all intercourse between them.⁴

⁴ Vide Spaight, War Rights on Land, p. 247.

(e) *What acts are prohibited during the armistice.*—In the absence of stipulations to the contrary, each belligerent is authorized to make movements of troops within his own lines, to receive and instruct recruits, to construct intrenchments, to repair bridges, to establish new batteries, and, in general, to take advantage of the time and means at his disposal to prepare for resuming hostilities. This includes the right to continue espionage, but does not include the right to introduce supplies into a fortress unless especially stipulated in the agreement.⁵

⁵ Les Lois, Jacomet, art. 133. Vide note 2, par. 261, supra.

In the Brussels Conference it was proposed to make the matter clear as to what a belligerent may or may not do after an armistice is concluded, by specifying that "on the conclusion of an armistice, what each of the parties may do and what he may not do shall be precisely stated."

This was not passed because of the belief that this was implied in Art. XXXVI of the present rules. See the French rule in note 1, par. 269, supra. For practice during modern wars which conform to the foregoing principle, see Spaight, War Rights on Land, pp. 233 et seq.

271. *Denunciation of armistice.*—H. R. Art. XL. Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

272. *Must not constitute perfidy.*—To denounce an armistice without some very serious breach, and to surprise the enemy before he can have time to put himself on guard, would constitute an act of perfidy. In the absence of extreme urgency, some delay should be given between the denunciation and resumption of hostilities.¹

¹ Land Warfare, Opp., pars. 296-297.

273. *Armistice no excuse for lack of vigilance.*—The existence of an armistice does not warrant relaxation of vigilance in the service of security and protection, or in the preparedness of troops for action, or exposing positions to the enemy.¹

¹ At the second battle of Fredericksburg, May 5, 1863, the Federals discovered the weakness of Gen. Barksdale's force during a suspension of hostilities to collect the wounded after the second repulse. Memoirs, Alexander, p. 351. In the suspension of arms at Wynnes Hill, during the relief of Ladysmith, many of the burghers stood up and disclosed the position of their trenches, which until then had not been located by the enemy. South African War, Vol. II, p. 602.

274. *Violations by individuals.*—H. R. Art. XLI. A violation of the terms of the armistice by individuals acting on their own initiative only entitles the injured party to demand punishment of the offenders or, if necessary, compensation for the losses sustained.

275. *Soldiers captured violating armistice are prisoners of war.*—Soldiers captured in the act of breaking an armistice must be treated as prisoners of war. Such acts do not justify denunciation of the armistice.¹

¹ Mr. Oppenheim says: "There is no justification in such circumstances for a renewal of hostilities, unless the behavior of these individuals is approved of or sanctioned by their superiors. If, however, the violation of the armistice by individuals acting on their own initiative be repeated, and if it become evident that the adversary is unable to repress such abuses, there might be no other way, after proper protest, to obtain redress except by denouncing the armistice." Land Warfare, art. 299; Ariga, p. 555, states that "during the armistice frequent reports were received that Russian soldiers entered the neutral zone in violation of the third article of the protocol. We have never believed, however, that we should make any complaint with regard to this, because it was a question in reality only of small individual infractions which should have no influence upon the general effect of the armistice."

APPENDIX A.

FORM OF ARMISTICE.

ARMISTICE BETWEEN TWO OPPOSING FORCES.

A B _____, authorized by C D, commander in chief of the United States forces in _____, and E F _____, authorized by F H _____, commander in chief of the _____ troops in _____, agree to the following articles:

ART. 1. On the publication of this armistice, hostilities shall cease between the United States and _____ forces at all points along the frontier of _____ between _____ and _____.

ART. 2. The armistice shall continue until noon on the ____ day of _____, and until such further time as is hereinafter mentioned.

ART. 3. Either side may at any time on or after the said ____ day of _____, give _____ days' notice of its intention to determine the armistice, and the armistice shall be determined at the expiration of such _____ days. Notice shall be given by writing, stating the intention to determine the armistice, and sent from the headquarters of one army to the headquarters of the other army. In reckoning time for the purpose of the said _____ days' notice, the day on which the notice is given, at whatever hour the same may be given, shall be reckoned as an entire day, and the armistice shall expire at midnight on the _____ day succeeding the day on which the notice is given.

ART. 4. The lines of demarcation shown on the attached map shall be strictly adhered to during the armistice. The territory lying between the two lines of demarcation shall be strictly neutral, and any advance into it by any member of either army is prohibited except for the purposes of communication between the two armies. Neither army shall extend its line in a _____ or _____ direction beyond the points shown as the extremities of their respective lines.

ART. 5. Subject to the restrictions mentioned in the fourth article, as respects making an advance into the neutral territory, either army may take measures to strengthen its position, and may receive reinforcements and stores of warlike and other material, and may do any other act not being an act of direct hostility.

ART. 6. During the two days following the day on which this armistice is ratified, burial parties from both armies shall be

permitted to visit the field of battle of the _____ instant, for the purpose of burying the dead.

ART. 7. The main road from A to B via C will be used for communication between the commanders in chief of the two armies.

ART. 8. During the continuance of the armistice the peaceful inhabitants of the country shall be allowed to pursue their occupations, and to buy from or sell to either army provisions or goods, but any measures consistent with the observance of the articles of the armistice in relation to the neutral territory may be taken by either army to prevent inhabitants, after entering the lines of or obtaining information respecting one army from passing or carrying information to the other army.

ART. 9. This armistice shall come into force immediately on its ratification by the commanders in chief of the two armies, and officers shall be dispatched with all speed, from the headquarters of each army, to give notice of the armistice at all points along the line.

APPENDIX B.

FORM OF ARMISTICE.

BETWEEN BESIEGING FORCE AND GARRISON.

A B, general, commander in chief of the United States forces now in _____, and C D, general, commander in chief of the garrison of _____, agree to the following articles.

ARTICLE 1. An armistice between the United States troops investing _____ and the troops forming the garrison of _____ shall begin at noon on the _____ instant and shall end at noon on the _____ instant.

ART. 2. White flags shall be hoisted simultaneously at the beginning of the armistice, the one at _____, within the United States lines, and the other at Fort _____.

The flags shall be kept flying during the continuance of the armistice and shall be lowered simultaneously at its conclusion.

ART. 3. Provisions to the extent of _____ rations shall be supplied daily for the use of the garrison by the besiegers on payment of such sums as may be agreed upon as the value thereof by commissioners to be appointed by the above-named commanders in chief, respectively. The provisions shall be delivered to persons authorized to demand the same by the general commanding the garrison, at such times, and in such places in front of the United States lines, as may be agreed upon by the above-named commanders in chief, and shall be conveyed to the garrison by the persons authorized as above stated.

ART. 4. Save in so far as is provided by article 3, or as may be agreed upon between the above-named commanders in chief,

it is agreed that the garrison shall not attempt to obtain succor, and that no communication whatever shall, during the armistice, take place between the garrison, whether friend or enemy, and a space of ----- around the fortification shall be considered neutral ground, and no person whatever, whether he be a stranger or belonging to the garrison or to the besieging army, shall be allowed to enter on such space without the permission of the above-named commanders in chief.

ART. 5. General -----, commanding the garrison, engages on behalf of the garrison not to repair the fortifications or to undertake any new siege works, or do any act or thing whatsoever calculated to place the garrison in a better position in regard to its defense; and General -----, on behalf of the United States troops, engages not to undertake any siege works, or to make any hostile move against the garrison, but it is understood that he is at liberty to obtain fresh supplies of provisions or reinforcements of troops.

APPENDIX C.

FORM OF SUSPENSION OF ARMS FOR THE BURIAL OF THE DEAD, ETC.

General A. B., commanding the United States forces at -----, and General C. D., commanding the forces at -----, agree as follows:

ARTICLE 1. A suspension of arms for the space of three hours, beginning at 10 o'clock and ending at 1 o'clock on this ----- day of ----- is agreed to for the purpose of burying the dead and withdrawing the wounded.

ART. 2. The beginning of the suspension of arms shall be notified by two white flags hoisted simultaneously, the one within the United States lines, and the other within the ----- lines. The white flags shall continue flying during the suspension of arms, and such flags shall be lowered simultaneously as a signal of the conclusion of the suspension of arms.

ART. 3. All firing shall cease during the suspension of arms.

ART. 4. The United States troops shall not, during the suspension of arms, advance beyond the line, and the ----- troops shall not advance beyond the ----- line. The space between the two lines shall be open to all persons engaged in burying the dead, or in attending to the wounded, or in carrying away the dead or wounded, but to no other persons.

APPENDIX D.

ARMISTICE AGREED ON BY JAPAN AND RUSSIA AT PORTSMOUTH
(U. S. A.) OF 5TH SEPTEMBER, 1905.

The undersigned plenipotentiaries of Japan and Russia, duly authorized to that effect by their respective Governments, have agreed on the following terms of the armistice, which will remain in force until the execution of the treaty of peace:

(1) A certain distance (zone of demarcation) shall be fixed to separate the front of the armies of the two powers in Manchuria, and also in the Tumen region.

(2) The naval force of one of the belligerents may not bombard the territory occupied or belonging to the other.

(3) The taking of maritime prizes will not be interrupted by the armistice.

(4) During the armistice no reinforcements may be sent to the theater of war. Those who are on the way from Japan may not be sent north of Mukden, and those on the way from Russia may not be sent south of Harbin.

(5) The commanders of the military and naval forces will arrange the details of the armistice in accordance with principles above enunciated.

(6) The two Governments will issue the order to put this protocol into execution directly after the signature of the treaty of peace.

(Signed)

WITTE.
ROSEN.

(Signed)

KOMOURA.
TAKAHURA.

APPENDIX E.

PROTOCOL OF THE CONDITIONS OF THE ARMISTICE CONCLUDED IN
MANCHURIA ON 13TH SEPTEMBER, 1905.

ARTICLE 1. Fighting is suspended throughout the extent of Manchuria.

ART. 2. The space between the front lines of the Japanese and Russian Armies, which are indicated on the maps exchanged with the present protocol, constitutes the neutral zone.

ART. 3. Every person having the least connection with either of the armies is forbidden to enter the neutral zone on any pretext whatsoever.

ART. 4. The road leading from Shuang-miao-tzu to Sha-ho-tzu is to be employed for communication between the two armies.

ART. 5. The present protocol will come into force on the 16th (Russian style 3d) September, 1905, at midday, and will remain in force until the execution of the treaty of peace signed at Portsmouth by the plenipotentiaries of the two powers.

The present protocol is signed by the representatives of the commanders in chief of the Japanese and Russian Armies in Manchuria, in virtue of the full powers which have been given to them by the said commanders in chief.

Done on the road situated close to Sha-ho-tzu the 13th September, 1905, in two texts, Japanese and Russian, each party keeping a Japanese and a Russian text.

(Signed)

FUKUSHIMA,
Major General, etc.
ORANOUSKI,
Major General, etc.

APPENDIX F.

JAPANESE PROJECT FOR THE ARMISTICE IN THE TUMEN REGION.

ARTICLE 1. The Japanese and Russian Armies in the Tumen region will execute the armistice according to the stipulations of the present convention.

ART. 2. The Japanese Army will canton south of the line ----- The positions of the Russian Army will be limited to the north of the line ----- The region between these two lines will form the neutral zone.

ART. 3. No troops, patrols, or men sent on reconnaissance, nor any individual belonging or attached to the army will be permitted to enter the neutral zone.

ART. 4. No preparations for attack or defense will be made near the line limiting the neutral zone. The necessary preparations for cantoning the troops will not be considered as preparations for attack or defense.

ART. 5. No requisitions of coolies, horses, or any other objects will be made in the neutral zone.

ART. 6. The Japanese and Russian Armies in the Tumen region will both commence to evacuate their troops beyond the lines indicated in article 2 on the third day, and must have completed the evacuation behind the lines by the seventh day from the signing of the present convention.

ART. 7. Once the convention is drawn up, the commanders of the Japanese and Russian Armies will order the troops and the officials under their command to execute the armistice, in such a manner that the order may reach them as soon as possible. They will at the same time notify the commanders of the land and sea forces.

ART. 8. This convention will come in force immediately it has been signed by the plenipotentiaries of the Japanese and Russian Armies; it will lapse on the execution of the treaty of peace.

ART. 9. The present convention will be drawn up in two Japanese and two Russian texts, each army keeping a text in each language.

(This project was not agreeable to the Russians and an armistice had not been concluded when the treaty of peace was ratified.)

APPENDIX G.

SUSPENSION OF ARMS AT THE SIEGE OF BELFORT, 13TH FEBRUARY, 1871.

It has been agreed by the undersigned, Capt. Krafft, of the auxiliary engineers, and Capt. von Schultzenorf, general staff, of the besieging army, both furnished with full powers by Col. Denfert-Rochereau, commandant of Belfort, and by Lieut. Gen. von Treskow, commandant of the besieging corps—

As follows:

(1) Lieut. Gen. von Treskow will send a telegram to Versailles to acquaint the Imperial Chancellor Count Bismarck that Col. Denfert-Rochereau requires direct instructions from his Government as regards the surrender of the fortress.

(2) Col. Denfert-Rochereau will send an officer to Bale to await the telegraphic instructions from the French Government.

(3) Until the return of this officer there will be a suspension of arms between the besieged and besiegers, beginning the 13th February at 11 p. m. Nevertheless, the suspension of arms may be denounced at any moment 12 hours before the time intended for the resumption of hostilities.

(4) During the suspension of arms the two parties shall remain in their present positions. The limits thus traced shall not be crossed, and, moreover, there shall be no communication on the part of civilians between the fortress and the outside.

(5) Col. Denfert-Rochereau engages to inform Lieut. Gen. von Treskow with the least possible delay of the decision he makes after receiving the instructions of the French Government.

The present convention has been made in duplicate original, one text in German and the other in French.

(Signed)

KRAFFT.

VON SCHULTZENORF.

13th February, 1871.

CHAPTER VII, SECTION IV.

PASSPORTS, SAFE-CONDUCTS, SAFEGUARDS, AND CARTELS.

276. *Passport defined.*—A passport is a written document given to a person or persons by a commander of belligerent forces authorizing him or them to travel unmolested within the district occupied by his troops.¹

¹ Mr. Spaight says: "The terms (passport and safe-conduct) appear to be convertible, though some would make the 'passport' confer a more extended liberty of movement than the 'safe-conduct' which they would confine to an authority to come to a specified place for a specified object" (War Rights on Land, p. 230).

Passports are issued by the State Department, or similar office in other countries, to diplomatic agents and others entering or traveling in foreign countries, which are of the same general character as those issued during war. The latter should, when practicable, have the photograph of the bearer attached. For form see appendix, this section.

277. *Safe-conduct as to persons.*—A safe-conduct is a document given to an enemy, alien, or other person or persons by a commander of belligerent forces authorizing him or them to go into places which they could not reach without coming into collision with armed forces actively operating against the enemy.¹

¹ Safe-conducts are more frequently issued to enemy subjects. Safe-conducts were issued to the Boer leaders in April and May, 1902, to permit them to confer about the terms of surrender. (Spaight, p. 230.) Gen. Scott issued a safe-conduct to several members of the new Federal Congress to permit them to pass through the City of Mexico and a passport to Gen. Santa Anna's wife to permit her to join her husband. (Moore's Int. Law. Dig., sec. 1158.) For form see appendix, this section.

278. *Safe-conduct as to goods.*—A safe-conduct is a written authority or license to carry goods to or out of, or to trade in a certain place or places otherwise forbidden by the laws of war, given by a commander of belligerent forces to an enemy, alien, or other person.¹

¹ For form of safe-conduct see appendix, this section.

279. *Character of these instruments.*—Both passports and safe-conducts fall within the scope of international law when granted by arrangement with the enemy or with a neutral power. The passports and safe-conducts as to persons are individual and nontransferable. A safe-conduct for goods, while restricted to the articles named in them, may be transferred from one person to another, provided it does not designate who is to carry the goods or to trade. They may be transferred

when the licensee is designated if the transferee is approved by the authorizing belligerent. The term "pass" is now frequently used instead of the older term "passport," and likewise the word "permit." The word "pass" being used for a general permission to do certain things, the word "permit" being used like the word "safe-conduct," to signify permission to do a particular thing.

280. *May be revoked.*—Passports and safe-conducts may be revoked by the commander issuing them or by his superiors for reasons of military expediency, but, until revoked, they are binding upon grantors and their successors. When a time is specified in the document it is valid only during such time. These documents should not be revoked for the purpose of securing the persons of the holders who should be given time to withdraw in safety; in case of violation of their terms the privilege will be withdrawn and the case investigated.¹ They are valid in the district of the commander who grants them only.

¹ See Land Warfare, Opp., art. 334. Spaight, War Rights on Land, p. 230.

281. *Licenses to trade.*—Licenses to trade are general and special. A general license relaxes the exercise of the rights of war, generally or partially, in relation to any community or individuals liable to be affected by their operation. A special license is one given to individuals for a particular voyage or journey for the importation or exportation of particular goods.¹

¹ Licenses to trade must, as a general rule, emanate from the supreme authority of the State. In certain exceptional cases the governor of a province, the general of an army, or the admiral of a fleet, may grant licenses to trade within the limits of their commands.

As to licenses to trade see the following cases:

The Sea Lion, 5 Wall., 630.

Coppell v. Hall, 7 Wall., 542.

Hamilton v. Dillin, 21 Wall., 73.

U. S. v. One hundred barrels of cement, 27 Fed. Cases, 292.

Dig. Int. Law, Moore, sec. 1141.

282. *Safeguard.*—A safeguard is a detachment of soldiers posted or detailed by a commander of troops for the purpose of protecting some person or persons, or a particular village, building, or other property. The term "safeguard" is also used to designate a written order by a commander of belligerent forces for the protection of an enemy subject or enemy property. It is usually directed to the succeeding commander requesting the grant of protection to such individuals or property.¹

¹ The object of a safeguard is usually to protect museums, historic monuments, etc. A case of this which caused much discussion was the action of Gen. McClellan in placing a safeguard over the residence of Mrs. R. E. Lee in 1862. McClellan's Own Story, p. 360; Spaight, War Rights on Land, p. 231.

The French call the first kind *vive* and the second *mort*. "It is called dead (mort) or alive (vive) according to whether it consists

in the simple posting of a notice showing the protection given to the establishment or, when, in order to insure the efficacy of the exemption accorded, there is placed over it a body of troops charged with enforcing the order." *Les Lois, Jacomet, art. 139.*

283. *Inviolability of soldiers as safeguards.*—Soldiers on duty as safeguards are guaranteed against the application of the laws of war, and it is customary to send them back to their army when the locality is occupied by the enemy, together with their baggage and arms, as soon as military exigencies permit.¹

¹ "Enemy safeguards which have been posted without previous arrangement ought, nevertheless, to be treated in the same way, provided that the circumstances of the case prove that their posting was *bona fide.*" *Land Warfare, Opp., par. 336.*

284. *Cartels.*—In the customary military sense a cartel is an agreement entered into by belligerents for the exchange of prisoners of war. In its broader sense it is a convention concluded between belligerents for the purpose of arranging or regulating certain kinds of non-hostile intercourse otherwise prohibited by the existence of the war.¹ A cartel is voidable as soon as either party has violated it.²

¹ "A cartel ship is a vessel engaged in the exchange of prisoners or in carrying official communications to the enemy. Such a ship is considered inviolable, but must not engage in hostilities or carry any implements of war except a signal gun." *Land Warfare, Opp., par. 239.*

United States v. Wright, 28 Fed. Cas., 796. Both belligerents are bound to observe the terms of the cartel, and they "are of such force under the law of nations that even the sovereign can not annul them."

² *Vide G. O. 100, 1863, art. 109.*

APPENDIX.

FORM OF PASSPORT.

(Place and date of issue.)

Authority is hereby granted to Mr. (or other title) _____
 living at _____ (if on a mission, state the same), to pass
 out of the lines for the purpose of (state object of journey)

He will cross the lines by the road from A to B (or at a des-
 ignated point) during the _____ (forenoon, after-
 noon, or day) of _____ (date).

He is authorized to take with him _____ (per-
 sons, articles, carriages, etc.).

He will proceed to (name destination) by the route C. D. E.

Photograph or
 finger print
 or signature.

 (Signature of officer.)

 (Rank, etc.)

NOTE.—This passport is strictly personal
 and will be void unless used on the date
 stated.

NOTE.—Blank forms for these should be issued at the commence-
 ment of hostilities. A photograph should be attached where the pass
 is for an extended period. A finger print or signature can be substi-
 tuted if desired.

In making application for a passport from the State Department,
 the applicant must make affidavit containing statement of his citizen-
 ship, residence, occupation, destination, and object of journey, and to
 which an oath of allegiance is attached. Attached is a description of
 the applicant and identification with address of witness testifying to
 applicant's identify. (This is or has been waived in certain cases.)

Photograph.

SAFE CONDUCT.

(Place and date of issue.)

_____ residing at _____
 (or if on a mission, the mission to be stated)
 is authorized to proceed to _____ for
 the purpose of _____

He will follow the route A. B. C.

He is authorized to take with him (persons, articles, vehicles).

This safe conduct is good until _____

All military authorities are directed to protect the bearer of
 this safe conduct and in nowise to molest him.

 (Signature of officer.)

 (Rank, etc.)

NOTE.—This safe conduct is strictly personal and shall be
 void unless used within the time fixed.

FORMS OF SAFEGUARD.¹

(Date and place of issue.)

All officers and enlisted men belonging to the _____
 _____ (Name the army
 _____ are directed to respect the premises of
 or subdivision thereof.)
 _____ situated at _____.

No requisitions thereon, nor damage thereto, will be permitted, and protection will be afforded by all officers and enlisted men against any person who shall attempt to act in violation of this order.

 (Signature of officer.)

 (Rank, etc.)

The following form was prescribed by Gen. Scott in Mexico :

SAFEGUARD.

By authority of Major Gen. _____ (or Brigadier Gen. _____).

The person, the property, and the family of _____ (or such a college, and the persons and things belonging to it; such mill, etc.), are placed under the safeguard of the United States. To offer any violence or injury to them is expressly forbidden; on the contrary, it is ordered that safety and protection be given to him or them in case of need.

Done at the headquarters of _____ this _____ day of _____, 18__.

¹ Forms for safeguards ought to be printed in blank, headed by the article of war relative thereto, and held ready to be filled up, as occasions may offer. A duplicate, etc., in each case might be affixed to the houses or edifices to which they relate.

5th Article of War: Whosoever, belonging to the armies of the United States in foreign parts, or at any place within the United States or their Territories, during rebellion against the supreme authority of the United States, forces a safeguard shall suffer death.

63rd Article of War: All retainers to the camp, and all persons serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders according to the rules and discipline of war.

CHAPTER VIII.

MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE.

285. *Military occupation.*—H. R. Art. XLII. Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

286. *Occupation question of fact.*—Military occupation is a question of fact. It presupposes a hostile invasion as a result of which the invader has rendered the invaded Government incapable of publicly exercising its authority, and that the invader is in position to substitute and has substituted his own authority for that of the legitimate Government in the territory invaded.¹

¹ *Thirty Hogshead of Sugar v. Boyle*, 9 Cranch, 191: "Some doubt has been suggested whether Santa Cruz, while in the possession of Great Britain, could properly be considered as a British island. But for this doubt there can be no foundation. Although acquisitions made during war are not considered as permanent until confirmed by treaty, yet to every commercial and belligerent purpose, they are considered as part of the domain of the conqueror, so long as he retains the possession and government of them."

287. *Does not transfer sovereignty.*—Being an incident of war, military occupation confers upon the invading force the right to exercise control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty.² The exercise of these rights results from the established power of the occupant and is considered legitimate by reason of the necessity for maintaining law and order, indispensable for both the inhabitants and for the occupying force.³

¹ "The territory of Castine, by the conquest and occupation by Great Britain, passed under the temporary allegiance and sovereignty of the British sovereign. The sovereignty of the United States over the territory was suspended during such occupation, so that the laws of the United States could not be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors." *United States v. Rice*, 4 Wheat., 246; *United States v. Hayward*, 2 Gallison, 485.

² In the case of *Dooley v. United States*, 182 U. S., 222, 231, the court said: "In *New Orleans v. Steamship Co.*, 20 Wall., 393, it was

said, with respect to the powers of the military government over the city of New Orleans after its conquest, that it had the same power and rights in territory held by conquest as if the territory had belonged to a foreign country and had been subjugated in a foreign war. In such cases the conquering power has the right to displace the pre-existing authority, and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and usages of war. These principles have the sanction of all publicists who have considered the subject." See also *Fleming v. Page*, 9 How., 603; *Am. Ins. Co. v. Canter*, 1 Pet., 511.

288. *Distinguished from invasion.*—The state of invasion corresponds with the period of resistance. Invasion is not necessarily occupation, although it precedes it and may frequently coincide with it. An invader may push rapidly through a large portion of enemy country without establishing that effective control which is essential to the status of occupation. He may send small raiding parties or flying columns, reconnoitering detachments, etc., into or through a district where they may be temporarily located and exercise control, yet when they pass on it can not be said that such district is under his military occupation.¹

¹ Early invaded Maryland in July, 1864, but the country was not occupied.

289. *Distinguished from subjugation or conquest.*—Subjugation and conquest imply the annexation of the property or territory by the conqueror through the treaty of peace, and with it the sovereignty. Military occupation is based upon the fact of possession and is essentially provisional until the conclusion of peace or the annihilation of the adversary, when sovereignty passes and military occupation technically ceases.¹

¹ G. O. No. 11, H. Q. Army of Virginia, Wash., July 26, 1862, by Gen. Pope, furnishes an example of improper conception of allegiance and military occupation. His last paragraph, concerning communications, is strictly in accord with the laws and usages of war. The German conception of her rights of sovereignty over Alsace and Lorraine, in that she made no pretension to absolute sovereignty until after their cession by France, is strictly in accord with the rights of military occupation. Vide Spaight, *War Rights on Land*, pp. 329-333.

290. *Occupation must be effective.*—It follows from the definition that military occupation must be both actual and effective; that is, the organized resistance must be overcome and the forces in possession have taken measures to establish law and order. It is sufficient that the occupying army can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district. It is immaterial by

what methods the authority is exercised, whether by fixed garrisons or flying columns, small or large forces.¹

¹Land Warfare, Opp., par. 344. "Practically, all enemy territory will be considered effectively occupied by a French army, over which a service of supply shall have been established in rear of the army of invasion." Lieut. Jacomet, *Les Lois*, p. 69.

291. *Presence of invested fort immaterial.*—The existence of a fort or defended area within the occupied district, provided such place is invested, does not render the occupation of the remainder of the district ineffective, nor is the consent of the inhabitants in any manner essential.¹

¹Land Warfare, Opp., par. 345. Citing "That when Alsace was declared occupied on 14th August, 1870, the fortresses in that Province were still uncaptured, but for the sieges in progress it had ceased to be the theater of active operations."

292. *Proclamation of occupation.*—In a strict legal sense no proclamation of military occupation is necessary. On account of the special relations established between the inhabitants of the occupied territory and the occupant, by virtue of the presence of the invading force, the fact of military occupation, with the extent of territory affected by the same, should be made known. The practice in this country is to make this fact known by proclamation.¹

¹The French rule is given by Lieut. Jacomet as follows: "Occupation should be preceded by a notification which should take the form of proclamations posted in the community, of circulars addressed to the local authorities, notices inserted in the local papers. These publications should enumerate the acts from which the inhabitants have to abstain, and the penalties imposed for corresponding infractions." *Les Lois*, p. 69. The Germans in 1870, usually issued a proclamation in accordance with that of August, 1870, which stated that: "The military jurisdiction will be considered in force and proclaimed for the whole area of a 'canton' immediately a proclamation has been posted up in one of the localities of the same."

In Great Britain proclamations were issued by Wellington simply warning the inhabitants to behave peaceably and not to communicate with the enemy. The same rule was followed by the Japanese in the war with China, and again in Manchuria. (Ariga, p. 443.) For practice in this country vide the proclamations by Gen. Kearney on Aug. 22, 1846; Gen. Taylor in Mexico, H. R. Executive Doc. No. 119, pp. 13-17; Gen. Scott in Mexico at Vera Cruz, Apr. 11, 1847; at Tampico, Feb. 19, 1847; G. O. No. 20, Feb. 19, 1847; and G. O. 287, Army Mex., Sept. 17, 1847; G. O. 101, W. D., July 18, 1898; Proc. Gen. Miles, July 28, 1898, as to Porto Rico; Proc. Gen. Merritt, Aug. 14, 1898, in Philippines.

293. *Commencement of occupation.*—In the absence of a proclamation or similar notice the exact time of commencement of occupation may be difficult to fix. The presence of a sufficient force to disarm the inhabitants or enforce submission and the cessation of local resistance due to the defeat of the enemy's forces determine the commencement of occupation.¹

¹"The presence of a hostile army proclaims its martial law." G. O. 100, 1863, art. 1, par. 2.

294. *Cessation of occupation.*—Occupation once acquired must be maintained. In case the occupant evacuates the district or

is driven out of the same by the enemy, or by a *levee en masse*, and the legitimate government actually resumes its functions, the occupation ceases. It does not cease, however, if the occupant, after establishing his authority, moves forward against the enemy, leaving a smaller force to administer the affairs of the district. Nor does the existence of a rebellion or the operations of guerrilla bands cause it to cease unless the legitimate government is reestablished and the occupant fails to promptly suppress such rebellion or guerrilla operations. Hostile military occupation ceases on the conclusion of peace.

295. *Administration of occupied territory.*—Military government is the organization through which a belligerent exercises authority over the territory of the enemy invaded and occupied by him.¹ The necessity for such government arises from the failure or inability of the legitimate government to exercise its functions on account of the military operations or occupation.²

¹ "The organization through which the authority is exercised in a region under military occupation constitutes the military government." Wilson on Int. Law., H. S., par. 143, p. 331.

² In *Dooley v. U. S.*, 182 U. S., 222, 230, the court said: "Upon the occupation of the country (Porto Rico) by the military forces of the United States the authority of the Spanish Government was superseded, but the necessity for a revenue did not cease. The government must be carried on, and there was no one left to administer its functions but the military forces of the United States." Cited in Dig. Int. Law, Moore, sec. 1145, p. 270, with other cases.

ADMINISTRATION OF OCCUPIED TERRITORY.

296. *Duty to restore law and order.*—H. R. Art. XLIII. The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

297. *Functions of government.*—All the functions of the hostile government—legislative, executive, or administrative—whether of a general, provincial, or local character, cease under military occupation, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.¹

¹ G. O. 100, 1863, art. 6.

298. *Nature of government.*—It is immaterial whether the government established over an enemy's territory be called a military or civil government. Its character is the same and the source of its authority is the same. It is a government imposed by force, and the legality of its acts are determined by the laws of war. During military occupation it may exercise all the powers given by the laws of war.¹

¹ See Halleck Int. Law (4th ed.), 2 p. 466. "While a military government continues as an instrument of warfare, used to promote the

objects of invasion by weakening the enemy or strengthening the invader, its powers are practically boundless." Magoon Law of Civ. Gov. under Mil. Occupation, p. 14. *United States v. Diekelman*, 92 U. S., 520. But note the language of the Sup. Court in the case of *Dooley v. U. S.*, 222, 234-5; in speaking of the powers of the military commander the court said: "While his power is necessarily despotic, this must be understood rather in an administrative than in a legislative sense. * * * His power to administer would be absolute, but his power to legislate would not be without certain restrictions; in other words, they would not extend beyond the necessities of the case."

See also the *Admittance, Jecker v. Montgomery*, 13 How., 498, in which it was held that the executive power could not establish a prize court in Mexico. Also *The Grapeshot*, 9 Wall., 129, 133; *Mitchell v. Harmony*, 13 How., 115; *Raymond v. Thomas*, 91 U. S., 712.

299. *The laws in force.*—The principal object of the occupant is to provide for the security of the invading army and to contribute to its support and efficiency and the success of its operations. In restoring public order and safety he will continue in force the ordinary civil and criminal laws of the occupied territory which do not conflict with this object. These laws will be administered by the local officials as far as practicable. All crimes not of a military nature and which do not affect the safety of the invading army are left to the jurisdiction of the local courts.¹

¹The jurisdiction of these local courts is never extended to members of the invading Army.

"All civil and penal law shall continue to take its usual course in the enemy's places and territories under martial law, unless interrupted or stopped by order of the occupying military power." G. O. 100, 1863, art. 6.

Dow v. Johnson, 100 U. S., 158: "An officer of the Army of the United States, whilst serving in the enemy's country during the rebellion, was not liable to an action in the courts of the country for injuries resulting from his military orders or acts; nor could he be required by a civil tribunal to justify or explain them upon any allegation of the injured party that they were not justified by military necessity. He was subject to the laws of war and amenable only to his own Government.

"When any portion of the insurgent States was in the occupation of the United States during rebellion, the municipal laws, if not suspended or superseded, were generally administered there by the ordinary tribunals for the benefit and protection of persons not in the military service. Their continued enforcement was not for the protection or control of officers or soldiers of the Army."

300. *Power to suspend and promulgate laws.*—The military occupant may suspend existing laws and promulgate new ones when the exigencies of the military service demand such action.

301. *Nature of laws suspended.*—The occupant will naturally alter or suspend all laws of a political nature as well as political privileges and all laws which affect the welfare and safety of his command. Of this class are those relating to recruitment in occupied territory, the right of assembly, the right to bear arms, the right of suffrage, the freedom of the

press, the right to quit or travel freely in occupied territory. Such suspensions should be made known to the inhabitants.¹

¹ See Wilson on Int. Law, H. S., p. 335; Land Warfare, Opp., p. 80. See Dow v. Johnson above and cases cited.

302. *Nature of laws promulgated.*—An occupant may create new laws for the government of a country where none exist.¹ He will promulgate such new laws and regulations as military necessity demands. In this class will be included those laws which come into being as a result of military rule; that is, those which establish new crimes and offenses incident to a state of war and are necessary for the control of the country and the protection of the army.²

¹ Mr. Spaight cites as perhaps the only modern case that of Bulgaria in 1877–8 and quotes Prof. De Martens that "The Russians were quite unable to comply with the Brussels rule which enjoined respect for local laws and institutions, for local laws and institutions there were none." War Rights on Land, p. 357. De Martens, *La Paix et la Guerre*, p. 243.

² The following is extracted from various martial-law regulations of the Japanese in Manchuria.

All laws and regulations relating to the punishments for acts detrimental to the Japanese Army in Korea and Manchuria can not be given here. All that can be done is to indicate the principal acts for which punishment can be awarded.

1. To oppose our land and sea forces, military authorities, or persons attached to our army or navy.

2. To be attached to the enemy and act hostilely against our army without being clothed in a regular uniform.

3. To act as a spy, to conceal a spy, or assist his flight.

4. To guide our army badly.

5. To communicate to the enemy the movement of our land or sea forces.

6. To spread false news.

7. To make a noise or utter outcries of a nature to disturb our land and sea forces.

8. To publish placards detrimental to our army.

9. To disturb public order by meetings, assemblies, publication of newspapers, and reviews, posting up placards, and other means.

10. To aid or facilitate the movements of the enemy.

11. To guide the enemy.

12. To guide or assist knowingly the flight of the enemy.

13. To deliver up prisoners of war, hide them, and assist their escape.

14. To destroy, burn, or steal military stores, military buildings, such as depots, barracks, arsenals, military stores, etc.

15. To destroy or spoil military stores, arms, and other articles left on the field of battle by our army or the enemy.

16. To destroy or burn the various means of military communication, such as telegraph wires, railways, bridges and highways, canals, etc., and to cause inconvenience to the military postal service.

17. To destroy, steal, damage, or change the position of signals, indicating posts, placards, etc., rendered necessary by military operations.

18. To prejudice the needs of our army by rendering water not drinkable or by hiding vehicles, commodities, supplies, and fuel.

19. To destroy or prevent the working of aqueducts, or to suppress the electric light.

20. To coin or alter money, notes, and Japanese military assignats and to make use of them whilst being aware of their fraudulent character.

21. To oppose requisitions in general, such as the lodgment or hiring of coolies, or to fail to comply with any requisitions.

22. To prevent by trickery or threat any duty imposed on individuals serving in our army.

23. To be in possession of arms and military stores without authority.

24. To enter ports, batteries, or other prohibited places without permission.

25. To infringe the prohibition against entering or remaining in forbidden radii.

26. To make trenches in the mountains and hills without authority.

27. To inspect, sketch, photograph, or make descriptions of views on land and sea without authority.

28. To plunder articles belonging to the wounded or dead on the field of battle.

29. To exhume or destroy dead bodies on the field of battle or to steal articles from them.

30. To put to death Japanese or allied soldiers.

31. To assassinate or steal with violence.

32. To provide opium, to procure the instruments for smoking it, and a favorable place to enable our soldiers, allies, and other persons attached to the army to make use of it.

33. To commit any other acts detrimental to the Japanese army.

34. To disobey orders given by our army.

35. Acts detrimental to our army of which mention is not made above will be punished according to the military, naval, and penal law, or according to the ordinary penal code of Japan.

303. *Prohibition as to rights and rights of action.*—H. R. Art. XXIII, last par. It is especially forbidden * * * to declare abolished, suspended, or inadmissible in a court of law the rights and rights of action of the nationals of the hostile party.¹

¹ For rule that debts due from citizens of one belligerent to those of another are not extinguished but suspended during war, see *State of Georgia v. Brailsford* (3 Dall., 1), *Ware v. Hylton* (3 Dall., 199, 281), *Williams v. Bruffy* (96 U. S., 176, 186-188), *Dig. Int. Law Moore*, sec. 1155.

304. *General restrictions imposed—Commercial relations.*—The occupant has the unquestioned right to regulate commercial intercourse in occupied territory; i. e., he may prohibit entirely or place such restrictions and limitations upon such intercourse as he considers desirable for military purposes.¹

¹ *Mil. Gov. and Martial Law*, Birkhimer (2d ed.), par. 272 et seq.; *Fleming v. Page* (9 How., 615); *Land Warfare, Opp.*, par. 373.

305. *Censorship of press and correspondence.*—The military occupant may establish censorship of the press and of telegraphic and postal correspondence. He may prohibit entirely the publication of newspapers, prescribe regulations for their publication and circulation and especially in unoccupied portions of the territory and in neutral countries. He is not required to furnish facilities for postal service, but may take charge of them himself, especially if the officials of the occupied district fail to act or to obey his orders.¹

¹ *Vide F. S. R.*, 1914, pars. 419-432.

306. *Means of transportation.*—The military occupant exercises authority over all means of transportation, both public and private within the occupied district, and may seize and utilize the same and regulate their operation.¹

¹ Vide infra pars. 341–343.

307. *Regulation as to taxes.*—H. R. Art. XLVIII. If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

308. *New taxes not to be levied.*—The imposition of taxes being an attribute of sovereignty, no new taxes should be imposed by the occupant. The occupant may, however, levy contributions and requisitions.¹

¹ As to requisitions vide infra pars. 345 et seq. As to contributions vide pars. 351 et seq.

309. *When existing rules may be disregarded.*—If, due to the flight or unwillingness of the local officials, it is impracticable to follow the rules of incidence and assessment in force, then the total amount of the taxes to be paid may be allotted among the districts, towns, etc., and the local authorities be required to collect it as a capitation tax or otherwise.¹

¹ G. O. 101, W. D. 1898. "As the result of military occupation the taxes and duties payable by the inhabitants to the former Government become payable to the military occupant, unless he sees fit to substitute for them other rates or modes of contribution to the expenses of the Government. The moneys so collected are to be used for the purpose of paying the expenses of government under the military occupation, such as the salaries of the judges and the police, and for the payment of the expenses of the army."

310. *Surplus may be used.*—The first charge upon the State taxes is for the cost of local maintenance. The balance may be used for the purposes of the occupant.¹

¹ See note to preceding paragraph.

311. *What included in taxes, tolls, etc.*—The words "for the benefit of the State" were inserted in the article to exclude local dues collected by local authorities. The occupant will supervise the expenditure of such revenue and prevent its hostile use.¹

¹ Holland, *Laws of War on Land*, par. 108. Spaight, *War Rights on Land*, p. 378.

EFFECTS OF OCCUPATION ON THE POPULATION.

312. *Right to enforce obedience.*—The occupant can demand and enforce from the inhabitants of occupied territory such

obedience as may be necessary for the security of his forces, for the maintenance of law and order, and the proper administration of the country.

313. *Oath of allegiance forbidden.*—H. R. Art. XLV. It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile power.¹

¹ Both the British and Boers required an *oath of neutrality*. They also punished those who violated such oaths with terms of imprisonment. The necessity for such oath is not readily apparent, except, perhaps, as a reminder of his obligations, since the inhabitant owes the obligations imposed and can be punished for violations of such obligations under the laws and rules of war. For form of oath required by Great Britain, vide Spaight, War Rights on Land, p. 372.

314. *Must respect persons, religious convictions, etc.*—H. R. Art. XLVI. Family honor and rights, the lives of persons, * * * as well as religious convictions and practice, must be respected.¹

¹ Mr. Spaight, after pronouncing this article the "*magna charta* of war law," says: "One is disheartened when one thinks of requisitions, of contributions, of fines, of reprisals, of houses leveled as a measure of tactics, of a whole town emptied as a military precaution (as Sherman emptied Atlanta and Burrows's brigade emptied Kandahar in 1880), of wide provinces cleared of their habitations and crops, of a thousand instances in which the provisions of Article XLVI have conspicuously not been adhered to, in later-day wars. If an invader had to comply strictly with its terms, that of itself would bring his invasion to an end. An invader must and does interfere with the lives and property of citizens in many ways; even their religious worship and the sanctity of their churches or chapels are not secure from the encroachments of the greedy mawed aggressor, the necessity of war. * * * The fact is that this Article XLVI must be read subject to military necessities. One might add such a proviso as to nearly every article, as Baron Jomini pointed out at the conference of 1874, but after none is the proviso so necessary as after this. So read, the article forbids certain violent acts unless they are demanded by the necessity of overcoming the armed forces of the enemy. Such acts must not be done as a substantive measure of war—they must not be made an end in themselves, but only as a means to the legitimate end of war; that is, the destruction of the other belligerent's fighting force." War Rights on Land, p. 374-375. Vide pars. 333 and 336 infra.

315. *United States rule.*—The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; the persons of inhabitants, especially those of women; and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.¹

¹ "It will therefore be the duty of the commander of the expedition, immediately on his arrival in the islands, to publish a proclamation, declaring that we come not to make war upon the people of the Philippines, nor upon any party or faction among them, but to protect them in their homes, in their employments, and in their personal and religious rights." (Instructions to Gen. Merritt May 28, 1898.) G. O. 100, 1863, art. 37, par. 1.

316. *Reciprocal obligations of inhabitants.*—In return for such considerate treatment, it is the duty of the inhabitants to

carry on their ordinary peaceful pursuits, to behave in an absolutely peaceful manner, to take no part whatever in the hostilities carried on, to refrain from all injurious acts toward the troops or in respect to their operations, and to render strict obedience to the officials of the occupant.¹

¹ "The freedom of the people to pursue their accustomed occupations will be abridged only when it becomes necessary to do so.

"While the rule of conduct of the American commander in chief will be such as has just been defined, it will be his duty to adopt measures of a different kind if, unfortunately, the course of the people should render such measures indispensable to the maintenance of law and order. He will then possess the power to replace or expel the native officials in part or altogether, to substitute new courts of his own constitution for those that now exist, or to create such new or supplementary tribunals as may be necessary. In the exercise of these high powers the commander must be guided by his judgment and his experience, and a high sense of justice." Ins. to Gen. Merritt, May 28, 1898. See also to same effect, G. O. 101, A. G. O., 1898. G. O. 100, 1863, art. 22. "The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property and honor as much as the exigencies of war will admit."

317. *Limitation as to services of inhabitants.*—H. R. Art. LII. Services shall not be demanded from inhabitants except for the needs of the army of occupation. They shall be of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such services shall only be demanded on the authority of the commander in the locality occupied.

318. *General right to requisition services.*—Services of the inhabitants of occupied territory may be requisitioned for the needs of the Army. These will include the services of professional men and tradesmen, such as surgeons, carpenters, butchers, bakers, etc., employees of gas, electric light, and water works, and of other public utilities, and of sanitary boards in connection with their ordinary vocations. The officials and employees of railways, canals, river or coastwise steamship companies, telegraph, telephone, postal, and similar services, and drivers of transport, whether employed by the State or private companies, may be requisitioned to perform their professional duties so long as the duties required do not directly concern the operations of war against their own country.¹

¹ Land Warfare, Opp., par. 388.

319. *Can restore general conditions.*—The occupant can requisition labor to restore the general condition of the public works of the country to that of peace; that is, to repair roads, bridges, railways, and as well to bury the dead and collect the wounded. In short, under the rules of obedience, they may be called upon to perform such work as may be necessary for the ordinary purposes of government, including police and sanitary work.

320. *Can not be forced to construct forts, etc.*—The prohibition against forcing the inhabitants to take part in the opera-

tions of war against their own country precludes requisitioning their services upon works directly promoting the ends of the war, such as construction of forts, fortifications, and entrenchments; but there is no objection to their being employed voluntarily, for pay, on this class of work, except the military reason of preventing information concerning such work from falling into the hands of the enemy.¹

¹The better rule is to pay for all services rendered whenever practicable to do so, since it avoids antagonizing the people against the occupant and forcing stronger adherence to his own government. Vide *Les Lois*, Jacomet, par. 93; *Land Warfare*, Opp., par. 392.

321. *Can not force furnishing information about enemy.*—H. R. Art. XLIV. A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defense.

322. *Interpretation of rule.*—This article was reserved by Austria-Hungary, Bulgaria, Montenegro, Russia, Japan, and Roumania, because it was believed that the prohibition was contrary to the general rule and practice of nations as expressed in G. O. 100, 1863, art. 93, that "All armies in the field stand in need of guides, and impress them if they can not obtain them otherwise." That the impressment of guides was intended to be forbidden by this rule seems evident from the action of the above nations who reserved it, and as well from the discussions at The Hague.¹

¹Spaight, *War Rights on Land*, pp. 368-371. *Les Lois*, Jacomet, art. 95. *Land Warfare*, Opp., par. 382 and note h. Hague Conference, 1907, Actes, Vol. III, pp. 136-141. Mr. Holland places the above rule (H. R. XLIV) in square brackets, to indicate that it possesses but little value. *War on Land*, art. 104.

323. *The practice as to guides.*—As to the countries making reservations, the old practice will prevail. Officers of all armies with experience in the field know that guides are absolutely essential to success in practically all military operations in the field in unknown enemy country. Whenever, therefore, guides are in fact essential to success, and, for that reason, a military necessity, the foregoing rule must give way to and be interpreted as subordinate to such military necessity.¹

¹No invader can be expected to forego the chances of success or imperil seriously his operations against the enemy by foregoing a well-understood and well-established practice of armies in the field as to the employment of a few individuals of his enemy as guides. Moreover, he must be protected in the use of such guides, because the success of his operations and the safety of his army are and must be his first consideration before which everything else must give way and be subordinated; and, as said by Mr. Lieber, "Military government—martial law—affects chiefly the police, etc., * * * and refers mainly to the support and efficiency of the army, its safety, and the safety of its operations." G. O. 100, 1863, art. 10.

OFFICIALS IN OCCUPIED TERRITORY.

324. *Oath of officials.*—The occupant may require such officials as are continued in their offices to take an oath to perform their duties conscientiously and not to act to his prejudice. Every such official who declines to take such oath may be expelled; but, whether they do so or not, they owe strict obedience to the occupant.¹

¹ G. O. 100, 1863, art. 26, states: "Commanding generals may cause the magistrates and civil officers of the hostile country to take the oath of *temporary allegiance* or an oath of *fidelity* to their own victorious Government or rulers, and they may expel anyone who declines to do so." Such oath is not essential, and should not be insisted upon, especially when the form of the oath implies allegiance which pertains to sovereignty.

325. *Retention of officials.*—It is to the best interests of the occupant, and more especially to that of the population, that at least some of the civil officials should remain in their offices in order to assist in the maintenance of order, as well as for the safety of the inhabitants themselves and of their property.¹

¹ Hague Conference, Actes, 1899, p. 148.

326. *Municipal officials should remain.*—Municipal officials, including the judges and magistrates, sanitary and police authorities, as well as the staffs of museums, libraries, and all establishments entitled to special protection during hostilities, should remain and be retained in office if consistent with the safety of the Army. The political officials, as well as railway, postal, telegraph, and telephone officials, will probably cease work.¹

¹ Land Warfare, Opp., par. 395.

327. *Salaries of officials.*—The salaries of civil officials of the hostile government who remain in the invaded territory, and continue the work of their offices, especially those who can properly continue it under the circumstances arising out of the war—such as judges, administrative or police officers, officers of city or communal governments—are paid from the public revenues of the invaded territory, until the military government has reason wholly or partially to dispense with their services. Salaries or incomes connected with purely honorary titles are always suspended.¹

¹ G. O. 100, 1863, art. 39.

328. *Resignation of officials.*—An official of the hostile government who has accepted service under the occupant should be permitted to resign and should not be punished for exercising such privilege. Such official should not be forced to exercise his functions against his will.¹

¹ Brussels Conference, p. 243; Spaight, War Rights on Land, p. 365.

329. *Removal of civil officials.*—By virtue of his powers of control the occupant is duly empowered to remove officials of every character. He will on principle remove political officials. Any official considered dangerous to the occupant may be removed, made a prisoner of war, or expelled from the occupied territory.

330. *Punishment of civil officials.*—Acts of civil officers that are harmful or injurious to the occupant will be dealt with under the laws of war. Other wrongs or crimes committed by them will be punished according to the law of the land.

CHAPTER IX.

TREATMENT OF ENEMY PROPERTY.

331. *Destruction and seizure of.*—H. R. Art. XXIII, par. (g). It is especially forbidden * * * to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

332. *General rule as to war right to seize and destroy property.*—The rule is that in war a belligerent can destroy or seize all property of whatever nature, public or private, hostile or neutral, unless such property is specifically protected by some definite law of war, provided such destruction or seizure is imperatively demanded by the necessities of war.¹

¹This right is recognized by comparison of H. R. XXIII and XLVI. The only property safeguarded is the matériel of the mobile sanitary formations under the Geneva Convention.

For the American rule, see G. O. 100, 1863, art. 15, ante par 12. The British rule is given as follows: "The 'necessities of war' may obviously justify not only the seizure of private property but even the destruction of such property and the devastation of whole districts." Spaight, *War Rights on Land*, p. 116.

The German rule is as follows: "No damage must be done, not even the most trivial, which is not necessitated by military reasons. Every damage—the very greatest—is justifiable if war demands it or if it is a consequence of the proper carrying on of war." *Kriegsbrauch*, p. 54.

PRIVATE PROPERTY.

333. *Must be respected.*—H. R. XLVI, par. 1. Private property * * * must be respected.

334. *Devastation.*—The measure of permissible devastation is found in the strict necessities of war. As an end in itself, as a separate measure of war, devastation is not sanctioned by the law of war. There must be some reasonably close connection between the destruction of property and the overcoming of the enemy's army. Thus the rule requiring respect for private property is not violated through damage resulting from operations, movements, or combats of the army; that is, real estate may be utilized for marches, camp sites, construction of trenches, etc. Buildings may be used for shelter for troops, the sick and wounded, for animals, for reconnoissance, cover, defense, etc. Fences, woods, crops, buildings, etc., may be demolished, cut down, and removed to clear a field of fire, to construct bridges, to furnish fuel if imperatively needed for the army.¹

¹Vide Hall, *Int. Law* (5th ed.), p. 535; Spaight, *War Rights on Land*, p. 112 et seq.; *Dig. Int. Law*, Moore, sec. 1113.

335. *American rule.*—This rule (respect for private property, etc.) does not interfere with the right of the victorious invader

to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, boats or ships, lands, and churches, for temporary and military use.¹

¹ G. O. 100, 1863, art. 37, par. 2.

336. *Confiscation*.—H. R. Art. XLVI, par. 2. Private property can not be confiscated.¹

¹ The seizure of enemy property by the United States as prize of war on land, *jure belli*, is not authorized by the law of nations, and can be upheld only by an act of Congress. *United States v. 1,756 Shares Capital Stock* (5 Blatchf. 231).

"It is no bar to the recovery of a claim that it was confiscated during the rebellion by a Confederate court, because due to a loyal citizen." (*Stevens v. Griffith*, 111 U. S., 48.)

"The Government recognized to the fullest extent the humane maxims of the modern law of nations, which exempt private property of non-combatant enemies from capture as booty of war." (*U. S. v. Klein*, 13 Wall., 128, 137; *Lamar v. Browne*, 92 U. S., 194.)

"If property be such that it ministers directly to the strength of the enemy and its possession alone enables him to supply himself with the munitions of war and to continue the struggle, then it may be confiscated." (*Prize cases*, 2 Black, 687.)

337. *Booty*.—All captures and booty belong, according to the modern law of war, primarily to the Government of the captor.

Prize money whether on land or sea can now only be claimed under local law.¹

¹ "The rightful capture of movable property on land transfers the title to the Government of the captor as soon as the capture is completed." *Young v. U. S.*, 97 U. S., 39, 60.

"This rule as to property on land has received very important qualifications from usage, from the reasoning of enlightened publicists, and from judicial decisions. It may now be regarded as substantially restricted 'to special cases dictated by the necessary operation of the war,' and as excluding in general the seizure of the private property of pacific persons for the sake of gain." *Mrs. Alexander's Cotton*, 2 Wall., 404, 419. *Briggs v. U. S.*, 143 U. S., 346, 355-358.

As to abandoned and captured property act, see *Dig. Int. Law*, Moore, sec. 1152.

338. *Private gain by officers and soldiers prohibited*.—Neither officers nor soldiers are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate. Offenses to the contrary committed by commissioned officers will be punished with cashiering or such other punishment as the nature of the offense may require; if by soldiers, they shall be punished according to the nature of the offense.¹

¹ G. O. 100, 1863, art. 46.

339. *Pillage*.—H. R. Art. XLVII. Pillage is formally forbidden.¹

¹ "Pillage was defined by Prof. Holland as 'Booty which is not permitted.' He refers to the following offenses for which the death penalty or any less punishment may be inflicted when committed by a soldier on active service: (1) Leaving his commanding officer to go in search of plunder; (2) committing any offense against the property or

person of any inhabitant of or resident in the country in which he is serving; (3) breaking into any house or other place in search of plunder." Vide Spaight, *War Rights on Land*, p. 188.

Baron Jomini remarked in the Brussels Conference, "There is a kind of booty which is allowed on the field of battle, for instance, that which consists of horses, munitions, cannon, etc.—it is the booty gained at the cost of private property which the committee wish to forbid."

340. Private property can be seized only by way of military necessity for the support or other benefit of the Army or of the occupant. All destruction of property not commanded by the authorized officer, all pillage or sacking, even after taking a town or place by assault, are prohibited under the penalty of death, or such other severe punishment as may seem adequate to the gravity of the offense. A soldier, officer, or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.¹

¹ G. O. 100, 1863, arts. 38 and 44.

341. *Private property susceptible of direct military use.*—H. R. Art. LIII, par. 2. All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is declared.

342. *What included in rule.*—The foregoing rule includes everything susceptible of direct military use, such as cables, telephone and telegraph plants, horses, and other draft and riding animals, motors, bicycles, motorcycles, carts, wagons, carriages, railways, railway plants, tramways, ships in port, all manner of craft in canals and rivers, balloons, airships, aeroplanes, depots of arms, whether military or sporting, and in general all kinds of war material.¹

¹ Land Warfare, Opp., par. 415.

343. *Destruction of such property.*—The destruction of the foregoing property and all damage to the same is justifiable if it is required by the exigencies of the war.¹

¹ Spaight, *War Rights on Land*, pp. 117 et seq., 410.

344. *Submarine cables.*—H. R. Art. LIV. Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.¹

¹ The Institute of Int. Law in 1902 agreed to the following rules:
1. A submarine cable uniting two neutral territories is inviolable.
2. A cable uniting the territories of two belligerents or of two parts of the territory of one of the belligerents may be cut anywhere, except in the territorial waters or the neutralized waters of a neutral State.

3. A cable uniting a neutral territory to the territory of one of the belligerents may not under any circumstances be cut in the territorial or neutralized waters of a neutral State. In the high sea this class of cable can be cut only if an effective blockade exists and within the limits of the line of the blockade, and the cable must be restored with the least practicable delay; it may always be cut on the territory or in the territorial waters of an enemy's territory up to a distance of 3 marine miles from low-water mark.

4. The liberty a neutral State has of transmitting messages does not imply the right to use the cable, or allow it to be used, clearly to assist one of the belligerents.

5. In the application of these rules no difference is to be made between cables belonging to the State and those belonging to individuals, or between cables belonging to the enemy and to neutrals.

REQUISITIONS.

345. *Requisitions.*—H. R. Art. LII. Requisitions in kind shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.¹

¹For form of requisition receipt see Appendix, this chapter.

346. *What may be requisitioned.*—Practically everything may be requisitioned under this article that is necessary for the maintenance of the Army and not of direct military use, such as fuel and food supplies, clothing, wine, tobacco, printing presses, type, etc., leather, cloth, etc.¹ Billeting of troops for quarters and subsistence is also authorized.²

¹Mr. Spaight says that "practically everything under the sun" may be requisitioned, and cites a case of a bootjack being requisitioned, and also that the Fifth Army Corps staff requisitioned six eggs. War Rights on Land, p. 402. Vide F. S. R., 1914, arts. 290-293. Marshal Oyama's instructions in the Chino-Japanese War were that "Requisitions are to be limited to objects essential for the subsistence or lodgment of troops, or discharge of fatigue duties, works of transport and organization of services for the transmission of messages. If it is necessary to requisition anything not here enumerated, the sanction of the commander in chief must be obtained." Takahashi, pp. 155-160. For articles and services that may be requisitioned under French law, see Bonfils, p. 702, par. 1211: "Subject to the right of requisition are all objects and everything the providing of which is necessitated by the military interest of the occupant, when even the local legislation would not permit requisition to the national government. Such is the principle. (Compare art. 52, Hague Rules.) Here are the cases of application. Purveyance can be demanded for the following: Lodging in the house of the inhabitant and cantonment for the men and horses, mules, and cattle, in available places, as also necessary buildings for the personnel and matériel of service of any kind and belonging to the army. Subsistence for officers and men lodged with the inhabitant, according to the custom of the country. Provisions and fuel for the army, forage for horses, mules, and cattle, and bed straw for troops

encamped or lodged in huts. Teams and means of transportation of every kind, including the personnel. Boats or small craft found on streams, rivers, lakes, or canals. Mills and bakeries. Materials, tools, machinery, and equipments necessary for the construction and repair of roads. Treatment of the sick and wounded in the house of the resident. Clothing, articles of equipment, camping equipage, horse furniture, bedding. Drugs, medicines, and first-aid articles. See French laws and decrees on military requisitions."

² As to billeting of troops, see III amendment to the Const. U. S. and F. S. R., 1914, par. 241.

347. *Method of requisitioning.*—Requisitions must be made under the authority of the commander in the locality.¹ No prescribed method is fixed, but if practicable requisitions should be accomplished through the local authorities by systematic collection in bulk. They may be made direct by detachments if local authorities fail for any reason.² Billeting may be resorted to if deemed advisable.³

¹ Note that it differs from the rule as to contributions, which require the order of the commander in chief. It is not necessary to actually show the order of the commander. Vide par. 352, par. 1, *infra*.

² It is generally recognized by all States that the assistance of local authorities is advisable, since in addition to the avoidance of contact with troops and inhabitants, the more even distribution of supplies furnished by the inhabitants is secured. The direct method was resorted to in the Civil War, and especially by Gen. Sherman, because "the country was sparsely settled, with no magistrates or civil authorities, who could respond to requisitions, as is done in all wars in Europe; so that this system of foraging was indispensable to our success." *Memoirs*, Vol. II, p. 183.

In case the direct method (foraging) is resorted to, it is the practice of all countries to send a commissioned officer in charge of the detachment. F. S. R., 1914, par. 290.

³ Subsisting troops by billeting can generally be resorted to only in case of small commands or when troops are scattered. F. S. R., 1914, par. 241.

348. *The amount taken.*—The expression "needs of the army" was adopted rather than "necessities of the war" as more favorable to the inhabitants, but the commander is not thereby limited to the absolute needs of the troops actually present.¹ The object was to avoid reducing the population to starvation.²

¹ It was stated in The Hague Convention that "occupied territory is not to be systematically exhausted." *Actes*, Vol. III, p. 149.

² The practice in the British Army is to leave three days' supplies with residents of municipalities and one week's supply with the inhabitants of farms and outlying district. F. S. R., Part II, p. 63. The Japanese were instructed to "take into account the competence of the inhabitants to supply what was demanded." Takahashi, p. 159.

349. *Fixing prices.*—The prices of articles requisitioned to be paid for, can and should be fixed by the commander. The prices of commodities on sale may also be regulated and limits placed on the hours and places of trading. All authorities agree that it is good policy to pay cash if possible and to take up receipts as soon as possible.¹

¹ F. S. R., 1914, par. 290. See also Land Warfare, *Opp.*, art. 421, Spaight, *War Rights on Land*, p. 407. The Japanese in 1904 prescribed: "5th. The price of each commodity should be strictly reasonable, and

whoever demands intentionally an exorbitant price or commits an act of fraud shall be punished." Ariga, p. 457. In the Chinese War the rule was that requisitions shall be paid for "at a rate deemed appropriate, though not necessarily so large as to obtain the consent of the owners of the requisitioned articles." Takahashi, p. 159. The British in South Africa stopped cash payments and made receipts non negotiable, but payable at the end of the war.

350. *Method of enforcing.*—If cash is paid coercion will seldom be necessary. The coercive measures adopted will be limited to the amount and kind necessary to secure the articles requisitioned.¹

¹ The practice of the Germans in the War of 1870–1 was "to increase the amount demanded if it were not immediately forthcoming, and then, if the inhabitants still proved recalcitrant, to bombard and burn the village. Often hostages were taken to secure levies in money or kind. At Nancy a threat to shoot certain workmen was made, but not executed." Mr. Spaight says: "It is the experience of history that an occupant can usually seize, in land war, what he wants; and if he can not, the threat of either carrying off the prominent citizens as prisoners of war (hostages) or of burning down a few houses usually suffices to bring the people to terms." War Rights on Land, p. 407. Vide, as to bombardment of undefended towns, etc., in naval warfare, Hague Con., IX, Art. III, 1907.

CONTRIBUTIONS.

351. *Contributions.*—H. R. Art. XLIX. If, in addition to the taxes mentioned in the above article (XLVIII), the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

352. *Method of levying contributions.*—H. R. Art. LI. No contribution shall be collected except under a written order, and on the responsibility of a commander in chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.¹

For every contribution a receipt shall be given to the contributor.

¹ Vide par. 309, supra.

353. *Penalty for individual acts of inhabitants.*—H. R. Art. L. No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of acts of individuals for which they can not be regarded as jointly and severally responsible.

354. *Collective punishments authorized.*—Collective punishments may be inflicted for such offenses as the community has committed or permitted to be committed. Such offenses are not necessarily limited to violations of the laws of war. Any breach of the occupant's proclamations or martial-law regulations may be punished collectively. For instance, a town or village may be held collectively responsible for damage done

to railways, telegraphs, roads, and bridges in the vicinity.¹ The most frequent form of collective punishment consists in fines.²

¹ This rule does not prejudice the question of reprisals, as to which see *infra*, pars. 379 et seq.

² The Germans in 1870-71 imposed collective responsibility, which made not only the commune from which the delinquent came but also that in which the offense was committed liable for the offense. Vide Spaight, *War Rights on Land*, pp. 408-409.

REAL PROPERTY OF A STATE.

355. *Occupant the administrator and usufructuary of.*—H. R. Art. LV. The occupying State shall be regarded as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.¹

¹ The following table is taken from Spaight, *War Rights on Land*, p. 418:

"Tabular statement showing the treatment of property in an occupied country."

Property may be either:

I. Confiscable, when it becomes the property of the occupant outright, no indemnity or compensation being due (C).

II. Not confiscable, but subject to sequestration by the occupant, who must, however, return the property at the peace or pay compensation (S).

III. Neither confiscable nor sequestrable, but subject to be requisitioned (for barracks or billets, e. g., services or supplies) (R).

IV. Subject to usufruct, i. e., it may be exploited by the occupant, who must not, however, alienate, damage, or destroy the substance (U).

CLASSIFICATION OF PROPERTY UNDER THE ABOVE HEADINGS.

Nature of the property.	Public property.	Private property
Movables:		
(1) Money, notes, realizable securities.....	C	R
(2) War material—depots of arms, uniforms, army stores, and, generally speaking, property directly adaptable to war.....	C	S
(3) Railway material, telegraphs, shore ends of cables, wagons, horses, motor cars, airships, boats, and other means of transit and communication.....	C ¹	S
(4) Movable property not directly adaptable to warlike purposes.....	R	R
Immovables:		
(1) Institutions devoted to religion, ² charity, education, arts, and sciences.....	R	R
(2) Other buildings, lands, forests, and agricultural undertakings.....	U	R
The property of communes—e. g., "town halls, waterworks, gas works, police stations" (Holland, <i>Laws and Customs of War</i> , p. 40).....	R	R
Shore ends of submarine cables connected with a neutral country.....	S	S

¹ Whether State-owned railway rolling stock is to be retained by captor or restored should be specially settled in the treaty of peace.

² Includes churches, temples, mosques, synagogues, etc., without any distinction as to the nature of the religious cult (Hague I. B. B., p. 152).

As to neutral property in an occupied country, see chapter XV.
N. B.—Imperative military necessity may justify the destruction of any of the above kinds of property.”

356. *What occupant may do with such property.*—The occupant does not have the absolute right of disposal or sale of enemy's real property. As administrator or usufructuary he should not exercise his rights in such wasteful and negligent manner as to seriously impair its value. He may, however, lease or utilize public lands or buildings, sell the crops, cut and sell timber, and work the mines. A lease or contract should not extend beyond the conclusion of the war.¹

¹ Land Warfare, Opp., par. 427. Spaight, War Rights on Land, p. 416. The rules of usufruct of the invaded territory should be applied especially as to forests, which should not be treated in a barbarous manner.

357. *State real property susceptible of direct military use.*—Real property of a State which is of direct military use, such as forts, arsenals, dockyards, magazines, barracks, railways, canals, bridges, piers, wharves, remain in the hands of the occupant until the close of the war, and may be destroyed or damaged, if deemed necessary, in military operations.¹

¹ Rules adopted by the Japanese upon the occupation of Dalny-Ariga, pp. 354-355.

I. PUBLIC PROPERTY OF THE ENEMY.

A. LANDED PROPERTIES.

(a) The buildings, grounds, and other real estate belonging to the Government will be utilized by our army or will be a source of revenue to it. The army will destroy them only in extreme necessity of war. Outside of this case, it must manage them as a usufruct and never claim the property for itself. However, the ordnance depots, telegraph, and telephone establishments will be seized.

(b) The landed estates of the city of Dalny, and the establishments devoted to public worship, charity, fine arts, and sciences will be protected and considered as private properties.

B. PERSONAL PROPERTIES.

(a) All moneys, securities, arms, munitions, railroad material, wagons, horses, vessels, provisions, clothing, and all objects fit for use in war, will be seized.

(b) The properties belonging to the city of Dalny and institutions of public worship, charity, education, fine arts and sciences, will be treated as private properties.

II. PRIVATE PROPERTY.

A. REAL PROPERTY.

(a) Only grounds, buildings, or real properties, the owners of which have left without intrusting them to administrators, can be temporarily occupied by our army.

(b) Common landed property will be placed for our use by way of request only.

B. PERSONAL PROPERTY.

(a) Only railroad material, vessels, arms, munitions, horses, stores, clothing, and all articles that can be used directly in war will be appropriated.

(b) Other private properties shall be turned to account of our army by right of taxation, contribution, or requisition only.

III. PROPERTY OF UNKNOWN ORIGIN.

When it is not clear whether property is public or private, it will be temporarily regarded as public property upon condition that the principle of private property is applied to it if, subsequently, the private ownership is clearly proved.

REMARKS.

1. As the administration of the Railway Co. of Eastern China may be considered as a State undertaking, everything owned by it or connected with its working will be considered and treated as property of the State.

2. As the greater part of the property of the town of Dalny is so situated that it is impossible to ascertain definitely the ownership, especially after the destructive acts of the Russians, the pillage and devastation of marauding bands and of the Chinese inhabitants themselves, no provision can be made with respect thereto. That to which the owners can prove their right by incontestable evidence will be treated according to the principles of international law.

3. Private property seized will be restored and the question of indemnity settled when peace is reestablished. For every article of private property seized by the army, a certificate will, as soon as possible, be furnished.

4. When our army makes use of property the ownership of which is not certain, the designation of these articles, their number, and any information as to the place where they were found, etc., will, as far as possible, be recorded.

358. *Property of municipalities, etc.*—H. R. Art. LVI. The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art, science, is forbidden, and should be made the subject of legal proceedings.

359. *Authorized treatment of.*—The property included in the foregoing rule may be utilized in case of necessity for quartering the troops, the sick and wounded, horses, stores, etc., and generally as prescribed for private property.¹ Such property must, however, be secured against all avoidable injury, even when located in fortified places which are subject to seizure or bombardment.²

¹ Vide ante pars. 333–335.

² Vide ante pars. 225–228. Sieges and bombardments.

G. O. 100, 1863, art. 35: "Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded."

360. *Public movable property.*—H. R. Art. LIII, par. 1. An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.¹

¹ On January 23, 1898, the firm of Smith, Bell & Co., of Manila (bankers), were required to pay to the military authorities \$100,000 for a draft for that amount drawn in favor of one Mariano Trias, who was the custodian of the funds, or treasurer, of the Philippine In-

surgents. The original draft, which was not in the possession of the United States authorities, passed through several hands and was finally located in the possession of a certain Filipino, who was warned that if he attempted to collect the amount, or to let same out of his possession, his house and lands would be confiscated to the United States.

The action of the military authorities was sustained. Vide Magoon's reports, p. 261.

361. *Two classes of movable property of enemy.*—All movable property belonging to the State directly susceptible of military use may be taken possession of as booty and utilized for the benefit of the invader's Government. Other movable property, not directly susceptible of military use, must be respected and can not be appropriated.¹

¹ It is usual to accord protection to Crown pictures, jewels, collections of art; and archives, but papers connected with the war may be secured, even if they pertain to archives. Land Warfare, Opp., par. 431.

362. *Property of unknown ownership.*—Where the ownership of property is unknown—that is, where there is any doubt as to whether it is public or private, as frequently happens—it should be treated as public property until ownership is definitely settled.¹

¹ The application of this rule will avoid fraudulent transfer of title of public property to private individuals. Land Warfare, Opp., par. 432.

APPENDIX.

The following blanks were prepared in the office of the Quartermaster's Corps for use of officers in making requisitions. They are issued in triplicating books so arranged that one copy can be sent to proper headquarters, one copy given to the party from whom articles are requisitioned, and one copy retained.

[Field Form No. —.]

Not negotiable.

Receipt for supplies in enemy's country.

Received from

P. O. Address

Date, 19...

Quantity.	Unit.	Article.	Condition.
.....
.....
.....

I certify that I have received the above stores. That I have (have not) paid for same and that they will be taken up and accounted for on my
..... for 19.....

....., Quartermaster.
Station:

(Signature of person furnishing supplies.)

Authority

Under Art. 52, Hague Convention October 18, 1907, respecting laws and customs of war on land. 32 Stats., Part 2, Page 1823.

Instructions to holder.

This receipt should be delivered to

.....
(Name of disbursing officer.)at
(Address of disbursing officer.)

within 30 days of its date.

The holder will request a certificate of acknowledgment at the time of turning in this receipt, which is intended to safeguard his interests in case of loss of this receipt while in transit or during adjustment.

The holder is informed that this receipt will be examined and inquired into and that he may be required to present satisfactory evidence as to his title, etc., to the property taken before payment is made.

No payment can be made under any circumstances whatever until this receipt has been turned in.

CHAPTER X.

PENALTIES FOR VIOLATIONS OF THE LAWS OF WAR.

363. *Violations by belligerent party.*—H. Con. IV, Art. III. A belligerent party which violates the provisions of the said regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.¹

¹ See also Hague Con., IV, Art. I; H. R., Art. LVI, par. 2; and Gen. Con., art. 28.

364. *Penalties for States.*—From the inherent nature of war as a last remedy of States, and from the nature of governments themselves, no penalties can be directed against the State itself, although certain practical measures are recognized in international law for securing the legitimate conduct of war by belligerents which will be considered under the following heads: (a) Public complaints; (b) punishment of individuals; (c) reprisals or retaliation; and (d) taking hostages.

(A) COMPLAINTS.

365. *Complaints.*—(1) Complaints through the public, and especially foreign, press have force solely through the formation of adverse public opinion, which no nation at war can afford to disregard.

(2) Complaints sent through neutral States—the only channel of diplomatic intercourse—may result in mediation or good offices, or intervention.¹

¹ Ariga, p. 253.

(3) Complaints sent direct by parlementaires made use of between commanders of belligerent forces produce results in the future avoidance of acts complained of or in the punishment of offenders for violations of the laws of war.²

² Ariga, p. 286.

(B) PUNISHMENT OF INDIVIDUALS.

WAR CRIMES.

366. *Offenses committed by armed forces.*—The principal offenses of this class are: Making use of poisoned and otherwise forbidden arms and ammunition; killing of the wounded; refusal of quarter; treacherous request for quarter; maltreat-

ment of dead bodies on the battle field; ill treatment of prisoners of war; breach of parole by prisoners of war; firing on undefended localities; abuse of the flag of truce; firing on the flag of truce; abuse of the Red Cross flag and emblem; and other violations of the Geneva Convention; use of civilian clothing by troops to conceal their military character during battle; bombardment of hospitals and other privileged buildings, improper use of privileged buildings for military purposes; poisoning of wells and streams; pillage and purposeless destruction; ill-treatment of inhabitants in occupied territory.¹ Individuals of the armed forces will not be punished for these offenses in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall.

¹ Land Warfare, Opp., par. 118.

367. *Effect of disregard of war law by entire corps.*—When an entire corps, or body of troops, systematically disregards the laws of war, e. g., by refusal of quarter, any individuals belonging to it who are taken prisoners may be treated as implicated in the offense.¹

¹ Laws of War on Land, Holland, par. 118.

368. *Refusal of quarter.*—All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none.¹

¹ G. O. 100, 1863, art. 62: "Quarter having been given to an enemy by American troops, under a misapprehension of his true character, he may, nevertheless, be ordered to suffer death if, within three days after the battle, it be discovered that he belongs to a corps which gives no quarter." G. O. 100, 1863, Art. 66. Vide par. 183, supra.

369. *Hostilities committed by individuals not of armed forces.*—Persons who take up arms and commit hostilities without having complied with the conditions prescribed for securing the privileges of belligerents, are, when captured by the enemy, liable to punishment for such hostile acts as war criminals.

370. *War rebels.*—War rebels are persons within an occupied territory who rise in arms against the occupying or conquering army, or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in small or large bands, and whether called upon to do so by their own, but expelled government or not. They are not prisoners of war; nor are they, if discovered and secured before their conspiracy has matured to an actual rising or armed violence.¹

¹ G. O. 100, 1863, art. 65.

371. *Highway robbers and pirates of war.*—Men, or squads of men, who commit hostilities, whether by fighting, or by inroads

for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers—such men, or squads of men, are not public enemies, and, therefore, if captured, are not entitled to the privileges of prisoners of war, but shall be treated summarily as highway robbers and pirates.¹

¹ G. O. 100, 1863, art. 82.

372. *Acts punished as war treason.*—Some of the principal acts punished as treasonable by belligerents in invaded territory, when committed by the inhabitants, are espionage, supplying information to the enemy, damage to railways, war material, telegraphs, or other means of communication; aiding prisoners of war to escape; conspiracy against the armed forces of the enemy or members thereof; intentional misleading of troops while acting as guides; voluntary assistance to the enemy by giving money or serving as guides; inducing soldiers to serve as spies, to desert, or to surrender; bribing soldiers in the interest of the enemy; damage or alteration to military notices and signposts in the interests of the enemy; fouling sources of water supply and concealing animals, vehicles, supplies, and fuel in the interest of the enemy; knowingly aiding the advance or retirement of the enemy; circulating proclamations in the interests of the enemy.¹

¹ Land Warfare, Opp., par. 445.

373. *Armed prowlers.*—Armed prowlers, by whatever names they may be called, or persons of the enemy's territory, who steal within the lines of the hostile army for the purpose of robbing, killing, or of destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to the privileges of the prisoner of war.¹

¹ G. O. 100, 1863, art. 84.

374. *Marauders.*—Marauders are individuals, either civilians or soldiers, who have left their corps, and who follow armies on the march or appear on battlefields, either singly or in bands, in quest of booty, and rob, maltreat, or murder stragglers and wounded, and pillage the dead. Their acts are considered acts of illegitimate warfare, and the punishment is imposed in the interest of either belligerent.¹

¹ The foregoing definition is taken from Land Warfare, Opp., par. 488. See also *Curry v. Collins*, 37 Mo., 324, 328, where the court says: "A marauder is one who while employed in the army as a soldier commits larceny or robbery in the neighborhood of the camp or while wandering away from the army (2 Bouv. Law Dict., 133). But in

the modern and metaphysical sense of the word, as now sometimes used in common speech, the word seems to be applied to a class of persons who are not a part of any regular army, and are not answerable to any military discipline, but who are mere lawless banditti, engaged in robbery, murder, and all conceivable crimes." See pars. 112 and 171.

375. *Other crimes.*—There are many other crimes or offenses which are the result of war and which a belligerent may forbid and punish in the maintenance of order and the safety of his army, such as evasion of censorship regulations; making false claims for damage; making false accusations against the troops; furnishing liquor to soldiers; being in possession of animals, stores, or supplies pertaining to the army, and, generally, neglect and disobedience of orders of the Government, including police and sanitary regulations. All such crimes should be defined and the liability to punishment therefor made known to the inhabitants.¹

¹ Land Warfare, Opp., par. 446. See also note 2 to par. 302, supra.

376. *Trials.*—In every case trial of individuals before military or other courts designated by the belligerent should precede punishment.¹

¹ Hague Conference, 1890, p. 146.

377. *Punishments.*—All war crimes are subject to the death penalty, although the fact of trial indicates that a lesser penalty may be pronounced. The punishment should be deterrent, and in imposing a sentence of imprisonment it is not necessary to take into consideration the end of the war, which fact does not necessarily limit the imprisonment imposed. Any other construction of this would result in belligerents imposing the extreme penalty of death in all cases.¹

¹ Land Warfare, Opp., pars. 450–451.

378. Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred.¹

¹ G. O. 100, 1863, art. 47. See also A. W. 58.

(C) REPRISALS.

379. *Reprisals.*—Reprisals are acts of retaliation, resorted to by one belligerent against the enemy individuals or property for illegal acts of warfare committed by the other belligerent, for the purpose of enforcing future compliance with the recognized rules of civilized warfare.¹

¹ The following rules were adopted at the Inst. of Int. Law at Oxford, arts. 85 and 86:

"Reprisals are formally forbidden in all cases in which the wrong complained of has been redressed.

"In the grave cases in which reprisals appear to be an imperious necessity, the manner of inflicting them, and their extent, must not be disproportioned to the infraction committed by the enemy.

"They can only be inflicted under the authority of the commander in chief.

"They must in all cases take account of the laws of humanity and morality."

380. *Retaliation indispensable.*—The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch. Yet civilized nations acknowledge retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage.¹

¹ G. O. 100, 1863, art. 27.

381. *Retaliation not resorted to for revenge.*—Retaliation will, therefore, never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and, moreover, cautiously and unavoidably; that is to say, retaliation shall only be resorted to after careful inquiry into the real occurrence, and the character of the misdeeds that may demand retribution. Unjust or inconsiderate retaliation removes the belligerents farther and farther from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages.¹

¹ G. O. 100, 1863, art. 28.

382. *Who may commit the illegal acts causing reprisals.*—The illegal acts of warfare may be committed by a government, by its military commanders, or by a community or individuals thereof whom it is impossible to apprehend, try, and punish.

383. *Subjects of retaliation.*—All prisoners of war are liable to the infliction of retaliatory measures.¹ Persons guilty of no offense whatever may be punished as retaliation for the guilty acts of others.

¹ G. O. 100, 1863, art. 59, par. 2.

384. *Who may resort to retaliation.*—Reprisals should never be resorted to by individual soldiers but solely under the direct orders of a commander.¹

¹ Land Warfare, Opp., par. 455.

385. *Procedure.*—The rule requiring careful inquiry into the real occurrence will always be followed unless the safety of the troops requires immediate drastic action and the persons who actually committed the offense can not be ascertained.¹

¹ See par. 381, ante. Spaight, War Rights on Land, p. 469; Opp., Land Warfare, par. 456.

386. *Form of reprisal.*—The acts resorted to as reprisal need not conform to those complained of by the injured party, but

should not be excessive or exceed the degree of violence committed by the enemy. Villages or houses, etc., may be burned for acts of hostility committed from them where the guilty individuals can not be identified, tried, and punished. Collective punishments may be inflicted either in form of fine or otherwise.¹

¹ See note 2, par. 354, supra. Also Spaight, War Rights on Land, p. 464-465; Land Warfare, Opp., par. 459. The Germans in 1870-1 by way of reprisals for hostile acts committed by inhabitants on troops, convoys, etc., exacted fines or burned buildings. At Chammes the Casino was burned. The village of Fontenay was burned and a fine of 10,000,000 francs levied on account of the destruction of the railroad bridge near the village with the connivance of the inhabitants.

(D) HOSTAGES.

387. *Hostages.*—Hostages have been taken in recent wars for the following purposes: (1) To insure proper treatment of wounded and sick when left behind in hostile localities; (2) to protect the lives of prisoners of war and railroad officials who have fallen into the hands of irregular troops or whose lives have been threatened; (3) to protect lines of communication by placing them on engines of trains in occupied territory; (4) to insure compliance with requisitions, contributions, etc. When a hostage is accepted he is treated as a prisoner of war.¹

¹ German practice: F. S. R., p. 143. "It is a good plan to make each locality in the neighborhood of a telegraph or telephone line responsible, under heavy penalties, for the preservation of a particular section."

In 1870 in France the Germans directed that all trains in Alsace and other occupied districts "be accompanied by inhabitants who are well known and generally respected, and who shall be placed upon the locomotive, so that it may be made known that every accident caused by the hostility of the inhabitants will, in the first place, injure their countrymen."

The same practice prevailed in South Africa under proclamation of Lord Roberts of June 16, 1900, although this proclamation was subsequently repealed. In the war of 1861-1865, Gen. Sherman caused a suspected place to be tested by drawing a carload of prisoners, or of citizens implicated, over it by a long rope. See McClellan's Own Story, pp. 326-327. Sheridan Memoirs, Vol. I, pp. 380-381. Grant's Memoirs, p. 558.

The Germans in 1870-1 took hostages at Chatillon for the safety of 200 prisoners in the hands of Garibaldi, who had threatened to kill them, and at Remiremont for some railway officials who had been carried off. Spaight, War Rights on Land, pp. 466 et seq.

Vide requisitions, supra, par. 350, and note.

CHAPTER XI.

NEUTRALITY.

388. *Definition.*—Neutrality on the part of a State not a party to the war, consists in refraining from all participation in the war, and in exercising absolute impartiality in preventing, tolerating, and regulating certain acts on its own part, by its subjects and by the belligerents. It is the duty of belligerents to respect the territory and rights of the neutral States.¹

¹ The written law on the subject of neutrality in regard to land warfare is found in conventions III and V of The Hague of 1907.

The purpose and effect of the rules laid down at The Hague in convention V were (1) to define more clearly the rights and duties of neutral powers in war on land and defining their positions with regard to the belligerents; and (2) defining the term neutral and the position of neutral individuals in their relations with the belligerents.

389. *Notification of state of war and effect upon neutrals.*—H. Con. III, Art. II. The existence of a state of war must be notified to the neutral powers without delay, and shall not take effect with regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral powers, nevertheless, can not rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.¹

¹ Vide par. 21, supra.

NEUTRAL RIGHTS AND DUTIES.

390. *Inviolability of territory.*—H. C. V, Art. I. The territory of neutral powers is inviolable.¹

¹ It is a principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral State for belligerent purposes without the consent of the neutral Government. 7 Opp. Att. Gen., 367, Cushing.

391. *Movements of troops and convoys of supplies.*—H. C. V, Art. II. Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral power.

392. *Neutral can resist violations of neutrality by force.*—H. C. V, Art. X. The fact of a neutral power resisting, even by force, attempts to violate its neutrality can not be regarded as a hostile act.

393. *Patrolling the frontier.*—It is quite usual, frequently necessary, and therefore the duty of a neutral power whose terri-

tory is adjacent to a theater of war, to mobilize a portion of its forces to enforce its neutrality along the frontier. That is to prevent troops of either belligerent to enter its territory, to intern such as may be permitted to enter, and generally to enforce its neutrality duties.¹

¹ In 1806 the Danes formed a cordon of troops along the frontier near Lubeck, with arms in their hands to make their neutrality respected. They fired on French troops who were pursuing the Prussians. Letters and documents, Murat, Vol. IV, Despatch 2639. In 1870-71 both Belgium and Switzerland mobilized troops on their frontiers to prevent violations of their neutrality by the belligerents. Germany complained that no measures were taken by the Grand Duchy of Luxemburg to prevent French troops from crossing their territory and violating their territory. There have been frequent mobilizations of United States troops on the Mexican frontier for the enforcement of our neutrality laws during rebellions in Mexico. For the past three years the entire frontier has been patrolled along the Mexican border and we now have a large number of Federal troops interned at El Paso. They crossed the border at or near Ojinaga.

394. *Effect of failure in preventing belligerent troops violating neutrality.*—Should the neutral State be unable, or fail for any reasons, to prevent violations of its neutrality by the troops of one belligerent entering or passing through its territory, the other belligerent may be justified in attacking the enemy forces on this territory.¹

¹ In August, 1870, Von Moltke issued orders to the Third, and Meuse armies, directing that: "Should the enemy pass over into Belgium without being at once disarmed, he is to be pursued thither without delay." Ger. Off. Hist., pt. 1, Vol. II, Appendix 42.

¹ In the South African War a Boer commando retreated into Swaziland (understood and agreed to be neutral), where it was followed and attacked by a British column in March, 1901. Times Hist., Vol. V, p. 177.

In the Russo-Japanese War, Manchuria and Chosen, both neutral States, became the theater of military operations between the two belligerents. The avowed object of the war was the expulsion of the Russians from these two States, neither of which were able to prevent violations of their neutrality. Japan deliberately violated the neutrality of Chosen in order to forestall similar action by Russia. Prof. Ariga said that in many cases "a violation of neutrality may, in land war, have so very great an influence on the general issue of the operations that the other belligerent will usually not have to resort to the always uncertain methods of diplomacy; he must therefore retort in kind and at once to the act of violation, whatever be the intention of the neutral nation." P. 506.

For protest of Mr. Evarts, Secretary of State, against the troops of Gen. Diaz crossing the border into Texas and attacking his enemies, vide Digest of International Law, Moore, sec. 1334.

395. *Convoys of munitions and supplies.*—A distinction must be drawn between the official acts of the belligerent State in conveying or shipping munitions and supplies through neutral territory as part of an expedition and the shipment of such supplies commercially. The former is forbidden while the latter is not.¹

¹ Vide H. C. V. Art. VII, par. 403 infra.

RECRUITING.

396. *Forming corps of combatants and recruiting forbidden.*—H. C. V., Art. IV. Corps of combatants can not be formed nor recruiting agencies opened on the territory of a neutral power to assist the belligerents.

397. *What is prohibited.*—The establishment of recruiting agencies, the actual recruiting of men, the formation and organization of hostile expeditions on neutral territory, and the passage across its frontiers of organized bodies of men intending to enlist, are prohibited.¹

¹ Rev. Stat. U. S., secs. 5281-5291. Sec. 5282. "Every person who, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, State, colony, district, or people, as a soldier, * * * shall be deemed guilty of a high misdemeanor, and shall be fined not less than one thousand dollars, and imprisoned not more than three years."

Sec. 5291. "The provisions of this title shall not be construed to extend to any subject or citizen of any foreign prince, State, colony, district, or people, who is transiently in the United States."

398. *Personnel of Voluntary Aid Society.*—This prohibition does not extend to the medical personnel and units of a recognized voluntary aid society duly authorized to join one of the belligerents.¹

¹ Vide Geneva Conference, 1906, Art. II.

399. *Does not extend to individuals.*—H. C. V, Art. VI. The responsibility of a neutral power is not engaged by the fact of individuals crossing the frontier separately to offer their services to one of the belligerents.

400. *What the test.*—The prohibition in the two foregoing rules is directed against organized bodies which only require to be armed to become an immediate fighting force. Individuals crossing the frontier singly or in small bands that are unorganized create no obligation on the neutral State.¹

¹ The Santissima Trinidad, I Brock, 478. "An American citizen may enter either the land or naval service of a foreign Government without compromising the neutrality of his own."

United States v. Louis Kazinski, 2 Sprague, 7. "It is not a crime, under the neutrality law, to leave this country with intent to enlist in foreign military service; nor to transport persons out of the country with their own consent who have an intention of so enlisting. To constitute a crime under the statute, such person must be hired or retained to go abroad with the intent to be so enlisted."

Vide, 4, Op. Att. Gen., 336 (Nelson) and 7 Op. Att. Gen., 367 (Cushing). 8 id. 468 and id. 476. "It goes without saying that the neutral State must prevent its frontiers being crossed by corps or bands which have been organized on its territory without its knowledge. On the other hand, individuals may be considered as acting in an isolated manner when there exists between them no bond of a known or obvious organization, even when a number of them pass the frontier simultaneously." Hague Con. Actes, p. 127.

401. *Nationals of belligerent not included.*—Nationals of a belligerent State are permitted freely to leave neutral territory to join the armies of their country.¹

¹In 1870 the United States permitted large numbers of French and Germans to leave this country under recalls from their Governments. In one case about 1,200 Frenchmen embarked in French ships with 96,000 rifles and 11,000,000 cartridges. The United States held that the men were not officered or in any manner organized, and as the arms and ammunition were legitimate subjects of commerce, the issuing of the ships from an American port did not constitute an expedition. Vide Hall Int. Law, p. 609, and Spaight, War Rights on Land, pp. 492 et seq. See also sec. 5291, U. S. Rev. Stat., supra, note 1, par. 397.

402. *Officers on active list.*—Officers of the land forces of neutral powers on the active list should not be permitted to join a belligerent, and having joined such belligerent forces should be recalled.¹

¹Sec. 5281, U. S. Rev. Stat.: "Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, State, colony, district, or people, in war, by land or by sea, against any prince, State, colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars and imprisoned not more than three years." Murray v. Schooner Charming Betsy, 2 Cranch, 64, 82.

The consensus of opinion is that it is an unneutral act for a State to permit its officers on the active list to take service in a foreign belligerent army. The practice of States has not always been uniform. In 1899, Germany recalled and punished some of her officers on the active list for taking service in the South African War. In 1876, Russia permitted many of her officers to serve in the Servian Army against Turkey, but in 1887 withdrew her officers from the Bulgarian Army on the outbreak of war with Servia.

Mr. Spaight says that, "Retired officers, having ceased to possess an official character, as it were, are recognized as having a freedom of action which the usages affecting neutrality do not allow to serving officers." War Rights on Land, p. 495.

As to medical personnel, see par. 398.

SUPPLIES.

403. *Neutral not bound to prevent shipment of supplies.*—H. C. V., Art. VII. A neutral power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

404. *Obligations of neutral state as to supplies.*—A neutral state, as such, is prohibited from furnishing supplies, munitions of war, or to make loans¹ to a belligerent. It is also forbidden to permit the use of its territory for the fitting out of hostile expeditions.² It should issue a proclamation of neutrality.³

¹As to loans by individuals see H. C. V., Art. XVIII, infra, par. 430.

²U. S. Rev. Stat., Sec. 5286.—"Every person who, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise,

to be carried on from thence against the territory or dominions of any foreign prince or state; or of any colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years."

Kennett v. Chambers, 14 How., 38. *United States v. Ybanez*, 53 Fed. Rep., 536. *Wiborg v. United States*, 163 U. S., 632, 655. U. S. v. *Murphy*, 84 Fed. Rep., 609. *United States v. Hart*, 78 Fed. Rep., 868.—"Sec. 5286, Rev. Stat., creates two offenses, (1) the setting on foot, within the United States, a military expedition, to be carried on against any power, etc., with whom the United States are at peace; (2) providing the means for such expedition."

Vide as to sales of arms, etc., by the U. S. Govt. Dig. Int. Law, Moore, sec. 1309.

³ See par. 389 supra. For neutrality proclamations of President Grant, Aug. 22, 1870, see For. Rel., 1870, p. 45; also Dig. Int. Law, Moore, sec. 1319. After setting forth categorically acts prohibited by the laws of neutrality, warns the population that "while all persons may lawfully and without restriction, by reason of the aforesaid state of war, manufacture and sell within the United States arms and munitions of war, and other articles ordinarily known as contraband of war, yet they can not carry such articles upon the high seas for the use or service of either belligerent, nor can they transport soldiers and officers of either, * * * without incurring the risk of hostile capture, and the penalties denounced by the law of nations in that behalf." See also the proclamation of President Roosevelt on February 11, 1904, upon the opening of hostilities between Japan and Russia. For. Rel., 1904, pp. 32 et seq.

405. *Commercial transactions not prohibited*.—Commercial transactions by neutral companies, citizens, or persons resident in its territory with belligerents are not prohibited. That is, a belligerent can purchase from neutral companies, citizens, or persons within its territory supplies, munitions of war, or anything that can be of use to an army or fleet, which can be exported or transported without involving the neutral state.¹

¹ *United States v. The Laurada*, 85 Fed. Rep., 760.—"The neutrality laws are not designed to interfere with commerce, even in contraband of war, but merely to prevent distinctly hostile acts, as against a friendly power, which tend to involve this country in war." *Pearson v. Parson*, 108 Fed. Rep., 461.

The Peterhoff, 5 Wall., 28.—"The trade of neutrals with belligerents in articles not contraband is absolutely free, unless interrupted by blockade."

Northern Pac. Ry. Co. v. American Trading Co., 195 U. S., 439, 465.—"Contracts for the transportation of contraband articles are enforceable."

Hendricks v. Gonzales, 67 Fed. Rep., 351; 14 C. C. A., 659.—"A collector of customs is not justified in refusing clearance to a vessel and her cargo, under sec. 5290, Rev. Stat., because she is intended to transport arms and munitions of war for the use of an insurrectionary party in a country with which the United States is at peace."

406. *Means of communication*.—H. C. V, Art. VIII. A neutral power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraph apparatus belonging to it or to companies or private individuals.

407. *Must not manifestly assist one belligerent*.—The liberty of a neutral State to transmit dispatches by means of its tele-

graph lines on land, its submarine cables, and wireless apparatus does not imply the power to use them or permit their use to lend a manifest assistance to one of the belligerents.¹

¹ Hague conference 1907, *Actes* Vol. III, p. 56. No mention is made of the use of postal services in these rules. It is assumed that they can be used, subject to the same restrictions.

408. *Impartiality*.—H. C. V, Art. IX. Every measure of restriction or prohibition taken by a neutral power in regard to the matters referred to in Articles VII and VIII (pars. 403, 406) must be impartially applied by it to both belligerents.

A neutral power must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraph apparatus.

409. *Use of neutral territory to establish wireless telegraphy*.—H. C. V, Art. III. Belligerents are likewise forbidden to:

(a) Erect on the territory of a neutral power a wireless telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea.¹

¹ This paragraph was intended to prohibit in future a repetition of the action by Russia in establishing a wireless station at Chefoo in Chinese territory, by means of which communication was kept up between Port Arthur and the outer world during the siege in 1904. Spaight, *War Rights on Land*, p. 490.

(b) Use any installation of this kind established by them before the war on the territory of a neutral power for purely military purposes, and which has not been opened for the service of public messages.²

² Vide Hague Con., 1907, *Actes*, Vol. III, p. 53.—“The inviolability of the territory of a neutral State is incompatible with the use of this territory by a belligerent in the aid of any of the objects that Art. III is directed at.”

410. *Neutral state must prohibit acts on its own territory*.—H. C. V, Art. V. A neutral power must not allow any of the acts referred to in Articles II to IV (pars. 391, 396, 409) to occur on its territory.

It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory.

BELLIGERENTS INTERNED IN NEUTRAL TERRITORY.

411. *Internment*.—H. C. V, Art. XI. A neutral power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theater of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

412. *Duty of neutral state.*—A neutral is not bound to permit belligerent troops to enter its territory. On the other hand it may permit them to do so without violating its neutrality. But they must be interned or confined in places designated by the neutral. They will naturally be disarmed and placed under the necessary guard, thereby occupying in many respects the same status as prisoners of war.¹

¹ See as to inviolability of neutral territory, *supra*, pars. 391–395 and notes.

413. *Neutral can impose terms.*—If troops or soldiers of a belligerent are permitted to seek refuge in neutral territory, the neutral can impose the terms upon which they may do so. In case of large bodies of troops seeking refuge in neutral territory, these conditions will be usually stipulated in a convention drawn up by and between the duly authorized representative of the neutral power and the senior officer of the troops.¹

¹ The historical example of this is the convention drawn up between Gen. Clinchant, of the French Army, and the Swiss general, Herzog, appendix A to this chapter.

414. *Parole of officers.*—Beyond the right of deciding which, if any, of the officers are to be paroled, no conditions are specified and no penalties are prescribed for breach of parole.¹

¹ The proposition by Japan "that officers and other members of the armed forces of a belligerent should not be given their liberty or authorized to return to their country except with the consent and under conditions laid down by the other belligerent, and that the parole given to a neutral State by such individuals should be deemed equivalent to a pledge given to the enemy," was rejected by the committee. Hague Con. *Actes*, Vol. III, p. 61. As to medical personnel, see *infra*, par. 424.

415. *Disposition of arms, equipment, etc.*—The munitions, stores, and effects which the interned troops bring with them should be restored to their Government at the termination of the war.¹

¹ Vide Appendix A to this chapter. The foregoing rule is subject to the exception that the neutral State would certainly sell such articles as are subject to deterioration, utilizing the proceeds for the maintenance of the troops. As to material captured by and in the hands of the troops seeking asylum in neutral territory, the proposition was made that it should be returned at the end of the war to the Government from which it was captured. Objection was raised to this, and the proposal was withdrawn. Hague Conference *Actes*, Vol. III, pp. 59–60.

416. *Maintenance.*—H. C. V, Art. XII. In the absence of a special convention to the contrary, the neutral power shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.¹

¹ See Appendix A, this chapter.

417. *Prisoners of war.*—H. C. V, Art. XIII. A neutral power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral power.¹

¹ Note that a different rule applies with regard to sick and wounded prisoners of the enemy forming part of a convoy permitted to pass through neutral territory under Art. XIV, par. 2. See pars. 107, 418, and 422.

418. *Sick and wounded.*—H. C. V, Art. XIV. A neutral power may authorize the passage into its territory of the sick and wounded belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel or war material. In such a case, the neutral power is bound to take whatever measures of safety and control are necessary for the purpose.

The sick or wounded brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral power so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.¹

¹ See pars. 107, 417 and 422, and note.

419. *Obligations of neutral State.*—The neutral power is under no obligation to permit the passage of a convoy of evacuation of sick and wounded through its territory, but when permitted to pass, the neutral must exercise control, must see that neither personnel nor matériel is carried, and generally must accord impartiality of treatment to the belligerents.¹

¹ Recognizing that in facilitating the evacuation of sick and wounded of a belligerent a neutral power may render valuable assistance to a belligerent, it was officially explained in the peace conference in 1899 that the article had no other meaning than "to establish that considerations of humanity and hygiene might determine a neutral State to permit such sick and wounded soldiers to cross its territory without failing in its duties of neutrality." Land Warfare, Opp. par. 495. Hague Conference 1899, p. 153.

420. *Consent of other belligerent.*—There is no indicated necessity for obtaining the consent of the other belligerent before granting authority for the passage of the convoy, but this action seems advisable, especially where the passage of a considerable body of sick and wounded is contemplated.¹

¹ French Manual, p. 82. "Neutral States abstain from authorizing the transit of convoys of sick and wounded until the consent of the belligerent has been obtained." In 1870-1 Belgium, after consulting with England, refused passage of German sick and wounded across its territory on the ground that it would be a breach of neutrality. Luxemburg authorized such passage. Land Warfare, Opp. par. 496, note a.

421. *Sick and wounded of belligerent convoying same.*—The sick and wounded of the belligerent convoying them may be

carried through to their own territory. If, however, they are left in the neutral's territory they must be interned so as to insure their not taking part again in the war.

422. *Sick and wounded prisoners of war.*—Sick and wounded prisoners of war brought into neutral territory as part of a convoy of evacuation, granted right of passage through neutral territory, can not be transported to their own country nor liberated, as are prisoners of war escaping into or brought by troops seeking asylum in neutral territory, but must be detained by the neutral power.¹

¹ See par. 417 supra.

423. *The Geneva convention.*—H. C. V, Art. XV. The Geneva convention applies to sick and wounded interned in neutral territory.

424. *Medical personnel.*—The medical personnel belonging to belligerent forces, who have sought asylum and are interned under Article XI (par. 411), can be released by the neutral and permitted to return to their own State or army. Medical personnel and matériel necessary for the care of the sick and wounded of a convoy of evacuation, permitted to pass through neutral territory under Article XIV (par. 418), may be permitted to accompany the convoy. The neutral State may retain the necessary medical personnel and matériel for the care of the sick and wounded left in its care, and, failing this, may furnish same and will have expense of same refunded by the belligerent concerned after the termination of the war.¹

¹ See note 1, par. 414 supra.

425. *Neutral persons.*—H. C. V, Art. XVI. The nationals of a State which is not taking part in the war are considered as neutrals.¹

¹ The intention in using the word "nationaux" was to convey the idea of "citizens" as understood in the English use of the word. Hague Convention *Actes*, 1907, p. 64.

426. *Neutral persons resident in enemy territory.*—Neutral persons resident in occupied territory are not entitled to claim different treatment, in general, from that accorded the other inhabitants.¹ They must refrain from all participation in the war, from all hostile acts, and observe strictly the rules of the occupant.²

¹ The articles relating to neutral persons (XVI, XVII, and XVIII) are what is left of twelve articles proposed to The Hague by Germany. England has never ratified them. The intention of these articles was to accord preferential treatment to the neutral persons and property during war. With regard to the suppressed articles the following two voeux were adopted by the conference:

"1. That in case of war the competent authorities, civil and military, shall make it a special duty to assist and protect the maintenance of peaceful relations, and in particular of commercial and industrial relations, between the inhabitants of the belligerent States and neutral States.

"2. That the high contracting powers shall seek to establish, by agreements between them, uniform contractual provisions determining the

relations, in respect of military obligations, of each State with foreigners established in its territory."

² Vide supra pars. 312 et seq.

Mr. Oppenheim (Land Warfare) says: "Subjects of neutral powers not resident but only on a temporary visit within occupied territory can, to a certain extent, claim different treatment from that accorded to inhabitants, provided they take no part in the war. For instance, they are as a rule exempt from requisitions and contributions, and, if their property is required for military ends and needs, they must be fully indemnified." Par. 505 and note.

427. *Diplomatic agents.*—Diplomatic agents of neutral sovereigns and Governments must be treated with all courtesy, and be permitted such freedom of action as is possible to allow, with due regard to the necessities of the war.¹

¹ The same rule applies to consuls of non-Christian countries, excluding Japan. In all countries consuls, while not diplomatic agents, are entitled to have their persons and offices exempted from martial law, except in urgent cases, although their property and business are not necessarily exempted.

As to right of correspondence, see Dig. Int. Law, Moore, sec. 675, as to correspondence by Mr. Washburn, our ambassador in Paris at the time of the siege of that city.

The Japanese in the exceptional case of correspondence by the Imperial Government at Peking and the Provinces in Manchuria laid down the following rules:

"1. Communications of the Government of Peking with local officials in the territory occupied by the enemy, through territory occupied by our army. Not permitted.

"2. Communications addressed by the local Chinese functionaries in the country occupied by the enemy to the Peking Government through territory occupied by our army. Permitted by a designated route which could not be used returning.

"3. Communications from the local Chinese functionaries in the territory occupied by our army to those in territory occupied by the enemy. Absolutely prohibited, except after minute examination by our army.

"4. Communications from local Chinese functionaries in territory occupied by the enemy with regions occupied by our army. Permitted after examination at the outposts of the messengers and the official communications.

"5. Communications between the Government at Peking and the local functionaries in territory occupied by our army. Absolutely free. Ariga. pp. 544-547."

428. *Punishments.*—All subjects of neutral powers whether resident or temporarily visiting in occupied territory may be punished for offenses committed by them to the same extent and in the same manner as enemy subjects.¹

¹ Vide supra Military occupation, Chapter VIII, and Penalties for Violations of the Laws of War, Chapter X.

429. *Forfeiting rights by neutrals.*—H. C. V, Art. XVII. A neutral can not avail himself of his neutrality:

(a) If he commits hostile acts against a belligerent.

(b) If he commits acts in favor of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neu-

trality than a national of the other belligerent State could be for the same act.

430. *What acts not favorable to one belligerent.*—H. C. V, Art. XVIII. The following acts shall not be considered as committed in favor of one belligerent in the sense of Article XVII, letter (b) :

(a) Supplies furnished or loans made to one of the belligerents, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from these territories.

(b) Services rendered in matters of police or civil administration.

RAILWAY MATERIAL.¹

431. *Railway material.*—H. C. V, Art. XIX. Railway material coming from the territory of neutral powers, whether it be the property of the said powers or of companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral power may likewise, in case of necessity, retain and utilize to an equal extent material coming from the territory of the belligerent power.²

Compensation shall be paid by one party or the other in proportion to the material used and to the period of usage.³

¹For law as to preference to be given to the transportation of troops and material of war in time of war, see U. S. Stat. at Large, vol. 34, part 1, chap. 3591, p. 587: *Provided*, That wherever the word "carrier" occurs in this act it shall be held to mean "common carrier."

"That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic."

²This paragraph is new, being inserted in 1907. "It has the double object of: 1. To prevent a neutral State having its own railway service disturbed by the loss of its rolling stock; 2. To provide an automatic discouragement, as it were, to the practice of seizing neutral material which a belligerent might be inclined to resort to if the material so obtained became a clear addition to his resources." Spaight, *War Rights on Land*, pp. 512-513.

³Article XIX recognizes the right of a belligerent to seize and destroy the property of neutrals temporarily passing through his territory in so far as railway material is concerned.

This right as to certain neutral ships was exercised by Germany in December, 1870, by seizing some English colliers lying in the Seine near Rouen and sinking them for the purpose of obstructing the channel so that French gunboats could not ascend the river. The right to do this was not questioned by Great Britain and the matter was settled by Germany paying a satisfactory indemnity. *Land Warfare*, Opp. pars. 505, note c, and 507-510.

APPENDIX A.

Military Convention between the Commander of the First French Army and the General-in-chief of the Army of the Swiss Confederation for the entry of the French troops into Switzerland; signed at Les Verrieres, February 1, 1871.

The following convention has been made between General Clinchant, General-in-chief of the First French Army, and General Herzog, General-in-chief of the Army of Swiss Confederation:

Article 1. The French Army demanding to pass into Swiss territory will on entering lay down its arms, equipment, and ammunition.

Art. 2. These arms, equipment, and ammunition will be restored to France after peace and after the definitive settlement of the expenses occasioned to Switzerland by the sojourn of the French troops.

Art. 3. The artillery material and ammunition will be dealt with as above.

Art. 4. The horses, arms, and effects of the officers will remain at their disposal.

Art. 5. Arrangements will be made later as regards the troop horses.

Art. 6. Supply and baggage wagons, after having deposited their contents, will immediately return to France with their drivers and horses.

Art. 7. The treasure chest and post wagons will be handed over with the contents to the Swiss Confederation, which will account for them when the settlement of expenses is taking place.

Art. 8. The execution of these arrangements will take place in the presence of French and Swiss officers nominated for the purpose.

Art. 9. The confederation reserves the designation of the place of internment for officers and soldiers.

Art. 10. It is the right of the Federal Council to indicate the detailed prescriptions necessary to complete the present convention.

Done in triplicate at Les Verrieres, 1st Feb., 1871.

(Signed) CLINCHANT.

(Signed) HERZOG.

CHAPTER XII.

AUTOMATIC SUBMARINE CONTACT MINES.¹

432. *Kinds of mines.*—There are three general classes of mines: (1) Observation mines which are anchored along the coast and connected therewith by wires by which they can be exploded electrically. (2) Anchored automatic contact mines which are attached to heavy weights, and which can be placed at any required depth below the surface; these mines are exploded automatically by contact with heavy bodies such as ships. (3) Unanchored automatic contact mines which also explode by contact.²

¹ The rules governing this subject are contained in Convention VIII of The Hague of Oct. 18, 1907. The rules contained in this chapter are of special interest to officers of the seacoast artillery and will be of value as well to other arms of the mobile army in connection with the defense of our seacoast fortifications.

² These rules do not deal with the first class of mines, since they are innocuous to peaceful shipping.

433. *Unanchored automatic contact mines.*—H. VIII, art. 1, par. 1. It is forbidden to lay unanchored automatic contact mines unless they be so constructed as to become harmless one hour at most after those who laid them have lost control over them.¹

¹ This rule as originally presented by Great Britain was as follows: "The employment of unanchored automatic submarine contact mines is forbidden." The rule as stated in the text is decidedly modified by article 6, which fixes no time within which States are obligated to cause their mines to conform to the provisions of this article.

434. *Commercial navigation.*—H. VIII, art. 2. It is forbidden to lay automatic contact mines off the coasts and ports of the enemy, with the sole object of intercepting commercial navigation.

435. *Effect of this article.*—It is not probable that a belligerent resorting to the use of these contact mines off the coasts and ports of his enemy will hesitate to disavow the intention of intercepting commercial navigation. In its present form this rule permits the use of such mines so as to cause great risks to neutral navigation.¹

¹ "This convention, however, as it has been adopted imposes on the belligerent no restriction as to the placing of anchored mines, which consequently may be laid wherever the belligerent chooses, in his own waters for self-defense, in the waters of the enemy as a means of attack, or, lastly, on the high seas, so that neutral navigation will inevitably run great risks in time of naval warfare and may be exposed to many a disaster. We have already on several occasions insisted on the danger of a situation of this kind." Sir Ernest Satow's declaration before The Hague Committee. Vide The Hague Peace Conference, Higgins, p. 341.

436. *Anchored automatic contact mines.*—H. VIII, art. 1, par. 2. It is forbidden to lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings.

437. *Precautions to be taken.*—H. VIII, art. 3. When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful navigation.

The belligerents undertake to provide, as far as possible, for these mines becoming harmless after a limited time has elapsed, and, where the mines cease to be under observation, to notify danger zones, as soon as military exigencies permit, by a notice to mariners, which must also be communicated to the Governments through the diplomatic channel.

438. *Neutral powers can lay mines.*—H. VIII, art. 4. Neutral powers which lay automatic contact mines off their coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral power must give notice to mariners in advance of the places where automatic contact mines have been laid. This notice must be communicated at once to the Governments through the diplomatic channel.

439. *Must remove mines at close of war.*—H. VIII, art. 5. At the close of the war the contracting powers undertake to do their utmost to remove the mines which they have laid, each power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the power which laid them, and each power must proceed with the least possible delay to remove the mines in its own waters.¹

¹At the time of The Hague convention the Chinese delegate made the following statement: "The Chinese Government is even to-day obliged to furnish vessels engaged in coastal navigation with special apparatus to raise and destroy floating mines which are found not only on the open sea, but even in its territorial waters. In spite of the precautions which have been taken, a very considerable number of coasting vessels, fishing boats, junks, and sampans have been lost with all hands without the details of these disasters being known to the western world. It is calculated from five to six hundred of our countrymen engaged in their peaceful occupations, have there met a cruel death in consequence of these dangerous engines of war."

440. *Agreement to convert matériel of mines.*—H. VIII, art. 6. The contracting powers which do not at present own perfected mines of the description contemplated in the present convention, and which, consequently, could not at present carry out the rules laid down in articles 1 and 3, undertake to convert the matériel

of their mines as soon as possible, so as to bring it into conformity with the foregoing requirement.¹

¹ Vide article 1, pars. 433, 436, 441. Mr. Higgins says: "The prohibitions contained in the first article are in effect nullified by the sixth, for no time is specified within which States are to cause their material to conform to the requirements of article 1, and where neutrals suffer from the use of imperfectly constructed mines it is not likely that they will be satisfied with the belligerent's plea that he has been prevented by lack of funds or time from making the needful changes." Peace Conferences, pp. 343-344.

441. *Torpedoes*.—H. VIII, art. 1, par. 3. It is forbidden to use torpedoes which do not become harmless when they have missed their mark.

442. *Duration of convention*.—H. VIII, art. 11. The present convention shall remain in force for seven years, dating from the sixtieth day after the date of the first deposit of ratifications. Unless denounced, it shall continue in force after the expiration of this period.

443. *Incompleteness of convention*.—That this convention attempted to reduce to writing the rules governing the use of mines principally for the protection of neutral shipping, and in large measure failed, appears from the following facts, to wit: There is nothing in its provisions to prevent a belligerent placing mines on the high seas. There is nothing to prevent a belligerent from placing mines off the coasts of the enemy without regard to neutral shipping, except the proviso that danger zones shall be notified "as soon as military exigencies allow," which is of little or no practical value. The delegate from Great Britain declared that this convention is wholly inadequate for the protection of neutral shipping, and that the signing of the convention would not preclude his Government from contesting the legitimacy of acts committed in violation of neutral rights. The Institute of International Law formulated rules upon this subject at their meetings in 1908, 1910, and 1912. The two last will be found in the note.¹

¹ The following rules are taken from the proceedings of the Institute of 1910, *Annuaire de L'Institut de Droit International*, vol. 23, pp. 202-204:

1. It is forbidden to lay anchored or unanchored mines on the high seas.

2. Belligerents can place mines in their territorial waters or in those of the enemy.

But they are forbidden, even in territorial waters—

1. To lay unanchored automatic contact mines, unless they be so constructed as to become harmless one hour at most after the person who laid them has ceased to control them.

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings.

3. It is forbidden to use, as well in the territorial waters as on the high seas, torpedoes which do not become harmless when they have missed their mark.

4. It is forbidden to block the ports or coasts of the enemy or the points occupied by him by means of automatic contact mines.

It is likewise prohibited to place automatic contact mines in the passage of straits leading into the open sea.

5. When anchored or unanchored automatic contact mines are employed all precautions must be taken for the safety of peaceful navigation.

The belligerents will do their utmost to render these mines harmless after a limited time has elapsed.

In the case where the mines cease to be under observation by them, the belligerents will point out the danger zones as soon as military exigencies permit by a notice to navigation, which must also be communicated to the Governments through diplomatic channels.

6. Neutral powers can lay mines off their coasts for the defense of their neutrality. They must in such a case observe the same rules and take the same precautions as are imposed on belligerents.

The neutral power must give notice to mariners in advance of the places where automatic contact mines will be laid. This notice must be communicated at once to the Governments through diplomatic channels.

7. Omitted.

8. At the close of the war the belligerent and neutral powers will do their utmost, each on its part, to remove the mines which they have laid.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be indicated to the other party by the power which laid them, and each power must proceed with the least possible delay to raising the mines in its own waters.

The belligerent powers will furthermore announce the date on which the removal of the mines is terminated, and navigation will cease to be dangerous in the zones where the mines had been laid.

9. Omitted.

10. Violation of one of the rules preceding, involves the responsibility of the power at fault.

This responsibility will be brought before the International Prize Court, which will have full liberty for investigating the matter at fault, in appreciating the degree and fixing, if needs be, the amount of reparations.

The following taken from "Les lois de la guerre maritime dans les rapports entre belligérants." Manuel adopté par l'Institut de droit international session d'Oxford, 1913 :

Article 20. Submarine mines.—It is forbidden to lay on the high seas anchored or unanchored automatic contact mines.

Article 21. The belligerents can lay mines in their territorial waters and in those of the enemy.

But they are forbidden even in these territorial waters :

1. To lay unanchored automatic contact mines, unless they be so constructed as to become harmless, one hour at most, after the person who placed them has ceased to control them.

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings.

Article 22. A belligerent can place mines off the coast and ports of his adversary for military and naval purposes only. It is forbidden to place them for establishing or maintaining a blockade to commerce.

Article 23. When anchored or unanchored automatic contact mines are used, every precaution must be taken for the safety of peaceful navigation.

Belligerents will do all that is possible to render the mines harmless after the lapse of a limited time.

In the case where the mines cease to be under observation by them, the belligerents will point out the danger zones as soon as military exigencies permit, by a notice to navigation, which must also be communicated to the Governments through diplomatic channels.

APPENDIX No. 1.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention relative to the opening of hostilities was concluded and signed at The Hague on October 18, 1907, by the respective Plenipotentiaries of the United States of America [here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference], the original of which Convention, being in the French language, is word for word as follows:

[Translation.]

III. CONVENTION RELATIVE A L'OUVERTURE DES HOSTILITÉS.

Le Président des États-Unis D'Amérique.

[Here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference.]

Considérant que, pour la sécurité des relations pacifiques, il importe que les hostilités ne commencent pas sans un avertissement préalable;

Qu'il importe, de même, que l'état de guerre soit notifié sans retard aux Puissances neutres;

Désirant conclure une Convention à cet effet, ont nommé pour Leurs Plénipotentiaires, savoir:

[Here follows the names of Plenipotentiaries.]

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:

ARTICLE PREMIER. Les Puissances contractantes reconnaissent que les hostilités entre elles ne doivent pas commencer sans un avertissement préalable et non équivoque, qui aura, soit la forme d'une déclaration de guerre motivée, soit celle d'un ultimatum avec déclaration de guerre conditionnelle.

ART. 2. L'état de guerre devra être notifié sans retard aux Puissances neutres et ne produira effet à leur égard qu'après réception d'une notification qui pourra être faite même par voie télégraphique. Toutefois les Puissances neutres ne pourraient invoquer l'absence de notification, s'il était établi d'une manière non douteuse qu'en fait elles connaissaient l'état de guerre.

III. CONVENTION, RELATIVE TO THE OPENING OF HOSTILITIES.

The President of the United States of America.

Considering that it is important, in order to ensure the maintenance of pacific relations, that hostilities should not commence without previous warning.

That it is equally important that the existence of a state of war should be notified without delay to neutral Powers;

Being desirous of concluding a Convention to this effect, have appointed the following as their Plenipotentiaries:

Who, after depositing their full powers, found in good and due form, have agreed upon the following provisions:—

ARTICLE 1. The Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war.

ART. 2. The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral Powers, nevertheless, cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war.

ART. 3. L'article 1 de la présente Convention produira effet en cas de guerre entre deux ou plusieurs des Puissances contractantes.

L'article 2 est obligatoire dans les rapports entre un belligérant contractant et les Puissances neutres également contractantes.

ART. 4. La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un *procès-verbal* signé par les représentants des Puissances qui y prennent part et par le Ministre des Affaires Etrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du *procès-verbal* relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent ainsi que des instruments de ratification, sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, ledit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

ART. 5. Les Puissances non signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans les archives dudit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

ART. 6. La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du *procès-verbal* de ce dépôt, et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

ART. 7. S'il arrivait qu'une des Hautes Parties contractantes voudrât dénoncer la présente Convention, la dénonciation sera

ART. 3. Article I of the present Convention shall take effect in case of war between two or more of the Contracting Powers.

Article II is binding as between a belligerent Power which is a party to the Convention and neutral Powers which are also parties to the Convention.

ART. 4. The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent by the Netherland Government through the diplomatic channel to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform them of the date on which it received the notification.

ART. 5. Non-Signatory Powers may adhere to the present Convention.

The Power which wishes to adhere notifies in writing its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

The said Government shall at once forward to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, stating the date on which it received the notification.

ART. 6. The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of that deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ART. 7. In the event of one of the High Contracting Parties wishing to denounce the present Convention, the denunciation

notifiée par écrit au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

ART. 8. Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'article 4 alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (article 5, alinéa 2) ou de dénonciation (article 7, alinéa 1).

Chaque Puissance contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le dix-huit octobre mil neuf cent sept, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

[Here follows signatures.]

shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ART. 8. A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article IV, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article V, paragraph 2) or of denunciation (Article VII, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel to the Powers which have been invited to the Second Peace Conference.

APPENDIX No. 2.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention respecting the laws and customs of war on land was concluded and signed at The Hague on October 18, 1907, by the respective Plenipotentiaries of the United States of America, [Here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference.] the original of which Convention, being in the French language, is word for word as follows:

[Translation.]

IV. CONVENTION CONCERNANT LES LOIS ET COUTUMES DE LA GUERRE SUR TERRE.

IV. CONVENTION, RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND.

Le Président des Etats Unis d'Amérique:

The President of the United States of America:

[Here follows the list of Sovereigns and Heads of States who sent Plenipotentiaries to the Conference.]

Considérant que, tout en recherchant les moyens de sauvegarder la paix et de prévenir les conflits armés entre les nations, il importe de se préoccuper également du cas où l'appel aux armes serait amené par des événements que leur sollicitude n'aurait pu détourner;

Seeing that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where the appeal to arms has been brought about by events which their care was unable to avert;

Animés du désir de servir encore, dans cette hypothèse extrême, les intérêts de l'humanité et les exigences toujours progressives de la civilisation;

Estimant qu'il importe, à cette fin, de réviser les lois et coutumes générales de la guerre, soit dans le but de les définir avec plus de précision, soit afin d'y tracer certaines limites destinées à en restreindre autant que possible les rigueurs;

Ont jugé nécessaire de compléter et de préciser sur certains points l'œuvre de la Première Conférence de la Paix qui, s'inspirant, à la suite de la Conférence de Bruxelles de 1874, de ces idées recommandées par une sage et généreuse prévoyance, a adopté des dispositions ayant pour objet de définir et de régler les usages de la guerre sur terre.

Selon les vues des Hautes Parties contractantes, ces dispositions, dont la rédaction a été inspirée par le désir de diminuer les maux de la guerre, autant que les nécessités militaires le permettent, sont destinées à servir de règle générale de conduite aux belligérants, dans leurs rapports entre eux et avec les populations.

Il n'a pas été possible toutefois de concorder dès maintenant des stipulations s'étendant à toutes les circonstances qui se présentent dans la pratique;

D'autre part, il ne pouvait entrer dans les intentions des Hautes Parties contractantes que les cas non prévus fussent, faute de stipulation écrite, laissés à l'appréciation arbitraire de ceux qui dirigent les armées.

En attendant qu'un Code plus complet des lois de la guerre puisse être édicté, les Hautes Parties contractantes jugent opportun de constater que, dans les cas non compris dans les dispositions réglementaires adoptées par Elles, les populations et les belligérants restent sous la sauvegarde et sous l'empire des principes du droit des gens, tels qu'ils résultent des usages établis entre nations civilisées, des lois de l'humanité et des exigences de la conscience publique.

Elles déclarent que c'est dans ce sens que doivent s'entendre notamment les articles 1 et 2 du Règlement adopté.

Les Hautes Parties contractantes, désirant conclure une nouvelle Convention à cet effet, ont nommé pour Leurs Plénipotentiaires, savoir:

[Here follows the names of the Plenipotentiaries.]

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:

ARTICLE PREMIER. Les Puissances contractantes donneront à leurs forces armées de terre des instructions qui seront con-

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization;

Thinking it important, with this object, to revise the general laws and customs of war, either with a view to defining them with greater precision or to confining them within such limits as would mitigate their severity as far as possible;

Have deemed it necessary to complete and explain in certain particulars the work of the First Peace Conference, which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and govern the usages of war on land.

According to the views of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to concert Regulations covering all the circumstances which arise in practice;

On the other hand, the High Contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders.

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

They declare that it is in this sense especially that Articles I and II of the Regulations adopted must be understood.

The High Contracting Parties, wishing to conclude a fresh Convention to this effect, have appointed the following as their Plenipotentiaries:—

Who, after having deposited their full powers, found in good and due form, have agreed upon the following:—

ARTICLE I. The Contracting Powers shall issue instructions to their armed land forces which shall be in conformity with

formes au Règlement concernant les lois et coutumes de la guerre sur terre, annexé à la présente Convention.

ART. 2. Les dispositions contenues dans le Règlement visé à l'article 1^{er} ainsi que dans la présente Convention, ne sont applicables qu'entre les Puissances contractantes et seulement à les belligérants sont tous parties à la Convention.

ART. 3. La Partie belligérante qui violerait les dispositions dudit Règlement sera tenue à indemnité, s'il y a lieu. Elle sera responsable de tous actes commis par les personnes faisant partie de sa force armée.

ART. 4. La présente Convention dûment ratifiée remplacera, dans les rapports entre les Puissances contractantes, la Convention du 29 juillet 1899 concernant les lois et coutumes de la guerre sur terre.

La Convention de 1899 reste en vigueur dans les rapports entre les Puissances qui l'ont signée et qui ne ratifieraient pas également la présente Convention.

ART. 5. La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent ainsi que des instruments de ratification, sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent ledit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

ART. 6. Les Puissances non signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans les archives dudit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

the Regulations respecting the Laws and Customs of War on Land, annexed to the present Convention.

ART. 2. The provisions contained in the Regulations referred to in Article I, as well as in the present Convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

ART. 3. A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

ART. 4. The present Convention, duly ratified, shall as between the Contracting Powers, be substituted for the Convention of the 29th July, 1899, respecting the Laws and Customs of War on Land.

The Convention of 1899 remains in force as between the Powers which signed it, and which do not also ratify the present Convention.

ART. 5. The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph the said Government shall at the same time inform them of the date on which it received the notification.

ART. 6. Non-Signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ART. 7. La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

ART. 8. S'il arrivait qu'une des Puissances contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

ART. 9. Un registre tenu par le Ministère des Affaires Etrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'article 5 alinéas 3 et 4 ainsi que la date à laquelle auront été reçues les notifications d'adhésion (article 6, alinéa 2) ou de dénonciation (article 8, alinéa 1).

Chaque Puissance contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le dix-huit octobre mil neuf cent sept, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

[Here follow signatures.]

ANNEXE À LA CONVENTION.

Règlement concernant les lois et coutumes de la guerre sur terre.

SECCION I.—DES BELLIGÉRANTS.

CHAPITRE I.—De la qualité de belligérant.

ARTICLE PREMIER. Les lois, les droits et es devoirs de la guerre ne s'appliquent pas

ART. 7. The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ART. 8. In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ART. 9. A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article V, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article VI, paragraph 2) or of denunciation (Article VIII, paragraph 1) were received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

ANNEX TO THE CONVENTION

Regulations respecting the laws and customs of war on land.

SECTION I.—ON BELLIGERENTS.

CHAPTER I.—The Qualifications of Belligerents.

ARTICLE 1. The laws, rights, and duties of war apply not only to armies, but also to

seulement à l'armée, mais encore aux milices et aux corps de volontaires réunissant les conditions suivantes:

- 1^o. d'avoir à leur tête une personne responsable pour ses subordonnés;
- 2^o. d'avoir un signe distinctif fixe et reconnaissable à distance;
- 3^o. de porter les armes ouvertement et
- 4^o. de se conformer dans leurs opérations aux lois et coutumes de la guerre.

Dans les pays où les milices ou des corps de volontaires constituent l'armée ou en font partie, ils sont compris sous la dénomination d'*armées*.

ART. 2. La population d'un territoire non occupé qui, à l'approche de l'ennemi, prend spontanément les armes pour combattre les troupes d'invasion sans avoir eu le temps de s'organiser conformément à l'article premier, sera considérée comme belligérante si elle porte les armes ouvertement et si elle respecte les lois et coutumes de la guerre.

ART. 3. Les forces armées des Parties belligérantes peuvent se composer de combattants et de non-combattants. En cas de capture par l'ennemi, les uns et les autres ont droit au traitement des prisonniers de guerre.

CHAPITRE II.—*Des prisonniers de Guerre.*

ART. 4. Les prisonniers de guerre sont au pouvoir du Gouvernement ennemi, mais non des individus ou des corps qui les ont capturés.

Ils doivent être traités avec humanité. Tout ce qui leur appartient personnellement, excepté les armes, les chevaux et les papiers militaires, reste leur propriété.

ART. 5. Les prisonniers de guerre peuvent être assujettis à l'internement dans une ville, forteresse, camp ou localité quelconque, avec obligation de ne pas s'en éloigner au delà de certaines limites déterminées; mais ils ne peuvent être enfermés que par mesure de sûreté indispensable, et seulement pendant la durée des circonstances qui nécessitent cette mesure.

ART. 6. L'Etat peut employer, comme travailleurs, les prisonniers de guerre, selon leur grade et leurs aptitudes, à l'exception des officiers. Ces travaux ne seront pas excessifs et n'auront aucun rapport avec les opérations de la guerre.

Les prisonniers peuvent être autorisés à travailler pour le compte d'administrations publiques ou de particuliers, ou pour leur propre compte.

Les travaux faits pour l'Etat sont payés d'après les tarifs en vigueur pour les militaires de l'armée nationale exécutant les mêmes travaux, ou, s'il n'en existe pas, d'après un tarif en rapport avec les travaux exécutés.

militia and volunteer corps fulfilling the following conditions:—

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognizable at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

ART. 2. The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article I, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

ART. 3. The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II.—*Prisoners of War.*

ART. 4. Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated. All their personal belongings, except arms, horses, and military papers, remain their property.

ART. 5. Prisoners of war may be interned in a town, fortress, camp, or other place, and bound not to go beyond certain fixed limits; but they can not be confined except as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist.

ART. 6. The State may utilize the labour of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid at the rates in force for work of a similar kind done by soldiers of the national army, or, if there are none in force, at a rate according to the work executed.

Lorsque les travaux ont lieu pour le compte d'autres administrations publiques ou pour des particuliers, les conditions en sont réglées d'accord avec l'autorité militaire.

Le salaire des prisonniers contribuera à adoucir leur position, et le surplus leur sera compté au moment de leur libération, sauf défalcation des frais d'entretien.

ART. 7. Le Gouvernement au pouvoir duquel se trouvent les prisonniers de guerre est chargé de leur entretien.

A défaut d'une entente spéciale entre les belligérants, les prisonniers de guerre seront traités pour la nourriture, le couchage et l'habillement, sur le même pied que les troupes du Gouvernement qui les aura capturés.

ART. 8. Les prisonniers de guerre seront soumis aux lois, règlements et ordres en vigueur dans l'armée de l'Etat au pouvoir duquel ils se trouvent. Tout acte d'insubordination autorisée, à leur égard, les mesures de rigueur nécessaires.

Les prisonniers évadés, qui seraient repris avant d'avoir pu rejoindre leur armée ou avant de quitter le territoire occupé par l'armée qui les aura capturés, sont passibles de peines disciplinaires.

Les prisonniers qui, après avoir réussi à s'évader, sont de nouveau faits prisonniers, ne sont passibles d'aucune peine pour la fuite antérieure.

ART. 9. Chaque prisonnier de guerre est tenu de déclarer, s'il est interrogé à ce sujet, ses véritables noms et grade et, dans le cas où il enfreindrait cette règle, il s'exposerait à une restriction des avantages accordés aux prisonniers de guerre de sa catégorie.

ART. 10. Les prisonniers de guerre peuvent être mis en liberté sur parole, si les lois de leur pays les y autorisent, et, en pareil cas, ils sont obligés, sous la garantie de leur honneur personnel, de remplir scrupuleusement, tant vis-à-vis de leur propre Gouvernement que vis-à-vis de celui qui les a faits prisonniers, les engagements qu'ils auraient contractés.

Dans le même cas, leur propre Gouvernement est tenu de n'exiger ni accepter d'eux aucun service contraire à la parole connée.

ART. 11. Un prisonnier de guerre ne peut être contraint d'accepter sa liberté sur parole; de même le Gouvernement ennemi n'est pas obligé d'accéder à la demande du prisonnier réclamant sa mise en liberté sur parole.

When the work is for other branches of the public service or for private persons the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance.

ART. 7. The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards board, lodging, and clothing on the same footing as the troops of the Government who captured them.

ART. 8. Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary.

Escaped prisoners who are retaken before being able to rejoin their own army or before leaving the territory occupied by the army which captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of the previous flight.

ART. 9. Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed.

ART. 10. Prisoners of war may be set at liberty on parole if the laws of their country allow, and, in such cases, they are bound, on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

ART. 11. A prisoner of war can not be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

ART. 12. Tout prisonnier de guerre, libéré sur parole et repris portant les armes contre le Gouvernement envers lequel il s'était engagé d'honneur, ou contre les alliés de celui-ci, perd le droit au traitement des prisonniers de guerre et peut être traduit devant les tribunaux.

ART. 13. Les individus qui suivent une armée sans en faire directement partie, tels que les correspondants et les reporters de journaux, les vivandiers, les fournisseurs, qui tombent au pouvoir de l'ennemi et que celui-ci juge utile de détenir, ont droit au traitement des prisonniers de guerre, à condition qu'ils soient munis d'une légitimation de l'autorité militaire de l'armée qu'ils accompagnaient.

ART. 14. Il est constitué, dès le début des hostilités, dans chacun des Etats belligérants, et, le cas échéant, dans les pays neutres qui auront recueilli des belligérants sur leur territoire, un bureau de renseignements sur les prisonniers de guerre. Ce bureau, chargé de répondre à toutes les demandes qui les concernent, reçoit des divers services compétents toutes les indications relatives aux internements et aux mutations, aux mises en liberté sur parole, aux échanges, aux évasions, aux entrées dans les hôpitaux, aux décès, ainsi que les autres renseignements nécessaires pour établir et tenir à jour une fiche individuelle pour chaque prisonnier de guerre. Le bureau devra porter sur cette fiche le numéro matricule, les nom et prénom, l'âge, le lieu d'origine, le grade, le corps de troupe, les blessures, la date et le lieu de la capture, de l'internement, des blessures et de la mort, ainsi que toutes les observations particulières. La fiche individuelle sera remise au Gouvernement de l'autre belligérant après la conclusion de la paix.

Le bureau de renseignements est également chargé de recueillir et de centraliser tous les objets d'un usage personnel, valeurs, lettres etc., qui seront trouvés sur les champs de bataille ou délaissés par des prisonniers libérés sur parole, échangés, évadés ou décédés dans les hôpitaux et ambulances, et de les transmettre aux intéressés.

ART. 15. Les sociétés de secours pour les prisonniers de guerre, régulièrement constituées selon la loi de leur pays et ayant pour objet d'être les intermédiaires de l'action charitable, recevront, de la part des belligérants, pour elles et pour leurs agents dûment accrédités, toute facilité, dans les limites tracées par les nécessités militaires et les règles administratives, pour accomplir efficacement leur tâche d'humanité. Les délégués de ces sociétés pourront être admis à distribuer des secours dans les

ART. 12. Prisoners of war liberated on parole and recaptured bearing arms against the Government to whom they had pledged their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and can be brought before the Courts.

ART. 13. Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.

ART. 14. An inquiry office for prisoners of war is instituted on the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents in their territory. It is the function of this office to reply to all inquiries about the prisoners. It receives from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The office must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is likewise the function of the inquiry office to receive and collect all objects of personal use, valuables, letters, &c., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned.

ART. 15. Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose

dépôts d'internement, ainsi qu'aux lieux d'étape des prisonniers rapatriés, moyennant une permission personnelle délivrée par l'autorité militaire, et en prenant l'engagement par écrit de se soumettre à toutes les mesures d'ordre et de police que celle-ci prescrirait.

ART. 16. Les bureaux de renseignements jouissent de la franchise de port. Les lettres, mandats et articles d'argent, ainsi que les colis postaux destinés aux prisonniers de guerre ou expédiés par eux, seront affranchis de toutes les taxes postales, aussi bien dans les pays d'origine et de destination que dans les pays intermédiaires.

Les dons et secours en nature destinés aux prisonniers de guerre seront admis en franchise de tous droits d'entrée et autres, ainsi que des taxes de transport sur les chemins de fer exploités par l'Etat.

ART. 17. Les officiers prisonniers recevront la solde à laquelle ont droit les officiers de même grade du pays où ils sont retenus, à charge de remboursement par leur Gouvernement.

ART. 18. Toute latitude est laissée aux prisonniers de guerre pour l'exercice de leur religion, y compris l'assistance aux officiers de leur culte, à la seule condition de se conformer aux mesures d'ordre et de police prescrites par l'autorité militaire.

ART. 19. Les testaments des prisonniers de guerre sont reçus ou dressés dans les mêmes conditions que pour les militaires de l'armée nationale.

On suivra également les mêmes règles en ce qui concerne les pièces relatives à la constatation des décès, ainsi que pour l'inhumation des prisonniers de guerre, en tenant compte de leur grade et de leur rang.

ART. 20. Après la conclusion de la paix, le rapatriement des prisonniers de guerre s'effectuera dans le plus bref délai possible.

CHAPITRE III.—*Des malades et des blessés.*

ART. 21. Les obligations des belligérants concernant le service des malades et des blessés sont régies par la Convention de Genève.

SECTION II.—DES HOSTILITÉS.

CHAPITRE I.—*Des moyens de nuire à l'ennemi, des sièges et des bombardements.*

ART. 22. Les belligérants n'ont pas un droit illimité quant au choix des moyens de nuire à l'ennemi.

of distributing relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

ART. 16. Inquiry offices enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by the State railways.

ART. 17. Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained, the amount to be ultimately refunded by their own Government.

ART. 18. Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever Church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

ART. 19. The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ART. 20. After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPTER III.—*The Sick and Wounded.*

ART. 21. The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.

SECTION II.—HOSTILITIES.

CHAPTER I.—*Means of Injuring the Enemy, Sieges, and Bombardments.*

ART. 22. The right of belligerents to adopt means of injuring the enemy is not unlimited.

ART. 23. Outre les prohibitions établies par des conventions spéciales, il est notamment interdit:

- a. d'employer du poison ou des armes empoisonnées;
- b. de tuer ou de blesser par trahison des individus appartenant à la nation ou à l'armée ennemie;
- c. de tuer ou de blesser un ennemi qui, ayant mis bas les armes ou n'ayant plus les moyens de se défendre, s'est rendu à discrétion;
- d. de déclarer qu'il ne sera pas fait de quartier;
- e. d'employer des armes, des projectiles ou des matières propres à causer des maux superflus;
- f. d'user indûment du pavillon parlementaire, du pavillon national ou des insignes militaires et de l'uniforme de l'ennemi, ainsi que des signes distinctifs de la Convention de Genève;
- g. de détruire ou de saisir des propriétés ennemies, sauf les cas où ces destructions ou ces saisies seraient impérieusement commandées par les nécessités de la guerre;
- h. de déclarer éteints, suspendus ou non recevables en justice, les droits et actions des nationaux de la Partie adverse.

Il est également interdit à un belligérant de forcer les nationaux de la Partie adverse à prendre part aux opérations de guerre dirigées contre leur pays, même dans le cas où ils auraient été à son service avant le commencement de la guerre.

ART. 24. Les ruses de guerre et l'emploi des moyens nécessaires pour se procurer des renseignements sur l'ennemi et sur le terrain sont considérés comme licites.

ART. 25. Il est interdit d'attaquer ou de bombarder, par quelque moyen que ce soit, des villes, villages, habitations ou bâtiments qui ne sont pas défendus.

ART. 26. Le commandant des troupes assaillantes, avant d'entreprendre le bombardement, et sauf le cas d'attaque de vive force, devra faire tout ce qui dépend de lui pour en avertir les autorités.

ART. 27. Dans les sièges et bombardements, toutes les mesures nécessaires doivent être prises pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences et à la bienfaisance, les monuments historiques, les hôpitaux et les lieux de rassemblement de malades et de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire.

Le devoir des assiégés est de désigner ces édifices ou lieux de rassemblement par des

ART. 23. In addition to the prohibitions provided by special Conventions, it is especially forbidden—

- (a.) To employ poison or poisoned weapons;
- (b.) To kill or wound treacherously individuals belonging to the hostile nation or army;
- (c.) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;
- (d.) To declare that no quarter will be given;
- (e.) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
- (f.) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;
- (g.) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.
- (h.) To declare abolished, suspended, or inadmissible in a Court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

ART. 24. Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

ART. 25. The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

ART. 26. The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

ART. 27. In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by

signes visibles spéciaux qui seront notifiés d'avance à l'assiégeant.

ART. 28. Il est interdit de livrer au pillage une ville ou localité même prise d'assaut.

CHAPITRE II.—*Des espions.*

ART. 29. Ne peut être considéré comme espion que l'individu qui, agissant clandestinement ou sous de faux prétextes, recueille ou cherche à recueillir des informations dans la zone d'opérations d'un belligérant, avec l'intention de les communiquer à la Partie adverse.

Ainsi les militaires non déguisés qui ont pénétré dans la zone d'opérations de l'armée ennemie, à l'effet de recueillir des informations, ne sont pas considérés comme espions. De même, ne sont pas considérés comme espions: les militaires et les non militaires, accomplissant ouvertement leur mission, chargés de transmettre des dépêches destinées, soit à leur propre armée, soit à l'armée ennemie. A cette catégorie appartiennent également les individus envoyés en ballon pour transmettre les dépêches, et, en général, pour entretenir les communications entre les diverses parties d'une armée ou d'un territoire.

ART. 30. L'espion pris sur le fait ne pourra être puni sans jugement préalable.

ART. 31. L'espion qui, ayant rejoint l'armée à laquelle il appartient, est capturé plus tard par l'ennemi, est traité comme prisonnier de guerre, et n'encourt aucune responsabilité pour ses actes d'espionnage antérieurs.

CHAPITRE III.—*Des parlementaires.*

ART. 32. Est considéré comme parlementaire l'individu autorisé par l'un des belligérants à entrer en pourparlers avec l'autre et se présentant avec le drapeau blanc. Il a droit à l'inviolabilité ainsi que le trompette, clairon ou tambour, le porteur de drapeau et l'interprète qui l'accompagneraient.

ART. 33. Le chef auquel un parlementaire est expédié n'est pas obligé de le recevoir en toutes circonstances.

Il peut prendre toutes les mesures nécessaires afin d'empêcher le parlementaire de profiter de sa mission pour se renseigner.

Il a le droit, en cas d'abus, de retenir temporairement le parlementaire.

ART. 34. Le parlementaire perd ses droits d'inviolabilité, s'il est prouvé, d'une manière positive et irrécusable, qu'il a profité de sa position privilégiée pour provoquer ou commettre un acte de trahison.

distinctive and visible signs, which shall be notified to the enemy beforehand.

ART. 28. The pillage of a town or place, even when taken by assault, is prohibited.

CHAPTER II.—*Spies.*

ART. 29. A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, intrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory.

ART. 30. A spy taken in the act shall not be punished without previous trial.

ART. 31. A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

CHAPTER III.—*Flags of Truce.*

ART. 32. A person is regarded as bearing a flag of truce who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and interpreter who may accompany him.

ART. 33. The commander to whom a flag of truce is sent is not in all cases obliged to receive it.

He may take all the necessary steps to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

ART. 34. The envoy loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery.

CHAPITRE IV.—*Des capitulations.*

ART. 35. Les capitulations arrêtées entre les Parties contractantes doivent tenir compte des règles de l'honneur militaire.

Une fois fixées, elles doivent être scrupuleusement observées par les deux Parties.

CHAPITRE V.—*De l'armistice.*

ART. 36. L'armistice suspend les opérations de guerre par un accord mutuel des Parties belligérantes. Si la durée n'en est pas déterminée, les Parties belligérantes peuvent reprendre en tout temps les opérations, pourvu toutefois que l'ennemi soit averti en temps convenu, conformément aux conditions de l'armistice.

ART. 37. L'armistice peut être général ou local. Le premier suspend partout les opérations de guerre des Etats belligérants; le second, seulement entre certaines fractions des armées belligérantes et dans un rayon déterminé.

ART. 38. L'armistice doit être notifié officiellement et en temps utile aux autorités compétentes et aux troupes. Les hostilités sont suspendues immédiatement après la notification ou au terme fixé.

ART. 39. Il dépend des Parties contractantes de fixer, dans les clauses de l'armistice, les rapports qui pourraient avoir lieu, sur le théâtre de la guerre, avec les populations et entre elles.

ART. 40. Toute violation grave de l'armistice, par l'une des Parties, donne à l'autre le droit de le dénoncer et même, en cas d'urgence, de reprendre immédiatement les hostilités.

ART. 41. La violation des clauses de l'armistice, par des particuliers agissant de leur propre initiative, donne droit seulement à réclamer la punition des coupables et, s'il y a lieu, une indemnité pour les pertes éprouvées.

SECTION III.—DE L'AUTORITÉ MILITAIRE SUR LE TERRITOIRE DE L'ÉTAT ENNEMI.

ART. 42. Un territoire est considéré comme occupé lorsqu'il se trouve placé de fait sous l'autorité de l'armée ennemie.

L'occupation ne s'étend qu'aux territoires où cette autorité est établie et en mesure de s'exercer.

ART. 43. L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publiques en respectant, sauf empêchement absolu, les lois en vigueur dans le pays.

ART. 44. Il est interdit à un belligérant de forcer la population d'un territoire oc-

CHAPTER IV.—*Capitulations.*

ART. 35. Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties.

CHAPTER V.—*Armistices.*

ART. 36. An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

ART. 37. An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

ART. 38. An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

ART. 39. It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the inhabitants and between the inhabitants of one belligerent State and those of the other.

ART. 40. Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

ART. 41. A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders or, if necessary, compensation for the losses sustained.

SECTION III.—MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE.

ART. 42. Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

ART. 43. The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ART. 44. A belligerent is forbidden to force the inhabitants of territory occupied

cupé à donner des renseignements sur l'armée de l'autre belligérant ou sur ses moyens de défense.

ART. 45. Il est interdit de contraindre la population d'un territoire occupé à prêter serment à la Puissance ennemie.

ART. 46. L'honneur et les droits de la famille, la vie des individus et la propriété privée, ainsi que les convictions religieuses et l'exercice des cultes, doivent être respectés.

La propriété privée ne peut pas être confisquée.

ART. 47. Le pillage est formellement interdit.

ART. 48. Si l'occupant prélève, dans le territoire occupé, les impôts, droits et péages établis au profit de l'Etat, il le fera, autant que possible, d'après les règles de l'assiette et de la répartition en vigueur, et il en résultera pour lui l'obligation de pourvoir aux frais de l'administration du territoire occupé dans la mesure où le Gouvernement légal y était tenu.

ART. 49. Si, en dehors des impôts visés à l'article précédent, l'occupant prélève d'autres contributions en argent dans le territoire occupé, ce ne pourra être que pour les besoins de l'armée ou de l'administration de ce territoire.

ART. 50. Aucune peine collective, pécuniaire ou autre, ne pourra être édictée contre les populations à raison de faits individuels dont elles ne pourraient être considérées comme solidairement responsables.

ART. 51. Aucune contribution ne sera perçue qu'en vertu d'un ordre écrit et sous la responsabilité d'un général en chef.

Il ne sera procédé, autant que possible, à cette perception que d'après les règles de l'assiette et de la répartition des impôts en vigueur.

Pour toute contribution, un reçu sera délivré aux contribuables.

ART. 52. Des réquisitions en nature et des services ne pourront être réclamés des communes ou des habitants, que pour les besoins de l'armée d'occupation. Ils seront en rapport avec les ressources du pays et de telle nature qu'ils n'impliquent pas pour les populations l'obligation de prendre part aux opérations de la guerre contre leur patrie.

Ces réquisitions et ces services ne seront réclamés qu'avec l'autorisation du commandant dans la localité occupée.

Les prestations en nature seront, autant que possible, payées au comptant; sinon, elles seront constatées par des reçus, et le paiement des sommes dues sera effectué le plus tôt possible.

ART. 53. L'armée qui occupe un territoire ne pourra saisir que le numéraire, les

by it to furnish information about the army of the other belligerent, or about its means of defence.

ART. 45. It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.

ART. 46. Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

ART. 47. Pillage is formally forbidden.

ART. 48. If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

ART. 49. If, in addition to the taxes mentioned in the above Article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

ART. 50. No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

ART. 51. No contribution shall be collected except under a written order, and on the responsibility of a Commander-in-chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

ART. 52. Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

ART. 53. An army of occupation can only take possession of cash, funds, and realiza-

fonds et les valeurs exigibles appartenant en propre à l'Etat, les dépôts d'armes, moyens de transport, magasins et approvisionnements et, en général, toute propriété mobilière de l'Etat de nature à servir aux opérations de la guerre.

Tous les moyens affectés sur terre, sur mer et dans les airs à la transmission des nouvelles, au transport des personnes ou des choses, en dehors des cas régis par le droit maritime, les dépôts d'armes et, en général, toute espèce de munitions de guerre, peuvent être saisis, même s'ils appartiennent à des personnes privées, mais devront être restitués et les indemnités seront réglées à la paix.

ART. 54. Les câbles sous-marins reliant un territoire occupé à un territoire neutre ne seront saisis ou détruits que dans le cas d'une nécessité absolue. Ils devront également être restitués et les indemnités seront réglées à la paix.

ART. 55. L'Etat occupant ne se considérera qu'comme administrateur et usufruitier des édifices publics, immeubles, forêts et exploitations agricoles appartenant à l'Etat ennemi et se trouvant dans le pays occupé. Il devra sauvegarder le fonds de ces propriétés et les administrer conformément aux règles de l'usufruit.

ART. 56. Les biens des communes, ceux des établissements consacrés aux cultes, à la charité et à l'instruction, aux arts et aux sciences, même appartenant à l'Etat, seront traités comme la propriété privée.

Toute saisie, destruction ou dégradation intentionnelle de semblables établissements, de monuments historiques, d'œuvres d'art et de science, est interdite et doit être poursuivie.

ble securities which are strictly the property of the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depôts of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.

ART. 54. Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

ART. 55. The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

ART. 56. The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

APPENDIX No. 3.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention respecting the rights and duties of neutral powers and persons in case of war on land was concluded and signed at The Hague on October 18, 1907, by the respective Plenipotentiaries of the United States of America, [here follows a list of other Sovereigns and Heads of States, whose Plenipotentiaries to the conference], the original of which Convention, being in the French language, is word for word as follows:

[Translation.]

V. CONVENTION CONCERNANT LES DROITS ET LES DEVOIRS DES PUISSANCES ET DES PERSONNES NEUTRES EN CAS DE GUERRE SUR TERRE.

V. CONVENTION, RESPECTING THE RIGHTS AND DUTIES OF NEUTRAL POWERS AND PERSONS IN CASE OF WAR ON LAND.

Le Président des Etats-Unis d'Amerique:

The President of the United States of America:

[Here follows a list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference.]

En vue de mieux préciser les droits et les devoirs des Puissances neutre sen cas de

With a view to laying down more clearly the rights and duties of neutral Powers in

guerre sur terre et de régler la situation des belligérants réfugiés en territoire neutre;

Désirant également définir la qualité de neutre en attendant qu'il soit possible de régler dans son ensemble la situation des particuliers neutres dans leurs rapports avec les belligérants;

Ont résolu de conclure une Convention à cet effet et ont, en conséquence, nommé pour Leurs Plénipotentiaires, savoir:

[Here follows the names of Plenipotentiaries.]

Lesquels, après avoir déposé leurs pleins pouvoirs trouvés en bonne et due forme, sont convenus des dispositions suivantes:

case of war on land and regulating the position of the belligerents who have taken refuge in neutral territory;

Being likewise desirous of defining the meaning of the term "neutral", pending the possibility of settling, in its entirety, the position of neutral individuals in their relations with the belligerents;

Have resolved to conclude a Convention to this effect, and have, in consequence, appointed the following as their Plenipotentiaries:

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:—

CHAPITRE I.—DES DROITS ET DES DEVOIRS DES PUISSANCES NEUTRES.

CHAPTER I.—THE RIGHTS AND DUTIES OF NEUTRAL POWERS.

ARTICLE PREMIER. Le territoire des Puissances neutres est inviolable.

ARTICLE 1. The territory of neutral Powers is inviolable.

ART. 2. Il est interdit aux belligérants de faire passer à travers le territoire d'une Puissance neutre des troupes ou des convois, soit de munitions, soit d'approvisionnements.

ART. 2. Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

ART. 3. Il est également interdit aux belligérants:

ART. 3. Belligerents are likewise forbidden to:

a. d'installer sur le territoire d'une Puissance neutre une station radio-télégraphique ou tout appareil destiné à servir comme moyen de communication avec des forces belligérantes sur terre ou sur mer;

(a.) Erect on the territory of a neutral Power a wireless telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea;

b. d'utiliser toute installation de ce genre établie par eux avant la guerre sur le territoire de la Puissance neutre dans un but exclusivement militaire, et qui n'a pas été ouverte au service de la correspondance publique.

(b.) Use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages.

ART. 4. Des corps de combattants ne peuvent être formés, ni des bureaux d'enrôlement ouverts, sur le territoire d'une Puissance neutre au profit des belligérants.

ART. 4. Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents.

ART. 5. Une Puissance neutre ne doit tolérer sur son territoire aucun des actes visés par les articles 2 à 4.

ART. 5. A neutral Power must not allow any of the acts referred to in Articles II to IV to occur on its territory.

Elle n'est tenue de punir des actes contraires à la neutralité que si ces actes ont été commis sur son propre territoire.

It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory.

ART. 6. La responsabilité d'une Puissance neutre n'est pas engagée par le fait que des individus passent isolément la frontière pour se mettre au service de l'un des belligérants.

ART. 6. The responsibility of a neutral Power is not engaged by the fact of persons crossing the frontier separating to offer their services to one of the belligerents.

ART. 7. Une Puissance neutre n'est pas tenue d'empêcher l'exportation ou le transit, pour le compte de l'un ou de l'autre des belligérants, d'armes, de munitions, et, en général, de tout ce qui peut être utile à une armée ou à une flotte.

ART. 7. A neutral Power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

ART. 8. Une Puissance neutre n'est pas tenue d'interdire ou de restreindre l'usage, pour les belligérants, des câbles télégraphiques ou téléphoniques, ainsi que des appareils de télégraphie sans fil, qui sont, soit sa propriété, soit celle de compagnies ou de particuliers.

ART. 9. Toutes mesures restrictives ou prohibitives prises par une Puissance neutre à l'égard des matières visées par les articles 7 et 8 devront être uniformément appliquées par elle aux belligérants.

La Puissance neutre veillera au respect de la même obligation par les compagnies ou particuliers propriétaires de câbles télégraphiques ou téléphoniques ou d'appareils de télégraphie sans fil.

ART. 10. Ne peut être considéré comme un acte hostile le fait, par une Puissance neutre, de repousser, même par la force, les atteintes à sa neutralité.

CHAPITRE II.—DES BELLIGÉRANTS INTERNÉS ET DES BLESSÉS SOIGNÉS CHEZ LES NEUTRES.

ART. 11. La Puissance neutre qui reçoit sur son territoire des troupes appartenant aux armées belligérantes, les internera autant que possible, loin du théâtre de la guerre.

Elle pourra les garder dans des camps, et même les enfermer dans des forteresses ou dans des lieux appropriés à cet effet.

Elle décidera si les officiers peuvent être laissés libres en prenant l'engagement sur parole de ne pas quitter le territoire neutre sans autorisation.

ART. 12. A défaut de convention spéciale, la Puissance neutre fournira aux internés les vivres, les habillements et les secours commandés par l'humanité.

Bonification sera faite, à la paix, des frais occasionnés par l'internement.

ART. 13. La Puissance neutre qui reçoit des prisonniers de guerre évadés les laissera en liberté. Si elle tolère leur séjour sur son territoire, elle peut leur assigner une résidence.

La même disposition est applicable aux prisonniers de guerre amenés par des troupes se réfugiant sur le territoire de la Puissance neutre.

ART. 14. Une Puissance neutre pourra autoriser le passage sur son territoire des blessés ou malades appartenant aux armées belligérantes, sous la réserve que les trains qui les amèneront ne transporteront ni personnel, ni matériel de guerre. En pareil cas, la Puissance neutre est tenue de prendre les mesures de sûreté et de contrôle nécessaires à cet effet.

ART. 8. A neutral Power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to Companies or private individuals.

ART. 9. Every measure of restriction or prohibition taken by a neutral Power in regard to the matters referred to in Articles VII and VIII must be impartially applied by it to both belligerents.

A neutral Power must see to the same obligation being observed by Companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.

ART. 10. The fact of a neutral Power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act.

CHAPTER II.—BELLIGERENTS INTERNED AND WOUNDED TENDED IN NEUTRAL TERRITORY.

ART. 11. A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

ART. 12. In the absence of a special Convention to the contrary, the neutral Power shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

ART. 13. A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.

ART. 14. A neutral Power may authorize the passage into its territory of the sick and wounded belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel or war material. In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.

Les blessés ou malades amenés dans ces conditions sur le territoire neutre par un des belligérants, et qui appartiendraient à la partie adverse, devront être gardés par la Puissance neutre de manière qu'ils ne puissent de nouveau prendre part aux opérations de la guerre. Cette Puissance aura les mêmes devoirs quant aux blessés ou malades de l'autre armée qui lui seraient confiés.

ART. 15. La Convention de Genève s'applique aux malades et aux blessés internés sur territoire neutre.

CHAPITRE III.—DES PERSONNES NEUTRES.

ART. 16. Sont considérés comme neutres les nationaux d'un Etat qui ne prend pas part à la guerre.

ART. 17. Un neutre ne peut pas se prévaloir de sa neutralité;

- a. s'il commet des actes hostiles contre un belligérant;
- b. s'il commet des actes en faveur d'un belligérant, notamment s'il prend volontairement du service dans les rangs de la force armée de l'une des Parties.

En pareil cas, le neutre ne sera pas traité plus rigoureusement par le belligérant contre lequel il s'est départi de la neutralité que ne pourrait l'être, à raison du même fait, un national de l'autre Etat belligérant.

ART. 18. Ne seront pas considérés comme actes commis en faveur d'un des belligérants, dans le sens de l'article 17, lettre b:

- a. les fournitures faites ou les emprunts consentis à l'un des belligérants; pourvu que le fournisseur ou le prêteur n'habite ni le territoire de l'autre Partie, ni le territoire occupé par elle, et que les fournitures ne proviennent pas de ces territoires;
- b. les services rendus en matière de police ou d'administration civile.

CHAPITRE IV.—DU MATÉRIEL DES CHEMINS DE FER.

ART. 19. Le matériel des chemins de fer provenant du territoire de Puissances neutres, qu'il appartienne à ces Puissances ou à des sociétés ou personnes privées, et reconnaissable comme tel, ne pourra être réquisitionné et utilisé par un belligérant que dans le cas et la mesure où l'exige une impérieuse nécessité. Il sera renvoyé aussitôt que possible dans le pays d'origine.

La Puissance neutre pourra de même, en cas de nécessité, retenir et utiliser, jusqu'à due concurrence, le matériel provenant du territoire de la Puissance belligérante.

The sick or wounded brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral Power so as to ensure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

ART. 15. The Geneva Convention applies to sick and wounded interned in neutral territory.

CHAPTER III.—NEUTRAL PERSONS.

ART. 16. The nationals of a State which is not taking part in the war are considered as neutrals.

ART. 17. A neutral cannot avail himself of his neutrality:

- (a.) If he commits hostile acts against a belligerent;
- (b.) If he commits acts in favour of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent State could be for the same act.

ART. 18. The following acts shall not be considered as committed in favour of one belligerent in the sense of Article XVII, letter (b):

- (a.) Supplies furnished or loans made to one of the belligerents, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from these territories;
- (b.) Services rendered in matters of police or civil administration.

CHAPTER IV.—RAILWAY MATERIAL.

ART. 19. Railway material coming from the territory of neutral Powers, whether it be the property of the said Powers or of Companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral Power may likewise, in case of necessity, retain and utilize to an equal extent material coming from the territory of the belligerent Power.

Une indemnité sera payée de part et d'autre, en proportion du matériel utilisé et de la durée de l'utilisation.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.

CHAPITRE V.—DISPOSITIONS FINALES.

CHAPTER V.—FINAL PROVISIONS.

ART. 20. Les dispositions de la présente Convention ne sont applicables qu'entre les Puissances contractantes et seulement si les belligérants sont tous parties à la Convention.

ART. 20. The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

ART. 21. La présente Convention sera ratifiée aussitôt que possible.

ART. 21. The present Convention shall be ratified as soon as possible.

Les ratifications seront déposées à la Haye.

The ratifications shall be deposited at The Hague.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, ledit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the second Peace Conference as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform them of the date on which it received the notification.

ART. 22. Les Puissances non signataires sont admises à adhérer à la présente Convention.

ART. 22. Non-Signatory Powers may adhere to the present Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans les archives dudit Gouvernement.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

This Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ART. 23. La présente Convention produira effet, pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

ART. 23. The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ART. 24. S'il arrivait qu'une des Puissances contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances, en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

ART. 25. Un registre tenu par le Ministère des Affaires Etrangères des Pays-Bas indiquera la date du dépôt des ratifications effectué en vertu de l'article 21, alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (article 22, alinéa 2) ou de dénonciation (article 24, alinéa 1).

Chaque Puissance contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le dix-huit octobre mil neuf cent sept, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

[Here follow signatures.]

ART. 24. In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them at the same time of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ART. 25. A register kept by the Netherland Ministry of Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article XXI, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article XXII, paragraph 2) or of denunciation (Article XXIV, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

APPENDIX No. 4.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention relative to the laying of automatic submarine contact mines was concluded and signed at The Hague on October 18, 1907, by the respective Plenipotentiaries of the United States of America, [here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference], the original of which Convention, being in the French language, is word for word as follows:

[Translation.]

VIII. CONVENTION RELATIVE À LA POSE DE MINES SOUS-MARINES AUTOMATIQUES DE CONTACT.

Le Président des États-Unis d'Amérique:

[Here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference.]

S'inspirant du principe de la liberté des voies maritimes, ouvertes à toutes les nations;

VIII. CONVENTION, RELATIVE TO THE LAYING OF AUTOMATIC SUBMARINE CONTACT MINES.

The President of the United States of America:

Inspired by the principle of the freedom of sea routes, the common highway of all nations;

Considérant que, si dans l'état actuel des choses, on ne peut interdire l'emploi de mines sous-marines automatiques de contact, il importe d'en limiter et réglementer l'usage, afin de restreindre les rigueurs de la guerre et de donner, autant que faire se peut, à la navigation pacifique la sécurité à laquelle elle a droit de prétendre, malgré l'existence d'une guerre;

En attendant qu'il soit possible de régler la matière d'une façon qui donne aux intérêts engagés toutes les garanties désirables;

Ont résolu de conclure une Convention à cet effet et ont nommé pour Leurs Plénipotentiaires, savoir:

[Here follow the names of Plenipotentiaries.]

Lesquels, après avoir déposé leurs pleins pouvoirs trouvés en bonne et due forme, sont convenus des dispositions suivantes:

ARTICLE PREMIER. Il est interdit:

1°. de placer des mines automatiques de contact non amarrées, à moins qu'elles ne soient construites de manière à devenir inoffensives une heure au maximum après que celui qui les a placées en aura perdu le contrôle;

2°. de placer des mines automatiques de contact amarrées, qui ne deviennent pas inoffensives dès qu'elles auront rompu leurs amarres;

3°. d'employer des torpilles, qui ne deviennent pas inoffensives lorsqu'elles auront manqué leur but.

ART. 2. Il est interdit de placer des mines automatiques de contact devant les côtes et les ports de l'adversaire, dans le seul but d'intercepter la navigation de commerce.

ART. 3. Lorsque les mines automatiques de contact amarrées sont employées, toutes les précautions possibles doivent être prises pour la sécurité de la navigation pacifique.

Les belligérants s'engagent à pourvoir, dans la mesure du possible, à ce que ces mines deviennent inoffensives après un laps de temps limité, et, dans le cas où elles cesseraient d'être surveillées, à signaler les régions dangereuses, aussitôt que les exigences militaires le permettront, par un avis à la navigation, qui devra être aussi communiqué aux Gouvernements par la voie diplomatique.

ART. 4. Toute Puissance neutre qui place des mines automatiques de contact devant ses côtes, doit observer les mêmes règles et prendre les mêmes précautions que celles qui sont imposées aux belligérants.

La Puissance neutre doit faire connaître à la navigation, par un avis préalable, les régions où seront mouillées des mines automatiques de contact. Cet avis devra être communiqué d'urgence aux Gouvernements par voie diplomatique.

Seeing that, although the existing position of affairs makes it impossible to forbid the employment of automatic submarine contact mines, it is nevertheless desirable to restrict and regulate their employment in order to mitigate the severity of war and to ensure, as far as possible, to peaceful navigation the security to which it is entitled, despite the existence of war;

Until such time as it is found possible to formulate rules on the subject which shall ensure to the interests involved all the guarantees desirable;

Have resolved to conclude a Convention for this purpose, and have appointed the following as their Plenipotentiaries:

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:—

ARTICLE 1. It is forbidden:

1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

3. To use torpedoes which do not become harmless when they have missed their mark.

ART. 2. It is forbidden to lay automatic contact mines off the coast and ports of the enemy, with the sole object of intercepting commercial shipping.

ART. 3. When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice addressed to ship owners, which must also be communicated to the Governments through the diplomatic channel.

ART. 4. Neutral Powers which lay automatic contact mines off their coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral Power must inform ship-owners, by a notice issued in advance, where automatic contact mines have been laid. This notice must be communicated at once to the Governments through the diplomatic channel.

ART. 5. A la fin de la guerre, les Puissances contractantes s'engagent à faire tout ce qui dépend d'elles pour enlever, chacune de son côté, les mines qu'elles ont placées.

Quant aux mines automatiques de contact amarrées, que l'un des belligérants aurait posées le long des côtes de l'autre, l'emplacement en sera notifié à l'autre partie par la Puissance qui les a posées et chaque Puissance devra procéder dans le plus bref délai à l'enlèvement des mines qui se trouvent dans ses eaux.

ART. 6. Les Puissances contractantes, qui ne disposent pas encore de mines perfectionnées telles qu'elles sont prévues dans la présente Convention, et qui, par conséquent, ne sauraient actuellement se conformer aux règles établies dans les articles 1 et 3, s'engagent à transformer, aussitôt que possible, leur matériel de mines, afin qu'il réponde aux prescriptions susmentionnées.

ART. 7. Les dispositions de la présente Convention ne sont applicables qu'entre les Puissances contractantes et seulement si les belligérants sont tous parties à la Convention.

ART. 8. La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification, sera immédiatement remise, par les soins du Gouvernement des Pays-Bas et par la voie diplomatique, aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, ledit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

ART. 9. Les Puissances non signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans les archives dudit Gouvernement.

ART. 5. At the close of the war, the Contracting Powers undertake to do their utmost to remove the mines which they had laid, each Power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the Power which laid them, and each Power must proceed with the least possible delay to remove the mines in its own waters.

ART. 6. The Contracting Powers which do not at present own perfected mines of the pattern contemplated in the present Convention, and which, consequently, could not at present carry out the rules laid down in Articles I and III, undertake to convert the *matériel* of their mines as soon as possible, so as to bring it into conformity with the foregoing requirements.

ART. 7. The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

ART. 8. The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent, by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it has received the notification.

ART. 9. Non-Signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, transmitting to it the act of adhesion, which shall be deposited in the archives of the said Government.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

ART. 10. La présente Convention produira effet pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt, et pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

ART. 11. La présente Convention aura une durée de sept ans à partir du sixantième jour après la date du premier dépôt de ratifications.

Sauf dénonciation, elle continuera d'être en vigueur après l'expiration de ce délai.

La dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à toutes les Puissances, en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et six mois après que la notification en sera parvenue au Gouvernement des Pays-Bas.

ART. 12. Les Puissances contractantes s'engagent à reprendre la question de l'emploi des mines automatiques de contact six mois avant l'expiration du terme prévu par l'alinéa premier de l'article précédent, au cas où elle n'aurait pas été reprise et résolue à une date antérieure par la troisième Conférence de la Paix.

Si les Puissances contractantes concluent une nouvelle Convention relative à l'emploi des mines, dès son entrée en vigueur, la présente Convention cessera d'être applicable.

ART. 13. Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'article 8 alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (article 9 alinéa 2) ou de dénonciation (article 11 alinéa 3).

Chaque Puissance contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le dix-huit octobre mil neuf cent sept, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des cop-

This Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, stating the date on which it received the notification.

ART. 10. The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of this deposit, and, in the case of the Powers which ratify subsequently or adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ART. 11. The present Convention shall remain in force for seven years, dating from the sixtieth day after the date of the first deposit of ratifications.

Unless denounced, it shall continue in force after the expiration of this period.

The denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and six months after the notification has reached the Netherland Government.

ART. 12. The Contracting Powers undertake to reopen the question of the employment of automatic contact mines six months before the expiration of the period contemplated in the first paragraph of the preceding Article, in the event of the question not having been already reopened and settled by the Third Peace Conference.

If the Contracting Powers conclude a fresh Convention relative to the employment of mines, the present Convention shall cease to be applicable from the moment it comes into force.

ART. 13. A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article VIII, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article IX, paragraph 2) or of denunciation (Article XI, paragraph 3) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of

les, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

[Here follow signatures.]

APPENDIX NO. 5.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention concerning bombardment by naval forces in time of war was concluded and signed at The Hague on October 18, 1907, by the respective Plenipotentiaries of the United States of America, [here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference], the original of which Convention, being in the French language, is word for word as follows:

[Translation.]

IX. CONVENTION CONCERNANT LE BOMBARDÈMENT PAR DES FORCES NAVALES EN TEMPS DE GUERRE.

IX. CONVENTION CONCERNING BOMBARDMENT BY NAVAL FORCES IN TIME OF WAR.

Le Président des États-Unis d'Amérique:

The President of the United States of America:

[Here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference.]

Animés du désir de réaliser le vœu exprimé par la Première Conférence de la Paix, concernant le bombardement, par des forces navales, de ports, villes et villages, non défendus;

Animated by the desire to realize the wish expressed by the First Peace Conference respecting the bombardment by naval forces of undefended ports, towns, and villages;

Considérant qu'il importe de soumettre les bombardements par des forces navales à des dispositions générales qui garantissent les droits des habitants et assurent la conservation des principaux édifices, en étendant à cette opération de guerre, dans la mesure du possible, les principes du Règlement de 1899 sur les lois et coutumes de la guerre sur terre;

Whereas it is expedient that bombardments by naval forces should be subject to rules of general application which would safeguard the rights of the inhabitants and assure the preservation of the more important buildings, by applying as far as possible to this operation of war the principles of the Regulation of 1899 respecting the Laws and Customs of Land War;

S'inspirant ainsi du désir de servir les intérêts de l'humanité et de diminuer les rigueurs et les désastres de la guerre;

Actuated, accordingly, by the desire to serve the interests of humanity and to diminish the severity and disasters of war;

Ont résolu de conclure une Convention à cet effet et ont, en conséquence, nommé pour Leurs Plénipotentiaires, savoir:

Have resolved to conclude a Convention to this effect, and have, for this purpose, appointed the following as their Plenipotentiaries:—

[Here follow the names of Plenipotentiaries.]

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:

Who, after depositing their full powers, found in good and due form, have agreed upon the following provisions:—

CHAPITRE I.—*Du bombardement des ports, villes, villages, habitations ou bâtiments non défendus.*

CHAPTER I.—*The Bombardment of Undefended Ports, Towns, Villages, Dwellings, or Buildings.*

ARTICLE PREMIER. Il est interdit de bombarder, par des forces navales, des ports, villes, villages, habitations ou bâtiments, qui ne sont pas défendus.

ARTICLE 1. The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

Une localité ne peut pas être bombardée à raison du seul fait que, devant son port, se trouvent mouillées des mines sous-marines automatiques de contact.

ART. 2. Toutefois, ne sont pas compris dans cette interdiction les ouvrages militaires, établissements militaires ou navals, dépôts d'armes ou de matériel de guerre, ateliers et installations propres à être utilisés pour les besoins de la flotte ou de l'armée ennemie, et les navires de guerre se trouvant dans le port. Le commandant d'une force navale pourra, après sommation avec délai raisonnable, les détruire par le canon, si tout autre moyen est impossible et lorsque les autorités locales n'auront pas procédé à cette destruction dans le délai fixé.

Il n'encourt aucune responsabilité dans ce cas pour les dommages involontaires, qui pourraient être occasionnés par le bombardement.

Si des nécessités militaires, exigeant une action immédiate, ne permettaient pas d'accorder de délai, il reste entendu que l'interdiction de bombarder la ville non défendue subsiste comme dans le cas énoncé dans l'alinéa 1^{er} et que le commandant prendra toutes les dispositions voulues pour qu'il en résulte pour cette ville le moins d'inconvénients possible.

ART. 3. Il peut, après notification expresse, être procédé au bombardement des ports, villes, villages, habitations ou bâtiments non défendus, si les autorités locales, mises en demeure par une sommation formelle, refusent d'obtempérer à des réquisitions de vivres ou d'approvisionnement nécessaires au besoin présent de la force navale qui se trouve devant la localité.

Ces réquisitions seront en rapport avec les ressources de la localité. Elles ne seront réclamées qu'avec l'autorisation du commandant de ladite force navale et elles seront, autant que possible, payées au comptant; sinon elles seront constatées par des reçus.

ART. 4. Est interdit le bombardement, pour le non paiement des contributions en argent, des ports, villes, villages, habitations ou bâtiments, non défendus.

CHAPITRE II.—*Dispositions générales.*

ART. 5. Dans le bombardement par des forces navales, toutes les mesures nécessaires doivent être prises par le commandant pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences et à la bienfaisance, les monuments historiques, les hôpitaux et les lieux de rassemblement de malades ou de blessés. à condition qu'ils ne soient pas employés en même temps à un but militaire.

A place cannot be bombarded solely because automatic submarine contact mines are anchored off the harbour.

ART. 2. Military works, military or naval establishments, depôts of arms or war matériel, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbour, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

If for military reasons immediate action is necessary, and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the case given in paragraph 1, and that the commander shall take all due measures in order that the town may suffer as little harm as possible.

ART. 3. After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the local authorities, after a formal summons has been made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

These requisitions shall be in proportion to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in cash; if not, they shall be evidenced by receipts.

ART. 4. Undefended ports, towns, villages, dwellings, or buildings may not be bombarded on account of failure to pay money contributions.

CHAPTER II.—*General Provisions.*

ART. 5. In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.

Le devoir des habitants est de désigner ces monuments, ces édifices ou lieux de rassemblement, par des signes visibles, qui consisteront en grands panneaux rectangulaires rigides, partagés, suivant une des diagonales, en deux triangles de couleur, noir en haut et blanche en bas.

ART. 6. Sauf le cas où les exigences militaires ne le permettraient pas, le commandant de la force navale assaillante doit, avant d'entreprendre le bombardement, faire tout ce qui dépend de lui pour avertir les autorités.

ART. 7. Il est interdit de livrer au pillage une ville ou localité même prise d'assaut.

CHAPITRE III.—Dispositions finales.

ART. 8. Les dispositions de la présente Convention ne sont applicables qu'entre les Puissances contractantes et seulement si les belligérants sont tous parties à la Convention.

ART. 9. La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent, ainsi que des instruments de ratification, sera immédiatement remise, par les soins du Gouvernement des Pays-Bas et par la voie diplomatique, aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, ledit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

ART. 10. Les puissances non signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifie par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans archives dudit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white.

ART. 6. If the military situation permits, the commander of the attacking naval force, before commencing the bombardment, must do his utmost to warn the authorities.

ART. 7. A town or place, even when taken by storm, may not be pillaged.

CHAPTER III.—Final Provisions.

ART. 8. The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

ART. 9. The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers which take part therein and by the Netherland Minister of Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the Netherland Government and accompanied by the instrument of ratification:

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it received the notification.

ART. 10. Non-Signatory Powers may adhere to the present Convention.

The Power which desires to adhere shall notify its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall immediately forward to all the other Powers a duly certified copy of the notification, as well as of the act of adhesion, mentioning the date on which it received the notification.

ART. 11. La présente Convention produira effet pour, les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

ART. 12. S'il arrivait qu'une des Puissances Contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

ART. 13. Un registre tenu par le Ministre des Affaires Etrangères des Pays-Bas indiquera la date du dépôt de ratifications effectué en vertu de l'article 9 alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (article 10 alinéa 2) ou de dénonciation (article 12 alinéa 1).

Chaque Puissance contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le dix-huit octobre mil neuf cent sept, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

[Here follow signatures.]

ART. 11. The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the *procès-verbal* of that deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ART. 12. In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ART. 13. A register kept by the Netherland Minister for Foreign Affairs shall give the date of deposit of ratifications made in virtue of Article IX, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article X, paragraph 2) or of denunciation (Article XII, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference

APPENDIX No. 6.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention relative to certain restrictions with regard to the exercise of the right of capture in naval war was concluded and signed at The Hague on October 18, 1907, by the respective Plenipotentiaries of the United States of America, [here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Con-

ference], the original of which Convention being in the French language, is word for word as follows:

[Translation.]

XI. CONVENTION RELATIVE À CERTAINES RESTRICTIONS À L'EXERCICE DU DROIT DE CAPTURE DANS LA GUERRE MARITIME.

Le Président des États-Unis D'Amérique.

XI. CONVENTION RELATIVE TO CERTAIN RESTRICTIONS WITH REGARD TO THE EXERCISE OF THE RIGHT OF CAPTURE IN NAVAL WAR.

The President of the United States of America.

[Here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference.]

Reconnaissant la nécessité de mieux assurer que par le passé l'application équitable du droit aux relations maritimes internationales en temps de guerre;

Recognizing the necessity of more effectively ensuring than hitherto the equitable application of law to the international relations of maritime Powers in time of war;

Estimant que, pour y parvenir, il convient, en abandonnant ou en conciliant le cas échéant dans un intérêt commun certaines pratiques divergentes anciennes, d'entreprendre de codifier dans des règles communes les garanties dues au commerce pacifique et au travail inoffensif, ainsi que la conduite des hostilités sur mer; qu'il importe de fixer dans des engagements mutuels écrits les principes demeurés jusqu'ici dans le domaine incertain de la controverse ou laissés à l'arbitraire des Gouvernements;

Considering that, for this purpose, it is expedient, in giving up or, if necessary, in harmonizing for the common interest certain conflicting practices of long standing; to commence codifying in regulations of general application the guarantees due to peaceful commerce and legitimate business, as well as the conduct of hostilities by sea; that it is expedient to lay down in written mutual engagements the principles which have hitherto remained in the uncertain domain of controversy or have been left to the discretion of Governments;

Que, dès à présent, un certain nombre de règles peuvent être posées, sans qu'il soit porté atteinte au droit actuellement en vigueur concernant les matières qui n'y sont pas prévues;

That, from henceforth, a certain number of rules may be made, without affecting the common law now in force with regard to the matters which that law has left unsettled;

Ont nommé pour Leurs Plénipotentiaires, savoir:

Have appointed the following as their Plenipotentiaries:

[Here follow the names of Plenipotentiaries.]

Lesquels, après avoir déposé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes:

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:—

CHAPITRE I.—De la Correspondance postale.

CHAPTER I.—Postal Correspondence.

ARTICLE PREMIER. La correspondance postale des neutres ou des belligérants, quel que soit son caractère officiel ou privé, trouvée en mer sur un navire neutre ou ennemi, est inviolable. S'il y a saisie du navire, elle est expédiée avec le moins de retard possible par le capteur.

ARTICLE 1. The postal correspondence of neutrals or belligerents, whatever its official or private character may be, found on the high seas on board a neutral or enemy ship, is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

Les dispositions de l'alinéa précédent ne s'appliquent pas, en cas de violation de blocus, à la correspondance qui est à destination ou en provenance du port bloqué.

The provisions of the preceding paragraph do not apply, in case of violation of blockade, to correspondence destined for or proceeding from a blockaded port.

ART. 2. L'inviolabilité de la correspondance postale ne soustrait pas les paquebots-poste neutres aux lois et coutumes de la guerre sur mer concernant les navires de commerce neutres en général. Toutefois, la visite n'en doit être effectuée qu'en cas de nécessité, avec tous les ménagements et toute la célérité possibles.

ART. 2. The inviolability of postal correspondence does not exempt a neutral mail-ship from the laws and customs of maritime war as to neutral merchant-ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

CHAPITRE II.—*De l'exemption de capture pour certains bateaux.*

ART. 3. Les bateaux exclusivement affectés à la pêche côtière ou à des services de petite navigation locale sont exempts de capture, ainsi que leurs engins, agrès, appareils et chargement.

Cette exemption cesse de leur être applicable dès qu'ils participent d'une façon quelconque aux hostilités.

Les Puissances contractantes s'interdisent de profiter du caractère inoffensif desdits bateaux pour les employer dans un but militaire en leur conservant leur apparence pacifique.

ART. 4. Sont également exempts de capture les navires chargés de missions religieuses, scientifiques ou philanthropiques.

CHAPITRE III.—*Du régime des équipages des navires de commerce ennemis capturés par un belligérant.*

ART. 5. Lorsqu'un navire de commerce ennemi est capturé par un belligérant, les hommes de son équipage, nationaux d'un Etat neutre, ne sont pas faits prisonniers de guerre.

Il en est de même du capitaine et des officiers, également nationaux d'un Etat neutre, s'ils promettent formellement par écrit de ne pas servir sur un navire ennemi pendant la durée de la guerre.

ART. 6. Le capitaine, les officiers et les membres de l'équipage, nationaux de l'Etat ennemi, ne sont pas faits prisonniers de guerre, à condition qu'ils s'engagent, sous la foi d'une promesse formelle écrite, à ne prendre, pendant la durée des hostilités, aucun service ayant rapport avec les opérations de la guerre.

ART. 7. Les noms des individus laissés libres dans les conditions visées à l'article 5 alinéa 2 et à l'article 6, sont notifiés par le belligérant capteur à l'autre belligérant. Il est interdit à ce dernier d'employer sciemment lesdits individus.

ART. 8. Les dispositions des trois articles précédents ne s'appliquent pas aux navires qui prennent part aux hostilités.

CHAPITRE IV.—*Dispositions finales.*

ART. 9. Les dispositions de la présente Convention ne sont applicables qu'entre les Puissances contractantes et seulement si les belligérants sont tous Parties à la Convention.

CHAPTER II.—*The Exemption from Capture of certain Vessels.*

ART. 3. Vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo.

They cease to be exempt as soon as they take any part whatever in hostilities.

The Contracting Powers agree not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance.

ART. 4. Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

CHAPTER III.—*Regulations regarding the Crews of Enemy Merchant-ships Captured by a Belligerent.*

ART. 5. When an enemy merchant-ship is captured by a belligerent, such of its crew as are nationals of a neutral State are not made prisoners of war.

The same rule applies in the case of the captain and officers likewise nationals of a neutral State, if they promise formally in writing not to serve on an enemy ship while the war lasts.

ART. 6. The captain, officers, and members of the crew, when nationals of the enemy State, are not made prisoners of war, on condition that they make a formal promise in writing, not to undertake, while hostilities last, any service connected with the operations of the war.

ART. 7. The names of the persons retaining their liberty under the conditions laid down in Article 5, paragraph 2, and in Article 6, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

ART. 8. The provisions of the three preceding Articles do not apply to ships taking part in the hostilities.

CHAPTER IV.—*Final Provisions.*

ART. 9. The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

ART. 10. La présente Convention sera constatée aussitôt que possible.

Le ratifications seront déposées à La Haye.

Le premier dépôt de ratifications sera constaté par un procès-verbal signé par les représentants des Puissances qui y prennent part et par le Ministre des Affaires Étrangères des Pays-Bas.

Les dépôts ultérieurs de ratifications se feront au moyen d'une notification écrite adressée au Gouvernement des Pays-Bas et accompagnée de l'instrument de ratification.

Copie certifiée conforme du procès-verbal relatif au premier dépôt de ratifications, des notifications mentionnées à l'alinéa précédent ainsi que des instruments de ratification, sera immédiatement remise par les soins du Gouvernement des Pays-Bas et par la voie diplomatique aux Puissances conviées à la Deuxième Conférence de la Paix, ainsi qu'aux autres Puissances qui auront adhéré à la Convention. Dans les cas visés par l'alinéa précédent, ledit Gouvernement leur fera connaître en même temps la date à laquelle il a reçu la notification.

ART. 11. Les Puissances non signataires sont admises à adhérer à la présente Convention.

La Puissance qui désire adhérer notifié par écrit son intention au Gouvernement des Pays-Bas en lui transmettant l'acte d'adhésion qui sera déposé dans les archives dudit Gouvernement.

Ce Gouvernement transmettra immédiatement à toutes les autres Puissances copie certifiée conforme de la notification ainsi que de l'acte d'adhésion, en indiquant la date à laquelle il a reçu la notification.

ART. 12. La présente Convention produira effet pour les Puissances qui auront participé au premier dépôt de ratifications, soixante jours après la date du procès-verbal de ce dépôt et, pour les Puissances qui ratifieront ultérieurement ou qui adhéreront, soixante jours après que la notification de leur ratification ou de leur adhésion aura été reçue par le Gouvernement des Pays-Bas.

ART. 13. S'il arrivait qu'une des Puissances contractantes voulût dénoncer la présente Convention, la dénonciation sera notifiée par écrit au Gouvernement des Pays-Bas qui communiquera immédiatement copie certifiée conforme de la notification à toutes les autres Puissances en leur faisant savoir la date à laquelle il l'a reçue.

ART. 10. The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a *procès-verbal* signed by the Representatives of the Powers taking part therein and by the Netherland Minister for Foreign Affairs.

Subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the *procès-verbal* relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall inform them at the same time of the date on which it received the notification.

ART. 11. Non-Signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ART. 12. The present Convention shall come into force in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the *procès-verbal* of that deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification has been received by the Netherland Government.

ART. 13. In the event of one the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

La dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée et un an après que la notification en sera parvenue au Gouvernement des Pays-Bas.

ART. 14. Un registre tenu par le Ministère des Affaires Étrangères des Pays-Bas indiquera la date du dépôt des ratifications effectué en vertu de l'article 10 alinéas 3 et 4, ainsi que la date à laquelle auront été reçues les notifications d'adhésion (article 11 alinéa 2) ou de dénonciation (article 13 alinéa 1).

Chaque Puissance contractante est admise à prendre connaissance de ce registre et à en demander des extraits certifiés conformes.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Convention de leurs signatures.

Fait à La Haye, le dix-huit octobre mil neuf cent sept, en un seul exemplaire qui restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances qui ont été conviées à la Deuxième Conférence de la Paix.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ART. 14. A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article X, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article XI, paragraph 2) or of denunciation (Article XIII, paragraph 1) have been received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers invited to the Second Peace Conference.

[Here follow signatures.]

APPENDIX No. 7.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Declaration prohibiting the discharge of projectiles and explosives from balloons was signed at the Hague on October 18, 1907, by the respective Plenipotentiaries of the United States of America, [here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the conference], the original of which Declaration, being in the French language, is word for word as follows:

[Translation.]

XIV. DÉCLARATION RELATIVE À L'INTERDICTION DE LANCER DES PROJECTILES ET DES EXPLOSIFS DU HAUT DE BALLONS.

Les soussignés, Plénipotentiaires des Puissances conviées à la Deuxième Conférence Internationale de la Paix à La Haye, dûment autorisés à cet effet par leurs Gouvernements,

XIV. DECLARATION, PROHIBING THE DISCHARGE OF PROJECTILES AND EXPLOSIVES FROM BALLOONS.

The Undersigned, Plenipotentiaries of the Powers invited to the Second International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments

s'inspirant des sentiments qui ont trouvé leur expression dans la Déclaration de St. Pétersbourg du 29 novembre 1868, et désirant renouveler la Déclaration de La Haye du 29 juillet 1899, arrivée à expiration, Déclarent:

Les Puissances contractantes consentent, pour une période allant jusqu'à la fin de la troisième Conférence de la Paix, à l'interdiction de lancer des projectiles et des explosifs du haut de ballons ou par d'autres modes analogues nouveaux.

La présente Déclaration n'est obligatoire que pour les Puissances contractantes, en cas de guerre entre deux ou plusieurs d'entre elles.

Elle cessera d'être obligatoire du moment où, dans une guerre entre des Puissances contractantes, une Puissance non contractante se joindrait à l'un des belligérants.

La présente Déclaration sera ratifiée dans le plus bref délai possible.

Les ratifications seront déposées à La Haye.

Il sera dressé du dépôt des ratifications un procès-verbal, dont une copie, certifiée conforme, sera remise par la voie diplomatique, à toutes les Puissances contractantes.

Les Puissances non signataires pourront adhérer à la présente Déclaration. Elles auront, à cet effet, à faire connaître leur adhésion aux Puissances contractantes, au moyen d'une notification écrite, adressée au Gouvernement des Pays-Bas etc. et communiquée par celui-ci à toutes les autres Puissances contractantes.

S'il arrivait qu'une des Hautes Parties Contractantes dénonçât la présente Déclaration, cette dénonciation ne produirait ses effets qu'un an après la notification faite par écrit au Gouvernement des Pays-Bas et communiquée immédiatement par celui-ci à toutes les autres Puissances contractantes.

Cette dénonciation ne produira ses effets qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont revêtu la présente Déclaration de leurs signatures.

Fait à La Haye, le dix-huit octobre mil neuf cent sept, en un seul exemplaire qui

which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868, and being desirous of renewing the declaration of The Hague of the 29th July, 1899, which has now expired;

Declare:

The Contracting Powers agree to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature.

The present Declaration is only binding on the Contracting Powers in case of war between two or more of them:

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at the Hague.

A *procès-verbal* shall be drawn up recording the receipt of the ratifications, of which a duly certified copy shall be sent, through the diplomatic channel, to all the Contracting Powers.

Non-Signatory Powers may adhere to the present Declaration. To do so, they must make known their adhesion to the Contracting Powers by means of a written notification, addressed to the Netherland Government, and communicated by it to all the other Contracting Powers.

In the event of one of the High Contracting Parties denouncing the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only have effect in regard to the notifying Power.

In faith whereof the Plenipotentiaries have appended their signatures to the present Declaration.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain

restera déposé dans les archives du Gouvernement des Pays-Bas et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes. deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Contracting Powers.

Here follow signatures.]

APPENDIX No. 8.

Table of ratifications and adhesions to the Second

[A convention may be ratified by a signatory power or adhered to by a nonsignatory
Ratified with reservations. RP = Ratified provisionally.]

	I. Convention for the pacific settlement of international controversies.	II. Convention concerning the limitation of the employment of force for the recovery of contract debts.	III. Convention relating to the opening of hostilities.	IV. Convention concerning the laws and customs of war on land.	V. Convention concerning the rights and duties of neutral powers and persons in case of war on land.	VI. Convention relating to the treatment of hostile merchant vessels at the beginning of hostilities.
Germany.....	R	R	R	RR	R	RR
United States.....	RR	RR	R	R	R	
Argentina.....						
Austria-Hungary.....	R	R	R	RR	R	R
Belgium.....	R		R	R	R	
Bolivia.....	R		R	R	R	
Brazil.....						
Bulgaria.....						
Chile.....						
China.....	R	A	A		A	
Colombia.....						
Cuba.....	R			R	R	R
Denmark.....	R	R	R	R	R	
Dominican Republic.....						
Ecuador.....						
Spain.....						
France.....	R	R	R	R	R	R
Great Britain.....		R	R	R		R
Greece.....						
Guatemala.....	R	RR	R	R	R	R
Haiti.....	R	R	R	R	R	R
Italy.....						
Japan.....	R	R	R	R	R	R
Luxemburg.....	R		R	R	R	R
Mexico.....	R	R	R	R	R	R
Montenegro.....						
Nicaragua.....	A	AR	A	A	A	A
Norway.....	R	R	R	R	R	R
Panama.....	R	R	R	R	R	R
Paraguay.....						
Netherlands.....	R	R	R	R	R	R
Peru.....						
Persia.....						
Portugal.....	R	R	R	R	R	R
Roumania.....	R		R	R	R	R
Russia.....	R	R	R	RR	R	RR
Salvador.....	R	RR	R	R	R	R
Servia.....						
Siam.....	R		R	R	R	R
Sweden.....	RR		R	R	R	R
Switzerland.....	RR		R	R	R	R
Turkey.....						
Uruguay.....						
Venezuela.....						

Peace Conference held at The Hague in 1907.

power. In the table the following nomenclature is used: R= Ratified. RR= A= Adhered to. AR= Adhered to with reservations.]

VII.	VIII.	IX.	X.	XI.	XII.	XIII.	XIV.
Convention relating to the transformation of merchant vessels into war vessels.	Convention relating to the laying of automatic submarine contact mines.	Convention concerning bombardment by naval forces in time of war.	Convention for the adaptation of the principles of the Geneva Convention to maritime warfare.	Convention relating to certain restrictions in the exercise of the right of capture in maritime war.	Convention relative to the establishment of an international prize court.	Convention concerning the rights and duties of neutral powers in case of maritime war.	Declaration relative to prohibiting the throwing down of projectiles and explosives from balloons.
R	RR	RR	R	R		RR	
	R	R	R	R		AR	R
R	R	R	R	R		R	R
		R	R				R
		A	RR			AR	R
R	R	R	R	R		R	
R	RR	RR	R	R		R	R
R	RR	RR	R	R		R	R
R	R	R	R	R	RP	R	R
R	R	R	R	R		R	R
R	R	R	R	R	R	R	R
R	R	R	R	R		R	R
A	A	A	A	A		A	A
R	R	R	R	R		R	R
R	R	R	R	R	RP	R	R
R	R	R	R	R		R	R
R	R	R	R	R		R	R
R	R	R	R	R		R	R
R	RR	R	R	R		RR	R
R	R	R	R	R		R	R

APPENDIX No. 9.

INTERNATIONAL RED CROSS CONVENTION.

CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED OF THE ARMIES IN THE FIELD.

Signed at Geneva July 6, 1906.

Ratification advised by the Senate December 19, 1906.

Ratified by the President of the United States January 2, 1907.

Ratification deposited with the Government of the Swiss Confederation February 9, 1907.

Proclaimed August 3, 1907.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention between the United States of America (Here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference.) for the amelioration of the condition of the wounded of armies in the field, was signed at Geneva, July 6, 1906, the original of which convention, being in the French language, is word for word as follows:

[Translation.]

CONVENTION POUR L'AMÉLIORATION DU SORT DES BLESSÉS ET MALADES DANS LES ARMÉES EN CAMPAGNE.

Le Président des Etats-Unis d'Amérique;

CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED IN ARMIES IN THE FIELD.

The President of the United States of America;

[Here follows the list of other Sovereigns and Heads of States who sent Plenipotentiaries to the Conference.]

Également animés du désir de diminuer, autant qu'il dépend d'eux, les maux inséparables de la guerre et voulant, dans ce but, perfectionner et compléter les dispositions convenues à Genève, le 22 août 1864, pour l'amélioration du sort des militaires blessés ou malades dans les armées en campagne;

Ont résolu de conclure une nouvelle Convention à cet effet, et ont nommé pour leurs Plénipotentiaires, savoir:

[Here follows the list of Plenipotentiaries.]

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus de ce qui suit:

CHAPITRE PREMIER.—*Des blessés et malades.*

ARTICLE PREMIER.—Les militaires et les autres personnes officiellement attachées aux armées, qui seront blessés ou malades, devront être respectés et soignés, sans distinction de nationalité, par le belligérant qui les aura en son pouvoir.

Toutefois, le belligérant, obligé d'abandonner des malades ou des blessés à son adversaire, laissera avec eux, autant que les circonstances militaires le permettront, une partie de son personnel et de son matériel sanitaires pour contribuer à les soigner.

Being equally animated by the desire to lessen the inherent evils of warfare as far as is within their power, and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of the wounded in armies in the field;

Have decided to conclude a new convention to that effect, and have appointed as their plenipotentiaries, to wit:

Who, after having communicated to each other their full powers, found in good and due form, have agreed on the following:

CHAPTER I.—*The sick and wounded.*

ARTICLE 1. Officers, soldiers, and other persons officially attached to armies, who are sick or wounded, shall be respected and cared for, without distinction of nationality, by the belligerent in whose power they are.

A belligerent, however, when compelled to leave his wounded in the hands of his adversary, shall leave with them, so far as military conditions permit, a portion of the personnel and matériel of his sanitary service to assist in caring for them.

ART. 2. Sous réserve des soins à leur fournir en vertu de l'article précédent, les blessés ou malades d'une armée tombés au pouvoir de l'autre belligérant sont prisonniers de guerre et les règles générales du droit des gens concernant les prisonniers leur sont applicables.

Cependant, les belligérants restent libres de stipuler entre eux, à l'égard des prisonniers blessés ou malades, telles clauses d'exception ou de faveur qu'ils jugeront utiles; ils auront, notamment, la faculté de venir:

De se remettre réciproquement, après un combat, les blessés laissés sur le champ de bataille;

De renvoyer dans leur pays, après les avoir mis en état d'être transportés ou après guérison, les blessés ou malades qu'ils ne voudront pas garder prisonniers;

De remettre à un État neutre, du consentement de celui-ci, des blessés ou malades de la partie adverse, à la charge par l'État neutre de les internier jusqu'à la fin des hostilités.

ART. 3. Après chaque combat, l'occupant du champ de bataille prendra des mesures pour rechercher les blessés et pour les faire protéger, ainsi que les morts, contre le pillage et les mauvais traitements.

Il veillera à ce que l'inhumation ou l'incinération des morts soit précédée d'un examen attentif de leurs cadavres.

ART. 4. Chaque belligérant enverra, dès qu'il sera possible, aux autorités de leur pays ou de leur armée les marques ou pièces militaires d'identité trouvées sur les morts et l'état nominatif des blessés ou malades recueillis par lui.

Les belligérants se tiendront réciproquement au courant des internements et des mutations, ainsi que des entrées dans les hôpitaux et des décès survenus parmi les blessés et malades en leur pouvoir. Ils recueilleront tous les objets d'un usage personnel, valeurs, lettres, etc., qui seront trouvés sur les champs de bataille ou délaissés par les blessés ou malades décédés dans les établissements et formations sanitaires, pour les faire transmettre aux intéressés par les autorités de leur pays.

ART. 5. L'autorité militaire pourra faire appel au zèle charitable des habitants pour recueillir et soigner, sous son contrôle, des blessés ou malades des armées, en accordant aux personnes ayant répondu à cet appel une protection spéciale et certaines immunités.

ART. 2. Subject to the care that must be taken of them under the preceding article, the sick and wounded of an army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.

The belligerents remain free, however, to mutually agree upon such clauses, by way of exception or favor, in relation to the wounded or sick as they may deem proper. They shall especially have authority to agree:

1. To mutually return the sick and wounded left on the field of battle after an engagement.

2. To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported and whom they do not desire to retain as prisoners.

3. To send the sick and wounded of the enemy to a neutral state, with the consent of the latter and on condition that it shall charge itself with their internment until the close of hostilities.

ART. 3. After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and to protect the wounded and dead from robbery and ill treatment.

He will see that a careful examination is made of the bodies of the dead prior to their interment or incineration.

ART. 4. As soon as possible each belligerent shall forward to the authorities of their country or army the marks or military papers of identification found upon the bodies of the dead, together with a list of names of the sick and wounded taken in charge by him.

Belligerents will keep each other mutually advised of internments and transfers, together with admissions to hospitals and deaths which occur among the sick and wounded in their hands. They will collect all objects of personal use, valuables, letters, etc., which are found upon the field of battle, or have been left by the sick or wounded who have died in sanitary formations or other establishments, for transmission to persons in interest through the authorities of their own country.

ART. 5. Military authority may make an appeal to the charitable zeal of the inhabitants to receive and, under its supervision, to care for the sick and wounded of the armies, granting to persons responding to such appeals special protection and certain immunities.

CHAPITRE II.—*Des formations et établissements sanitaires.*

ART. 6. Les formations sanitaires mobiles (c'est-à-dire celles qui sont destinées à accompagner les armées en campagne) et les établissements fixes du service de santé seront respectés et protégés par les belligérants.

ART. 7. La protection due aux formations et établissements sanitaires cesse si l'on en use pour commettre des actes nuisibles à l'ennemi.

ART. 8. Ne sont pas considérés comme étant de nature à priver une formation ou un établissement sanitaire de la protection assurée par l'article 6 :

1° Le fait que le personnel de la formation ou de l'établissement est armé et qu'il use de ses armes pour sa propre défense ou celle de ses malades et blessés;

2° Le fait qu'à défaut d'infirmiers armés, la formation ou l'établissement est gardé par un piquet ou des sentinelles munis d'un mandat régulier;

3° Le fait qu'il est trouvé dans la formation ou l'établissement des armes et cartouches retirées aux blessés et n'ayant pas encore été versées au service compétent.

CHAPITRE III.—*Du personnel.*

ART. 9. Le personnel exclusivement affecté à l'enlèvement, au transport et au traitement des blessés et des malades, ainsi qu'à l'administration des formations et établissements sanitaires, les aumôniers attachés aux armées, seront respectés et protégés en toute circonstance; s'ils tombent entre les mains de l'ennemi, ils ne seront pas traités comme prisonniers de guerre.

Ces dispositions s'appliquent au personnel de garde des formations et établissements sanitaires dans le cas prévu à l'article 8, n° 2.

ART. 10. Est assimilé au personnel visé à l'article précédent le personnel des Sociétés de secours volontaires dûment reconnues et autorisées par leur Gouvernement, qui sera employé dans les formations et établissements sanitaires des armées, sous la réserve que ledit personnel sera soumis aux lois et règlements militaires.

Chaque État doit notifier à l'autre, soit dès le temps de paix, soit à l'ouverture ou au cours des hostilités, en tout cas avant tout emploi effectif, les noms des Sociétés qu'il a autorisées à prêter leur concours, sous sa responsabilité, au service sanitaire officiel de ses armées.

CHAPTER II.—*Sanitary formations and establishments.*

ART. 6. Mobile sanitary formations (*i. e.*, those which are intended to accompany armies in the field) and the fixed establishments belonging to the sanitary service shall be protected and respected by belligerents.

ART. 7. The protection due to sanitary formations and establishments ceases if they are used to commit acts injurious to the enemy.

ART. 8. A sanitary formation or establishment shall not be deprived of the protection accorded by article 6 by the fact:

1. That the personnel of a formation or establishment is armed and uses its arms in self-defense or in defense of its sick and wounded.

2. That in the absence of armed hospital attendants, the formation is guarded by an armed detachment or by sentinels acting under competent orders.

3. That arms or cartridges, taken from the wounded and not yet turned over to the proper authorities, are found in the formation or establishment.

CHAPTER III.—*Personnel.*

ART. 9. The personnel charged exclusively with the removal, transportation, and treatment of the sick and wounded, as well as with the administration of sanitary formations and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be considered as prisoners of war.

These provisions apply to the guards of sanitary formations and establishments in the case provided for in section 2 of article 8.

ART. 10. The personnel of volunteer aid societies, duly recognized and authorized by their own governments, who are employed in the sanitary formations and establishments of armies, are assimilated to the personnel contemplated in the preceding article, upon condition that the said personnel shall be subject to military laws and regulations.

Each state shall make known to the other, either in time of peace or at the opening, or during the progress of hostilities, and in any case before actual employment, the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies.

ART. 11. Une Société reconnue d'un pays neutre ne peut prêter le concours de ses personnels et formations sanitaires à un belligérant qu'avec l'assentiment préalable de son propre Gouvernement et l'autorisation du belligérant lui-même.

Le belligérant qui a accepté le secours est tenu, avant tout emploi, d'en faire la notification à son ennemi.

ART. 12. Les personnes désignées dans les articles 9, 10 et 11 continueront, après qu'elles seront tombées au pouvoir de l'ennemi, à remplir leurs fonctions sous sa direction.

Lorsque leur concours ne sera plus indispensable, elles seront renvoyées à leur armée ou à leur pays dans les délais et suivant l'itinéraire compatibles avec les nécessités militaires.

Elles emporteront, alors, les effets, les instruments, les armes et les chevaux qui sont leur propriété particulière.

ART. 13. L'ennemi assurera au personnel visé par l'article 9, pendant qu'il sera en son pouvoir, les mêmes allocations et la même solde qu'au personnel des mêmes grades de son armée.

CHAPITRE IV.—*Du matériel.*

ART. 14. Les formations sanitaires mobiles conserveront, si elles tombent au pouvoir de l'ennemi, leur matériel, y compris les attelages, quels que soient les moyens de transport et le personnel conducteur.

Toutefois, l'autorité militaire compétente aura la faculté de s'en servir pour les soins des blessés et malades; la restitution du matériel aura lieu dans les conditions prévues pour le personnel sanitaire, et, autant que possible, en même temps.

ART. 15. Les bâtiments et le matériel des établissements fixes demeurent soumis aux lois de la guerre, mais ne pourront être détournés de leur emploi, tant qu'ils seront nécessaires aux blessés et aux malades.

Toutefois, les commandants des troupes d'opérations pourront en disposer, en cas de nécessités militaires importantes, en assurant au préalable le sort des blessés et malades qui s'y trouvent.

ART. 16. Le matériel des Sociétés de secours, admises au bénéfice de la Convention conformément aux conditions déterminés par celle-ci, est considéré comme propriété privée et, comme tel, respecté en toute circonstance, sauf le droit de réquisition reconnu aux belligérants selon les lois et usages de la guerre.

ART. 11. A recognized society of a neutral state can only lend the services of its sanitary personnel and formations to a belligerent with the prior consent of its own government and the authority of such belligerent. The belligerent who has accepted such assistance is required to notify the enemy before making any use thereof.

ART. 12. Persons described in articles 9, 10, and 11 will continue in the exercise of their functions, under the direction of the enemy, after they have fallen into his power.

When their assistance is no longer indispensable they will be sent back to their army or country, within such period and by such route as may accord with military necessity. They will carry with them such effects, instruments, arms, and horses as are their private property.

ART. 13. While they remain in his power, the enemy will secure to the personnel mentioned in article 9 the same pay and allowances to which persons of the same grade in his own army are entitled.

CHAPTER IV.—*Matériel.*

ART. 14. If mobile sanitary formations fall into the power of the enemy, they shall retain their matériel, including the teams, whatever may be the means of transportation and the conducting personnel. Competent military authority, however, shall have the right to employ it in caring for the sick and wounded. The restitution of the matériel shall take place in accordance with the conditions prescribed for the sanitary personnel, and, as far as possible, at the same time.

ART. 15. Buildings and matériel pertaining to fixed establishments shall remain subject to the laws of war, but can not be diverted from their use so long as they are necessary for the sick and wounded. Commanders of troops engaged in operations, however, may use them, in case of important military necessity, if, before such use, the sick and wounded who are in them have been provided for.

ART. 16. The matériel of aid societies admitted to the benefits of this convention, in conformity to the conditions therein established, is regarded as private property and, as such, will be respected under all circumstances, save that it is subject to the recognized right of requisition by belligerents in conformity to the laws and usages of war.

CHAPITRE V.—*Des convois d'évacuation.*

ART. 17. Les convois d'évacuation seront traités comme les formations sanitaires mobiles, sauf les dispositions spéciales suivantes:

1°. Le belligérant interceptant un convoi pourra, si les nécessités militaires l'exigent, le disloquer en se chargeant des malades et blessés qu'il contient.

2°. Dans ce cas, l'obligation de renvoyer le personnel sanitaire, prévue à l'article 12, sera étendue à tout le personnel militaire préposé au transport ou à la garde du convoi et muni à cet effet d'un mandat régulier.

L'obligation de rendre le matériel sanitaire, prévue à l'article 14, s'appliquera aux trains de chemins de fer et bateaux de la navigation intérieure spécialement organisés pour les évacuations, ainsi qu'au matériel d'aménagement des voitures, trains et bateaux ordinaires appartenant au service de santé.

Les voitures militaires, autres que celles du service de santé, pourront être capturées avec leurs attelages.

Le personnel civil et les divers moyens de transport provenant de la réquisition, y compris le matériel de chemin de fer et les bateaux utilisés pour les convois, seront soumis aux règles générales du droit des gens.

CHAPITRE VI.—*Du signe distinctif.*

ART. 18. Par hommage pour la Suisse, le signe héraldique de la croix rouge sur fond blanc, formé par intervention des couleurs fédérales, est maintenu comme emblème et signe distinctif du service sanitaire des armées.

ART. 19. Cet emblème figure sur les drapeaux, les brassards, ainsi que sur tout le matériel se rattachant au service sanitaire, avec la permission de l'autorité militaire compétente.

ART. 20. Le personnel protégé en vertu des articles 9, alinéa 1^{er}, 10 et 11 porte, fixé au bras gauche, un brassard avec croix rouge sur fond blanc, délivré et timbré par l'autorité militaire compétente, accompagné d'un certificat d'identité pour les personnes rattachées au service de santé des armées et qui n'auraient pas d'uniforme militaire.

ART. 21. Le drapeau distinctif de la Convention ne peut être arboré que sur les formations et établissements sanitaires qu'elle ordonne de respecter et avec le consentement de l'autorité militaire. Il

CHAPTER V.—*Convoys of evacuation.*

ART. 17. Convoys of evacuation shall be treated as mobile sanitary formations subject to the following special provisions:

1. A belligerent intercepting a convoy may, if required by military necessity, break up such convoy, charging himself with the care of the sick and wounded whom it contains.

2. In this case the obligation to return the sanitary personnel, as provided for in article 12, shall be extended to include the entire military personnel employed, under competent orders, in the transportation and protection of the convoy.

The obligation to return the sanitary matériel, as provided for in article 14, shall apply to railway trains and vessels intended for interior navigation which have been especially equipped for evacuation purposes, as well as to the ordinary vehicles, trains, and vessels which belong to the sanitary service.

Military vehicles, with their teams, other than those belonging to the sanitary service, may be captured.

The civil personnel and the various means of transportation obtained by requisition, including railway matériel and vessels utilized for convoys, are subject to the general rules of international law.

CHAPTER VI.—*Distinctive emblem.*

ART. 18. Out of respect to Switzerland the heraldic emblem of the red cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

ART. 19. This emblem appears on flags and brassards as well as upon all matériel appertaining to the sanitary service, with the permission of the competent military authority.

ART. 20. The personnel protected in virtue of the first paragraph of article 9, and articles 10 and 11, will wear attached to the left arm a brassard bearing a red cross on a white ground, which will be issued and stamped by competent military authority, and accompanied by a certificate of identity in the case of persons attached to the sanitary service of armies who do not have military uniform.

ART. 21. The distinctive flag of the convention can only be displayed over the sanitary formations and establishments which the convention provides shall be respected, and with the consent of the military au-

devra être accompagné du drapeau national du belligérant dont relève la formation ou l'établissement.

Toutefois, les formations sanitaires tombées au pouvoir de l'ennemi n'arboreront pas d'autre drapeau que celui de la Croix-Rouge, aussi longtemps qu'elles se trouveront dans cette situation.

ART. 22. Les formations sanitaires des pays neutres qui, dans les conditions prévues par l'article 11, auraient été autorisées à fournir leurs services, doivent arborer, avec le drapeau de la Convention, le drapeau national du belligérant dont elles relèvent.

Les dispositions du deuxième alinéa de l'article précédent leur sont applicables.

ART. 23. L'emblème de la croix rouge sur fond blanc et les mots *Croix-Rouge* ou *Croix de Genève* ne pourront être employés, soit en temps de paix, soit en temps de guerre, que pour protéger ou désigner les formations et établissements sanitaires, le personnel et le matériel protégés par la Convention.

CHAPITRE VII.—*De l'application et de l'exécution de la Convention.*

ART. 24. Les dispositions de la présente Convention ne sont obligatoires que pour les Puissances contractantes, en cas de guerre entre deux ou plusieurs d'entre elles. Ces dispositions cesseront d'être obligatoires du moment où l'une des Puissances belligérantes ne serait pas signataire de la Convention.

ART. 25. Les commandants en chef des armées belligérantes auront à pourvoir aux détails d'exécution des articles précédents, ainsi qu'aux cas non prévus, d'après les instructions de leurs Gouvernements respectifs et conformément aux principes généraux de la présente Convention.

ART. 26. Les Gouvernements signataires prendront les mesures nécessaires pour instruire leurs troupes, et spécialement le personnel protégé, des dispositions de la présente Convention et pour les porter à la connaissance des populations.

CHAPITRE VIII.—*De la répression des abus et des infractions.*

ART. 27. Les Gouvernements signataires, dont la législation ne serait pas dès à présent suffisante, s'engagent à prendre ou à proposer à leurs législatures les mesures nécessaires pour empêcher en tout temps l'emploi, par des particuliers ou par des sociétés autres que celles y ayant droit en vertu de la présente Convention, de

thorities. It shall be accompanied by the national flag of the belligerent to whose service the formation or establishment is attached.

Sanitary formations which have fallen into the power of the enemy, however, shall fly no other flag than that of the Red Cross so long as they continue in that situation.

ART. 22. The sanitary formations of neutral countries which, under the conditions set forth in article 11, have been authorized to render their services, shall fly, with the flag of the convention, the national flag of the belligerent to which they are attached. The provisions of the second paragraph of the preceding article are applicable to them.

ART. 23. The emblem of the red cross on a white ground and the words *Red Cross* or *Geneva Cross* may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and matériel protected by the convention.

CHAPTER VII.—*Application and execution of the Convention.*

ART. 24. The provisions of the present convention are obligatory only on the contracting powers, in case of war between two or more of them. The said provisions shall cease to be obligatory if one of the belligerent powers should not be signatory to the convention.

ART. 25. It shall be the duty of the commanders in chief of the belligerent armies to provide for the details of execution of the foregoing articles, as well as for unforeseen cases, in accordance with the instructions of their respective governments, and conformably to the general principles of this convention.

ART. 26. The signatory governments shall take the necessary steps to acquaint their troops, and particularly the protected personnel, with the provisions of this convention and to make them known to the people at large.

CHAPTER VIII.—*Repression of abuses and infractions.*

ART. 27. The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or

l'emblème ou de la dénomination de *Croix-Rouge* ou *Croix de Genève*, notamment, dans un but commercial, par le moyen de marques de fabrique ou de commerce.

L'interdiction de l'emploi de l'emblème ou de la dénomination dont il s'agit produira son effet à partir de l'époque déterminée par chaque législation et, au plus tard, cinq ans après la mise en vigueur de la présente Convention. Dès cette mise en vigueur, il ne sera plus licite prendre une marque de fabrique ou de commerce contraire à l'interdiction.

ART. 28. Les Gouvernements signataires s'engagent également à prendre ou à proposer à leurs législatures, en cas d'insuffisance de leurs lois pénales militaires, les mesures nécessaires pour réprimer, en temps de guerre, les actes individuels de pillage et de mauvais traitements envers des blessés et malades des armées, ainsi que pour punir, comme usurpation d'insignes militaires, l'usage abusif du drapeau et du brassard de la Croix Rouge par des militaires ou des particuliers non protégés par la présente Convention.

Ils se communiqueront, par l'intermédiaire du Conseil fédéral suisse, les dispositions relatives à cette répression, au plus tard dans les cinq ans de la ratification de la présente Convention.

Dispositions générales.

ART. 29. La présente Convention sera ratifiée aussitôt que possible.

Les ratifications seront déposées à Berne. Il sera dressé du dépôt de chaque ratification un procès-verbal dont une copie, certifiée conforme, sera remise par la voie diplomatique à toutes les Puissances contractantes.

ART. 30. La présente Convention entrera en vigueur pour chaque Puissance six mois après la date du dépôt de sa ratification.

ART. 31. La présente Convention, dûment ratifiée, remplacera la Convention du 22 août 1864 dans les rapports entre les États contractants.

La Convention de 1864 reste en vigueur dans les rapports entre les Parties qui l'ont signée et qui ne ratifieraient pas également la présente Convention.

ART. 32. La présente Convention pourra, jusqu'au 31 décembre prochain, être signée par les Puissances représentées à la Conférence qui s'est ouverte à Genève le 11 juin 1906, ainsi que par les Puissances non représentées à cette Conférence qui ont signé la Convention de 1864.

Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

ART. 28. In the event of their military penal laws being insufficient, the signatory governments also engage to take, or to recommend to their legislatures, the necessary measures to repress, in time of war, individual acts of robbery and ill treatment of the sick and wounded of the armies, as well as to punish, as usurpations of military insignia, the wrongful use of the flag and brassard of the Red Cross by military persons or private individuals not protected by the present convention.

They will communicate to each other through the Swiss Federal Council the measures taken with a view to such repression, not later than five years from the ratification of the present convention.

General provisions

ART. 29. The present convention shall be ratified as soon as possible. The ratifications will be deposited at Berne.

A record of the deposit of each act of ratification shall be prepared, of which a duly certified copy shall be sent, through diplomatic channels, to each of the contracting powers.

ART. 30. The present convention shall become operative, as to each power, six months after the date of deposit of its ratification.

ART. 31. The present convention, when duly ratified, shall supercede the Convention of August 22, 1864, in the relations between the contracting states.

The Convention of 1864 remains in force in the relations between the parties who signed it but who may not also ratify the present convention.

ART. 32. The present convention may, until December 31, proximo, be signed by the powers represented at the conference which opened at Geneva on June 11, 1906, as well as by the powers not represented at the conference who have signed the Convention of 1864.

Celles de ces Puissances qui, au 31 décembre 1906, n'auront pas signé la présente Convention, resteront libres d'y adhérer par la suite. Elles auront à faire connaître leur adhésion au moyen d'une notification écrite adressée au Conseil fédéral suisse et communiquée par celui-ci à toutes les Puissances contractantes.

Les autres Puissances pourront demander à adhérer dans la même forme, mais leur demande ne produira effet que si, dans le délai d'un an à partir de la notification au Conseil fédéral, celui-ci n'a reçu d'opposition de la part d'aucune des Puissances contractantes.

ART. 33. Chacune des Parties contractantes aura la faculté de dénoncer la présente Convention. Cette dénonciation ne produira ses effets qu'un an après la notification faite par écrit au Conseil fédéral suisse; celui-ci communiquera immédiatement la notification à toutes les autres Parties contractantes.

Cette dénonciation ne vaudra qu'à l'égard de la Puissance qui l'aura notifiée.

En foi de quoi, les Plénipotentiaires ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait à Genève, le six juillet mil neuf cent six, en un seul exemplaire, qui restera déposé dans les archives de la Confédération suisse, et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux Puissances contractantes.

Such of these powers as shall not have signed the present convention on or before December 31, 1906, will remain at liberty to accede to it after that date. They shall signify their adherence in a written notification addressed to the Swiss Federal Council, and communicated to all the contracting powers by the said Council.

Other powers may request to adhere in the same manner, but their request shall only be effective if, within the period of one year from its notification to the Federal Council, such Council has not been advised of any opposition on the part of any of the contracting powers.

ART. 33. Each of the contracting parties shall have the right to denounce the present convention. This denunciation shall only become operative one year after a notification in writing shall have been made to the Swiss Federal Council, which shall forthwith communicate such notification to all the other contracting parties.

This denunciation shall only become operative in respect to the power which has given it.

In faith whereof the plenipotentiaries have signed the present convention and affixed their seals thereto.

Done at Geneva, the sixth day of July, one thousand nine hundred and six, in a single copy, which shall remain in the archives of the Swiss Confederation and certified copies of which shall be delivered to the contracting parties through diplomatic channels.

[Here follow the signatures.]

* * * * *

Dans une série de réunions tenues du 11 juin au 5 juillet 1906, la Conférence a discuté et arrêté, pour être soumis à la signature des Plénipotentiaires, le texte d'une Convention qui portera la date du 6 juillet 1906.

En outre, et en conformité de l'article 16 de la Convention pour le règlement pacifique des conflits internationaux, du 29 juillet 1899, qui a reconnu l'arbitrage comme le moyen le plus efficace et en même temps le plus équitable de régler les litiges qui n'ont pas été résolus par les voies diplomatiques, la Conférence a émis le vœu suivant:

La Conférence exprime le vœu que, pour arriver à une interprétation et à une application aussi exactes que possible de la Convention de Genève, les Puissances contractantes soumettent à la Cour Permanente de La Haye, si les cas et les circon-

In a series of meetings held from the 11th of June to the 5th of July 1906, the Conference discussed and framed, for the signatures of the Plenipotentiaries, the text of a Convention which will bear the date of July 6, 1906.

In addition, and conformably to Article 16 of the Convention for the peaceful settlement of international disputes, of July 29, 1899, which recognized arbitration as the most effective and at the same time, most equitable means of adjusting differences that have not been resolved through the diplomatic channel, the Conference uttered the following wish:

The Conference expressed the wish that, in order to arrive at as exact as possible an interpretation and application of the Geneva Convention, the Contracting Powers will refer to the Permanent Court at The Hague, if permitted by the cases and cir-

stances s'y prêtent, les différends qui, en temps de paix, s'élèveraient entre elles relativement à l'interprétation de ladite Convention.

Ce vœu a été voté par les États suivants: Allemagne, République Argentine, Autriche-Hongrie, Belgique, Bulgarie, Chili, Chine, Congo, Danemark, Espagne (*ad. ref.*), États-Unis d'Amérique, États-Unis du Brésil, États-Unis Mexicains, France, Grèce, Guatemala, Honduras, Italie, Luxembourg, Montenegro, Nicaragua, Norvège, Pays-Bas, Pérou, Perse, Portugal, Roumanie, Russie, Serbie, Siam, Suède, Suisse et Uruguay,

Ce vœu a été rejeté par les États suivants: Corée, Grande-Bretagne et Japon.

En foi de quoi, les Délégués ont signé le présent Protocole.

Fait à Genève, le six juillet milneuf cent six, en un seul exemplaire, qui sera déposé aux archives de la Confédération suisse et dont des copies, certifiées conformes, seront délivrées à toutes les Puissances représentées à la Conférence.

[Here follow the signatures.]

Great Britain signed under reserve of articles 23, 27, and 28. Persia under reserve of article 18.

The ratifications of the following States have up to the present been deposited:

Great Britain.
Siam.
United States.
Russia.
Italy.
Switzerland.
Congo.
German Empire.
Mexico.
Denmark.
Brazil.
Luxemburg.
Belgium.

Spain.
Austria-Hungary.
Japan and Korea.
Netherlands.
Chile.
Serbia.
Norway.
Honduras.
Portugal.
Roumania.
Sweden.
Guatemala.
Bulgaria.

The following accessions have been notified:

Nicaragua.
Venezuela.
Turkey.
Colombia.

Cuba.
Paraguay.
Costa Rica.
Salvador.

cumstances, such differences as may arise among them, in time of peace, concerning the interpretation of the said Convention.

This wish was adopted by the following States;

Germany, Argentine Republic, Austria-Hungary, Belgium, Bulgaria, Chile, China, Congo, Denmark, Spain (*ad referendum*), United States of America, United States of Brazil, France, Greece, Guatemala, Honduras, Italy, Luxemburg, Montenegro, Nicaragua, Norway, The Netherlands, Peru, Persia, Portugal, Roumania, Russia, Servia, Siam, Sweden, Switzerland and Uruguay.

The wish was rejected by the following States:

Corea, Great Britain and Japan.

In witness whereof the Delegates have signed the present Protocol.

Done at Geneva, the sixth day of July, one thousand nine hundred and six, in a single copy which shall be deposited in the archives of the Swiss Confederation and certified copies of which shall be delivered to all the Powers represented at the Conference.

INDEX.

Key: The numerical references are to paragraphs unless otherwise indicated. Numerals following abbreviations for The Hague and Geneva Conventions, etc., refer to the number of the article of the convention or declaration.

Examples: G. C. 8 indicates Geneva Convention, article 8. H. VIII 6 indicates The Hague Convention VIII, relative to the laying of automatic contact submarine mines, article 6; H. R. 3 means article 3 of the annex to The Hague Convention No. IV respecting the laws and customs of war on land.

The letter n is used as abbreviation for note or notes. Examples: 355n means paragraph 355 of text and note; n(212) means note to paragraph 212 text. See abbreviations, page 8.

A.

Acts constituting violations of laws of war	363 to 378, inc.
which do not forfeit rights of neutrals.....	430, H. V, 18
forfeit rights of neutrals.....	429, H. V, 17
Administrator, occupying state holding enemy's real property, acts as	355n, H. R. 55
Aeroplanes, use of, to bombard undefended places prohibited	213n
throw projectiles into forts, etc.....	215n
Agreement to convert matériel of mines to conform to rules	440n, H. VIII, 6
Agreements entered into during war	12
existing during war.....	12
Aid societies, volunteer, with sanitary formations, etc., q. v.	133, G. C., 10
conditions prescribed for employment.....	133, 135, 136
matériel, rules concerning.....	148, 149, G. C., 16
National Red Cross only authorized by United States.....	n(133), 134
others may work through Red Cross.....	n(133)
personnel of, captured, pay and allowances.....	143
of neutrals.....	137, 138, G. C., 11
conditions of employment of.....	138
Ambassadors, etc., of neutrals, safe conduct for (see Diplomatic Agents)	233
American rule, private property enemy	335
warning authorities before bombardment (see H. R. 26).....	217
Appropriation of enemy property	12
Armed enemies, capture of (see also Prisoners of War)	12
destruction of life or limb of.....	12
Armed forces, consist of	42, H. R., 3
Armed land forces, instructions to be issued to	5, H. IV, 1
Armed prowlers, definition of	373
not treated as prisoners of war.....	373
Armistice, acts permitted during	261, 270 (e)n 5
prohibited during.....	270 (e)n 5
belligerent troops' location to be fixed in.....	270 (c)n 3
between Gens. Sherman and Johnston.....	n(260)
Japan and Russia at Portsmouth.....	App. D, p. 97
binding, when.....	259
burial of dead.....	App. C, p. 96
cessation of hostilities or arms.....	n(263)
commencement of.....	260n, 270 (a), H. R., 38
definition of.....	256 (a)

- Armistice**, denunciation of..... 271, 272, 275n, H. R., 40
duration of..... 257n, 270 (b)n2, H. R., 36
effect of..... 257, H. R., 36
espionage during..... 270 (e)
form of, between besieging force and garrison..... App. B, p. 95
two opposing forces..... App. A, p. 94
burial of dead..... App. C, p. 96
not prescribed..... 262
general..... 263, 264, H. R., 37
H. R. governing..... 257, 263, 267, 268, 271, 274, H. R., 36-41
intercourse in theater of operations may be regulated by.. 268n, H. R., 39
suspended during if not specially authorized..... 269n
Japanese project for, with Russia in Tumen Region..... App. F, p. 98
kinds of..... 263n, H. R., 37
local..... 263, 265, H. R., 37
nature of..... 258, H. R., 36
neutral zone during..... 270 (c), n(275), App. pp. 94, 97, 98
notification of..... 267n, H. R., 38
prescribes relation between armies and people..... 270 (d)
protocol of conditions of, between Japan and Russia..... App. E, p. 97
soldiers captured violating, are prisoners of war..... 275n
stipulation of, should contain certain essentials..... 270n
suspension of arms, form of..... 266
termination of..... 260n
time of commencement and termination of, importance of..... 260n
truces..... n(263)
vigilance to be maintained during..... 273n
violation of, by individuals..... 274, H. R., 41
parties thereto..... 271, 272, H. R., 40
written, preferable..... 262
- Armistices**..... Chap. VII, sec. 3, p. 88, H. R., 36 to 41, inc.
- Arms, etc.**, of interned belligerents, disposition of..... 415n
personnel of sanitary formations, etc..... 124, 126, 139, G. C., 8, 12
wounded with sanitary formations..... 129, G. C., 8
- Arms**, suspension of. (See **Armistice**.)
- Army**. (See under **Belligerents**.)
- Army of occupation** can take possession of, what..... 341, 360, H. R., 53
militia and volunteer corps part of, when..... 30, 32, 33, 34, 35, H. R., 1
- Art**, buildings devoted to, destruction of..... 358, H. R., 56
protection, during bombardment..... 225, H. R., 27
use of..... 359
- Asphyxiating** or deleterious gases, diffusion by projectiles containing..... 3 (b)
- Assaults**, bombardments, and sieges. (See **Bombardments**, **assaults**, and **sieges**.)
- Authorities**, warning of, before bombardment..... 216, 217n, H. R., 26
- Automatic submarine contact mines**. (See **H. VIII**):
- Anchored**..... 432n, H. VIII, 1, 3
ceasing to be under observation, danger zone to be notified,
when..... 437, H. VIII, 3
danger zone, mariners to be notified of..... 437, H. VIII, 3
precautions to be taken for peaceful navigation..... 437, H. VIII, 3
removal of..... 439n, H. VIII, 5
requirements for..... 436, 437, H. VIII, 1, 3
restrictions as to laying..... 434, n(435), 436-440, H. VIII, 1, 2, 3, 4, 5, 6
when broken loose from moorings..... 436, H. VIII, 1
- As authorized, risk to neutral navigation..... 435, 443, n(439), H. VIII, 6
- Bombardment** undefended mined place..... n(212), H. IX, 1
- Commercial navigation**, forbidden to lay contact mines to intercept. 434, H. VIII, 2
- Duration** of convention on mines..... 442, H. VIII, 11
- Effect** of rule as to use of contact mines..... 435n, 443, H. VIII, 2
- Institute** of international law, rules as to mines..... n(443)
- Kinds** of..... 432n, 433

Automatic submarine contact mines—Continued.	
Mariners to be notified of, when.....	437, 438, H. VIII, 3, 4
Matériel of mines, agreement to convert to conform to rules.....	440n, H. VIII, 6
Navigation, commercial, laying mines to intercept, forbidden.....	434, H. VIII, 2
neutral, use of mines a risk to.....	435n, 443, n(439)
Neutral powers may lay and rules governing.....	438, H. VIII, 4
Observation mines.....	432n
Shipping, neutral, inadequately protected.....	435n, 443n, n(439)
Torpedoes, kinds forbidden.....	441, H. VIII, 1
Unanchored.....	432n, 433
to be harmless, when.....	433, H. VIII, 1
Zone, danger, rule as to notifying when mines cease to be under observa- tion.....	437, H. VIII, 3

B.

Bad faith, cruelty, etc.....	18
Balloons, bombarding undefended place from, prohibited.....	213
discharging projectiles and explosives from.....	3 (k), 215n, H. D., XIV
Belfort, suspension of arms.....	App. G., p. 99
Belligerent, action by, in case of parlementaire from enemy (see Parlemen- taire).....	243, H. R., 33
authorized to purchase war supplies from companies, neutral states.....	405n
government, declaration of, concerning paroles.....	77n
marauders may be punished by either.....	374
method of reception of enemy's parlementaire.....	246
not compelled to permit withdrawal civil population from be- sieged place.....	218
reprisals by, may be resorted to, when.....	379
sending parlementaire, must cease firing.....	249
sends rolls of sick and wounded enemy to his authorities..	113, G. C., 4
Belligerents, armistice between, when binding.....	259
capitulations between, involve what.....	250, 251, H. R., 35
channels of communication concerning sick, etc.....	115
communication between, by parlementaires.....	235, 236, H. R., 32
debts of one to another.....	n(303)
flag of truce, use of, in communicating.....	238, H. R., 32
general rule of conduct for.....	4 P. H., IV
intercourse between, rule for.....	230, 232
exceptions to.....	231, 233, 234
Belligerents interned in neutral territory..	411, 416, 417, 418, 423, H. V., 11, 12, 13, 14, 15
arms, equipments, etc., disposition of.....	415n
maintenance of.....	416
neutral state, duty of.....	412
may impose conditions.....	413n
parole of officers of.....	414n
prisoners of war escaped.....	417n, H. V., 13
sick and wounded, belligerents.....	n(417)
Belligerents, lawful, army, service in, not necessarily voluntary to qualify as..	31
may join before or after war.....	31
certificate or distinctive badges required, when.....	32, H. R., 1
commander required for.....	30, H. R., 1
conditions required for.....	30, H. R., 1, 2
distinctive emblem required for.....	30, H. R., 1
sign, requirements for.....	33n, H. R., 1
notice of.....	33n
instruction in laws of war required.....	5, 35, H. IV, 1, H. R., 1
levee en masse.....	36, H. R., 2
militia, must have commander.....	32
should carry arms openly, why.....	30, 34, H. R., 1
to conform to laws of war.....	30, 35, H. R., 1
volunteers, requisites for commander.....	32n, H. R., 1

- Belligerents**, prohibited to move troops, etc., across neutral territory.... 391, H. V., 2
 qualifications of..... 30-42, H. R., 1, 2, 3
 recruiting in neutral territory, rule concerning..... 396,
 397, 398, H. V., 4, G. C., 11
 to notify neutrals of existence of war..... 389, H. III, 2
 respect territory of neutral powers..... 388, 390, H. V. 1
- Billeting of troops**..... 346n, 347n
- Blank form for pass, newspaper correspondent**..... p. 35
- Blanks for certificate of identity, civilian employees**..... pp. 36, 37
 volunteer aid societies..... pp. 54, 55
 requisitions..... App. p. 128
- Board, lodging, and clothing of prisoners of war**..... 63, H. R., 7
- Bombardments, assaults, and sieges:**
- Aeroplanes, etc., from, of undefended places prohibited..... 213
 of forts, etc., not prohibited..... 215
- Authorities to be notified before bombardment**..... 216, 217n, H. R., 26
- Authorized, when**..... n(212), 214
- Balloons, etc., from, of undefended places prohibited**..... 213, H. R., 25
 of forts, etc., not prohibited..... 215n
- Buildings devoted to art, etc., protection of, during**..... 225, H. R., 27
 religion, etc., protection of, during..... 225, H. R., 27
 sick and wounded, protection by, signs during..... 225,
 H. R., 27
 protected, restrictions on use of..... 228, 359
 besieged to indicate by distinctive signs..... 225,
 227, H. IX, 5, H. R., 27
- Communications between besieged and outside during**..... 224n
 diplomatic agents, neutrals, and their govern-
 ment during..... n(224)
- Defended places, although unfortified, permitted**..... n(212)
- Firing during, need not cease when noncombatants leave**..... 223
- Forts and fortified places—**
- American rule concerning..... 217
 Authorities to be warned of..... 216, H. R., 26
 English rule concerning..... n(217)
 Withdrawal of noncombatants from, during..... 218, 221, 222
- Monuments, historical, etc., to be protected during**..... 225, H. R., 27, H. IX, 5
- Naval forces, in time of war, by**..... 3 (h), n(212), H. IX, p. 174
- Places occupied by sanitary troops only, prohibited**..... 214
- Undefended places by aeroplanes, etc., prohibited**..... 213
 forbidden..... 212, H. R., 25
 having automatic submarine mines near..... n(212)
 to secure money contributions, unauthorized..... n(212)
 H. IX, 4
 requisitions..... n(212), n(250), H. IX, 3
- Booty and capture, whose property**..... 56n, n(336), 337, n(339), H. R. 46, 147
- Brassard and flag, Red Cross, legislation regarding use of**..... 171, G. C., 27
- Brigands, men in arms of levee en masse not**..... 37
- Buildings devoted to art, etc.**..... 225, 227, 228, 358, 359n, H. R. 27, 56, H. IX, 5
- Bullets which expand or flatten (see 3(a)n, H. D. July 29, 1899; 3(c))**..... 175,
 184, 185, H. R., 23(e)
- Bureau of information for prisoners of war (see also Prisoners of war)**..... 83-90,
 H. R., 14-20
- Deaths, names, wounds of prisoners of war, etc., record of**..... 83, H. R., 14
- Functions of**..... 83, H. R., 14
- Information required to be kept by**..... 83, H. R., 14
- Postal duties for, free**..... 85, H. R., 16
- Relief societies, facilities afforded to**..... 87, H. R., 15
- Required to keep return or card for prisoners**..... 83, H. R., 14
- To collect and forward valuables, letters, etc.**..... 84, H. R., 14
- When and where instituted**..... 83, H. R., 14
- Burial of dead, form of suspension of arms for**..... App. C, p. 96
 prisoners of war..... 90, H. R., 19

C.

- Cables, submarine** 341, 342, 343, 344n, 406-408, 410, H. R., 53, 54, H. V, 8, 9
 Institute of International Law, rules concerning n(344)
- Capitulation:**
 Definition of 251
 Manila, at App. C, p. 84, n(256)
 Metz, at App. A, p. 80
 Port Arthur, at App. D, p. 85
 Santiago, at App. B, p. 83
 Verdun, at n. 3 (252)
- Capitulations:**
 Appendix to 254
 Between belligerents, involve what 250, H. R., 35
 Commissions, appointment of, to carry out provisions of 254 (e)
 Denunciation of 256n
 Flags, destruction of, before 254 (c)
 Forms of 253
 Garrison, treatment of, in 254 (a) n1, 2
 Military honor must be considered in 250, H. R., 35
 Powers of commanders when making, limitations on 252n
 Prisoners of war, retention of property by 254 (d)
 Property, damage or destruction of, after
 private, treatment of, in 254 (d)
 Subjects usually regulated in 253, 254n
 Written, preferable 253
- Captured troops, status of, how determined** 40
- Capture of persons** 12
 right of, in naval warfare 3 (j), H. XI
- Captures and booty, whose property** 56n, n(336), 337n, 339n, H. R., 46, 47
- Cartel:**
 Definition of 284
 Voidable 284
 Ships, definition of n(284)
 Binding effect of n(284)
- Cases not covered by written regulations** 4, P. H., IV
- Censorship:**
 Evasion of regulations of 375
 Press in occupied territory 305, 341, H. R., 53
 Prisoners of war, correspondence of 86
 Telegrams, etc., in occupied territory 305, 341, H. R., 53
- Certificate of identification, forms for civilian employees** pp. 36, 37
 news correspondent Ap. A, p. 35
 personnel, Red Cross... n1 (135a), pp. 54, 55
- Cessation of arms or hostilities (truce)** n(263)
- Chaplains:**
 Protection for 130, 132, G. C., 9
 Captured, pay of 142, G. C., 13
- Charitable inhabitants, in re, enemy sick and wounded** 116, G. C., 5
- Chivalry, principles of, affecting warfare** 9
- Civilian employees, form of certificate of identification** pp. 36, 37
 description of, to be on certificate of identification p. 37
- Civilians living between lines, treatment of** 220
- Civil officials and diplomatic agents, may be made prisoners of war, when** 47 (b)
 population, withdrawal from besieged place, not absolute right 218
- Clothing of prisoners of war** 63, H. R., 7
- Code, complete, not wholly written** 4, P. H. IV
- Collective punishment may be inflicted on community** 354n
- Colored troops, enrollment authorized** 41
- Combatants. (See Belligerents.)**
 right of, to be treated as prisoners of war 42, H. R., 3
- Commanders, ordering violations of laws of war** 366
- Commencement of hostilities, H. III, Chap. II:**
 Armed forces of enemy, rights, duties 29
 Army, militia, and volunteers constitute, when 30

Commencement of hostilities—Continued.

Belligerency, rights of, when operative	23
Belligerents, lawful, conditions required for	30
Declaration of war required	19n, 20n
Enemy population, two classes	29
Enemy subjects, resident, treatment of	24, 25n 1, 2; 26, 27, 28n 1, 2, 3
Hostilities, restriction of	26
Lawful belligerents	30
armies	30
militia	30
volunteers	30
Militia, part of Army, when	30
Neutral powers, rights and duties of	21, 22, H. III, 2, 3
Notifications of neutrals of existence of state of war	21, H. III, 2
Population enemy, two classes	29
Resident enemy subject	24-28
Surprise of unprepared enemy	20n
Volunteer corps, part of Army, when	30
Warning required prior to	19n, H. III, 1
Commercial transactions in hostile country by officers and men	338
supplies by companies of neutral States	405n
Commissioned officers, how paroled. (See Officers)	75
Commissions, capitulations to be carried out by	254 (e)
Common law of war, military offenses under	16
Communication between belligerents at night	242
by parlementaires	235-249, H. R., 32, 34
white flag	238, 243, H. R., 32, 33
besieged and outside	224
diplomats, neutrals, in besieged place with own Government	224n
enemy with own Government in occupied territory	204
lines of, hostages taken to protect	387n
traffic, etc., channels of, obstruction or destruction of	12
Communications, means of, in neutral countries	406-410, H. V., 3, 5, 8, 9
Compensation for maintenance of interned troops	416
property, private, seized	341, 344, 358, H. R., 53, 54, 56
violations of H. R.	363, H. IV, 3
Complaints public, of violations of laws or war	364, 365
Complete code not wholly written	4, P. H. IV
Conduct of hostilities. (See Means of injuring the enemy.)	
Conduct of war (see also Means of injuring the enemy):	
Participants in	2
Regulated by rules	1
Rules, unwritten, how applied	4, P. H. IV
written and unwritten, designation of	1
relating to war on land	3
result of convention or treaties	2
where discussed and formulated	2
Confiscation, private property	336n, n(337), 339n, 340, 358, n(360), H. R., 46, 47, 56
Consular officers, neutrals, right to withdraw from besieged place	219
Consuls, treatment of	n(427)
Contact mines, automatic submarine. (See Automatic submarine contact mines.)	
Contractors, newspaper correspondents, etc	46, H. R. 13
Contributions:	
Collection of	351, 352, H. R. 49, 51
Failure to pay money by undefended towns, bombardment unauthorized	n(212), H. IX, 4
Hostages taken to insure compliance with	337
Method of levying	352, H. R. 51
Receipt for, to be given	352, H. R. 52
form for	p. 128
Rules as to	345, 351, 352, 353, H. R. 49-52

Conventions and declarations, international:

- Convention relative to the opening of hostilities. (H. III), App. No. 1, p. 151, 3(e)
 respecting the laws and customs of war on land..... (H. IV),
 App. No. 2, p. 153, 3(f)n
 preamble to H. IV..... (P. H. IV), 4, pp. 153, 154
 regulations respecting the laws and customs of war on
 land (Annex to H. IV, abbreviated H. R.).... App. 2, p. 156
 respecting the rights and duties of neutral powers and persons
 in case of war on land..... (H. V) App. No. 3, p. 165, 3(g)
 relative to the laying of automatic submarine contact mines...
 (H. VIII) App. 4, p. 170, 3(i)
 concerning bombardment by naval forces in time of war.....
 (H. IX) App. 5, p. 174, 3(h)n
 relative to certain restrictions with regard to the exercise of the
 right of capture in naval war..... (H. XI), App. 6, p. 177, 3(j)
 Declaration relative to prohibiting the discharge of projectiles and explo-
 sives from balloons..... H. D. XIV, App. No. 7, p. 181, 3(k)n
 Table of ratifications, adhesions and reservations to The Hague conventions
 and declarations..... App. 8, pp. 184-185
 Convention for the amelioration of the condition of the wounded in armies
 in the field, also known as the International Red Cross Convention and
 Geneva Convention of 1906 (G. C.)..... App. 9, p. 186; 3(d)n
 List of ratifications and adhesions to the Geneva Convention of 1906..... p. 194
 Declaration of St. Petersburg convention, 11 Dec., 1868, regarding explosive
 projectiles (not ratified by United States)..... 10n, n(175), 3(a)
 The Hague, July 29, 1899, forbidding the employment of pro-
 jectiles which have for their only
 object the diffusion of asphyxi-
 ating and deleterious gases (not
 ratified by United States). (H. D. 1),
 3 (b)
 preventing the employment of
 bullets which expand or flatten
 in the human body (not ratified
 by United States)..... (H. D. 2), 3(c)
- Convoys of evacuation** (see under **Sanitary formations and establishments.**)
 through neutral states.... 418, 419n, 420, 421, 422, 424, H. V, 15
 sick and wounded prisoners of war..... 422, 423, H. V, 15
 munitions and supplies in neutral territory..... 391, 395, H. V, 2
- Corps of combatants** can not be formed in neutral territory..... 396, 397n, H. V, 4
- Correspondence** of diplomatic agents of neutrals..... 224n, n(427)
- Courts-martial** and military commissions..... 16n
- Crimes**, partial list of, against laws of war..... 366, 372
 punishable by penal codes, committed by soldiers..... 378
 result of war, should be defined and made known to inhabitants..... 375
 war, punishable by either belligerent..... 366
 punishment for..... 366, 377
 see also **Laws of War**..... 366, 372
- Criminal, war**..... 366-378
- Cruelty**, bad faith, extortion, revenge, etc..... 18
 practice of not permitted by military necessity..... 13

D.

- Dead**, duties of commanders concerning..... 165, G. C., 3
 form of armistice for burial of..... App. C., p. 96
 valuables, etc., found on bodies of..... 166, G. C., 4
- Death sentences**..... 17, 377, 378
- Deception** permitted, but not perfidy..... n(190), 191, 192n
 practice of..... 12
- Declaration of war**..... 19, H. III, 1
 time between and commencement of hostilities..... 20

Declarations and conventions, binding on whom.....	7, pp. 184, 185, 194
reservations, effect of.....	7
Defended place, defined.....	214
although unfortified, may be bombarded.....	n(212), H. IX, 4
Definitions:	
Armed prowlers.....	373
Armistice.....	256a, H. R., 36
general and local.....	263, H. R., 37
Capitulation.....	251
Cartel.....	284
Cartel-ship.....	n(284)
Defended place.....	214
"Fixed establishments" (sanitary).....	120
Highway robbers.....	371
Law of hostile occupation.....	n(14), n(16)
Marauders.....	374n
Martial law.....	14n
Military government.....	n(14), n(16)
occupation.....	285, H. R., 42
Mobile sanitary formations.....	118, 119
Neutrality.....	388
Neutrals.....	425, H. V., 16
Parlementaire.....	235
Passport.....	276n
Pillage.....	n(339)
Pirates of war.....	371
Prisoners of war.....	43
Public war.....	n(3), 10
Reprisal.....	379
Safe conduct.....	277
Safeguard.....	282
Spy.....	199n, H. R., 29
War, public.....	n(10)
rebels.....	370
traitor.....	203, 204, 205
Denunciation of armistice.....	271, 275n, H. R., 40
capitulations.....	256n
H. IV (Note: Other Hague conventions have provision similar to H. IV; see Appendices .).....	H. IV 8, p. 156
Deserters can not claim privileges of <i>levee en masse</i>	38n
captured in service of enemy punishable.....	38n
status of, how determined.....	40
Destruction of channels of communication, etc.....	12
life or property.....	12
Devastation, limitations on.....	331, n(332), 334, H. R., 23 (g)
of a district.....	13
Diplomatic agents and civil officials may be made prisoners of war, when.....	47 (b)
correspondence of.....	224n, n(427)
neutral in besieged place, communication with outside.....	224n
right to withdraw from besieged place.....	219
treatment of.....	427n
Distinctive emblems, prohibition of use of as trade-mark, etc.....	170, 171, G. C., 27, 28

E.

Enemies, armed, destruction of life or limb of.....	12
Enemy, communication with, by citizens of occupied territory.....	204
means of injuring. (See Means of injuring the enemy .)	
uniform, etc., improper use of forbidden.....	194, 196n, 197, H. R., 23
Engagements and treaties concluded with enemy during war.....	18
Equipment, etc., of interned belligerents, disposition of.....	415n
Escaped prisoners, punishment of.....	78, 79, 80, H. R., 8
Espionage and treason, Chapter VI, Section III.	
assisting, punishable.....	211
during armistice.....	270 (e) n5

Executions, summary, not contemplated.....	40
Ex parte Miligan.....	n(14)
Expedition, hostile, organization of, in neutral territory....	396, 397n, 400n, H. V. 4
Expelled person from besieged place, may be sent back.....	222
Explosive projectiles, see H. R., 23 (e).....	3 (a)
Explosives and projectiles from balloons.....	3 (k), 174, 175n
Extortion, cruelty, etc.....	18
of confessions by torture.....	13

F.

Finger prints, on certificates of identification.....	46,
135 (a)n, App. A and B, pp. 35-37, App., p. 103	
Firing need not cease during bombardment when noncombatants leave.....	223
when enemy hoists white flag.....	239n
not to be directed on parlementaire.....	240, H. R., 32
Flag and brassard, Red Cross, legislation regarding use of.....	171, G. C., 28
Flag of enemy, improper use of, forbidden.....	194, 196n, H. R., 23
truce.....	236-249, H. R., 23 (f), 32, 33, 34
abuse of, what acts constitute.....	249
improper use of, forbidden.....	194, 195n, H. R., 23 (f)
may cause and justify reprisals.....	249n
white, causes for belligerents raising.....	n(239)
firing may be continued after hoisting of.....	239n
signification of.....	238, H. R., 32
Flags, destruction of, before capitulations.....	254(c)
Force, amount and kind of, permissible.....	9
Forests in occupied territory, use of.....	355, 356n, H. R., 55
Form of reprisal.....	386
pass for newspaper correspondent.....	p. 35
Forms, certificate of identity.....	pp. 36, 37, 54, 55
of armistices.....	App. A-G, pp. 94-99
passports.....	p. 103
receipt for supplies.....	p. 128
safe conduct.....	p. 103
safeguard.....	p. 104
Fortifications, prisoners of war may work on, when.....	66
Fort, treatment in capitulations of garrison of.....	254n
bombardment of, from balloon.....	215n
French army, rule concerning H. R.....	n(7)
convention governing internment of, by Switzerland..	App. A, p. 146
Frontier, patrol of, by neutral.....	393n

G.

Gain, individual, transactions for, prohibited during war.....	18, 338
Garrison, treatment of, in capitulations.....	254n
General rule of conduct for belligerents.....	4, P. H. IV
Geneva Convention of 1864.....	3(d) n3
July 6, 1906 (abbreviated G. C.) (see also under Sanitary formations and establishments).....	3(d) App. 9, p. 186
G. C. applies to sick and wounded interned.....	423, H. V., 15
blinding on whom.....	3(d) n3, p. 194
Geneva Cross, legislation of signatory powers concerning use of.....	170, G. C., 27
flag, restrictions on use of.....	226
Good faith, breaking of.....	12
essential in intercourse between belligerents.....	232
Governments, signatory to G. C. must instruct troops and notify inhabitants concerning.....	169, G. C., 26
Guide, voluntary, war traitor when.....	205, 372
Guides, compelling service of hostile nationals as.....	188
impressment of, in occupied territory. 187, 189, 321, 322n, 323n, H. R., 23, 24, 44	

H.

- H. R., to whom applicable 6, H. IV, 2
 Highway robbers, definition of 371
 punishment for 371, 376, 377
 Hospitals to be protected during bombardment by visible sign 225, 227,
 H. IX, 5, H. R., 27
 Hostages 387n
 Hostile military occupation. (See Occupied territory.)
 occupation, law of n(14), n(16)
 Hostilities, cessation of (truce) n(263)
 conduct of. (See Means of injuring the enemy.)
 opening of (see Commencement of Hostilities) 19-22, H. III, 1, 2, 3,
 resumption of, after denunciation of armistice 271, 272, H. R., 40
 in case of violation armistices by soldiers. 275n, H. R., 41

I.

- Identification, certificates of 46, H. R., 13
 finger prints on App. A and B, pp. 35-37; App. p. 103
 Individual offenders, military jurisdiction over 17
 Individuals of neutral powers may cross frontier 399, 400n, H. V, 6
 violating armistice 274, H. R., 41
 Inhabitants, charitable, in re enemy sick and wounded 118, G. C., 5
 Insignia and uniform of the enemy, improper use of forbidden 194,
 196n, 197, H. R., 23 (f)
 Instructions to be issued to armed land forces 5, H. IV, 1
 troops and inhabitants 169, G. C., 26
 Intercourse between belligerents, comprises what 234
 general rule for 230
 exceptions to 231, 233, 234
 good faith essential 232
 in theater of operations, may be regulated by armistice. 263n, H. R., 39
 suspended when not authorized in armistice 269n
 Interned belligerents in neutral territory. (See Belligerents interned in neutral territory.)
 Internment by neutral, troops crossing frontier 393n, 411-424, H. V, 11, 12, 13, 14, 15
 convention governing, French army by Switzerland App. A, p. 146
 Hague rules concerning 411, 416, 417, 418, 423, H. V, 11, 12, 13, 14, 15
 Irregulars, regulars, and deserters, status 40

J.

- Japan, armistice between Russia and App. D, p. 97
 protocol between Russia and App. E, p. 97
 Japanese project to carry out armistice with Russia in Tumen region. App. F, p. 98
 rule for captured state property enemy n(357)
 Johnston, Gen., armistice with Gen. Sherman n(260)
 Jurisdiction over prisoners of war 51, H. R., 4

K.

- Killing or wounding of enemy who has surrendered forbidden (see 368n) 180,
 H. R., 23 (e)
 parlementaire 240n

L.

- Labels, commercial, can not use Red Cross or Geneva Cross as 170, G. C., 27
 Land forces, instructions to be issued to 5, H. IV, 1
 Lawful belligerents. (See Belligerents, lawful.)
 Law of nations, rules of, to govern in cases not covered by The Hague conventions and declarations 4, P. H., IV

Laws, neutrality of United States	n(397), n(402), n(404)
and customs of war on land.....	3 (f), H. IV, H. R.
binding on whom.....	n4 (3(f)-), pp. 184, 185
Laws of war, violation of, Chap. X:	
Acts which are, partial list of.....	366, 372
Armed forces committing.....	366
Armed prowlers.....	373
By belligerent rule governing.....	363, H. IV, 3
By entire corps.....	367
By States, compensation for.....	363
Communicating with enemy by inhabitants of occupied territory.....	201n,
202, 203, 204	
Complaints, public, of.....	364, 365
Highway robbers.....	371
Hostilities committed by individuals not of armed forces.....	369
Marauders.....	374
Penal code crimes committed by soldiers.....	378
Penalty for individuals.....	377
Penalties for States for.....	364
Pirates of war.....	371
Punishment for, by individuals.....	377
Refusal to give quarter.....	182, 183n, 368n, H. R., 23 (d)
Reprisals may be resorted to against.....	382
Retaliation indispensable in.....	380
Trials for (see H. R., 30).....	376
War rebels.....	370
War treason, acts punished as.....	372
Laws, regulations and orders to which prisoners of war are subject.....	67, H. R., 8
Laying of submarine mines.....	3 (l), H. VIII
Leaving besieged place without permission.....	221
Levee en masse:	
Conditions required.....	36, H. R., 2
Deserters can not claim privileges of.....	38
Distinctive sign not required.....	36
Not to be treated as brigands.....	37
Regarded as belligerents.....	36, H. R., 2
Requirements less than for volunteers and militia.....	36n
Responsible commander not required.....	36n
Uprising in occupied territory not.....	39
Violators of laws of war can not claim privileges of.....	38
Liability of violator of H. R.....	363, H. IV, 3
Licenses to trade.....	281
Life or limb, destruction of.....	12
Lines of communication, hostages taken to protect.....	387n
Loans made to belligerents by neutrals.....	430, H. V, 18

M.

Maintenance of interned troops.....	416, H. V, 12
Manila, capitulation of.....	n(256), App. C, p. 84
Marauders, definition of.....	374n
on battlefield.....	112, 374n, G. C., 3
punished by either belligerent.....	374
Mariners to be notified of danger zone of mines, when.....	437, 438, H. VIII, 3, 4
Martial law, as to persons, how exercised.....	17
definition of.....	14n
extent of.....	15
proper.....	n(14), n(16)
Matériel of volunteer aid societies.....	148, 149, G. C., 16
Means of injuring the enemy.....	H. R., 22 to 28, incl.
Aircraft, projectiles and explosives discharged from.....	174, 175n, 212-
215n, H. D., XIV,	
H. R., 25, H., IX	
Communication with enemy (see H. R. 29).....	201, 202, 203, 204
Confiscation of private property.....	336n, H. R., 46
Deception permitted, but not perfidy.....	12, n(190), 191, 192n
forbidden when.....	192

Means of injuring the enemy—Continued.

- Explosives and projectiles discharged from balloons, etc. 174, 175n, 212-215n,
H. D., XIV, H. R., 25, H., IX
- Forbidden, arms, projectiles, etc., causing unnecessary injury n(175),
184, 185, H. R., 23(e)
- assassination of individuals of hostile army or nation 178n,
179n, H. R., 23(b)
- bullets which expand in human body . . . n(175), 184, 185, H. R., 23(e)
- contamination of water, etc. 176, 177, H. R., 23(a),
distinctive badges and emblems, improper use of 170, 171,
194-198n, G. C., 27, 28, H. R., 23(f)
- flag of enemy, improper use of 194, 196n, H. R., 23(f)
- truce, improper use of 194, 195n, H. R., 23(f)
- Red Cross, improper use of 170, 171, 194, 198n,
G. C., 27, 28, H. R., 23(f)
- insignia and uniform of enemy, improper use of 194,
196n, 197n, H. R., 23(f)
- killing or wounding enemy who has surrendered 180,
181, 366, H. R., 23(c)
- penalty for,
United States 181
- outlaw, proclaiming individual of hostile army to be 179n
- pillage 229, 339n, 340, H. R., 28, 47
- poison and poisoned weapons n(175), 176, 177n, H. R., 23(a)
- projectiles, arms, etc., causing unnecessary injury 184,
185, H. R., 23(e)
- diffusing asphyxiating gases, etc. n(175), H. R., 23(a)
- explosive, artillery, mines, etc., are not 185
- to compel hostile nationals to take part in military operations,
etc. 187, 188, H. R., 23
- to declare no quarter will be given 182n, 183, 366, 368n, H. R., 23(d)
- train wrecking, firing military depots, etc., are not 186n
hospital train n(186)
- treacherous killing or wounding of individuals 178n,
179, 180, 181, H. R., 23(b)
- treachery, examples of n(178)
- uniform, etc., improper use of 194, 196n, 197n, H. R., 23(f)
- Good faith to be observed with enemy 190n, 191, 192n
- Hostilities committed by individuals not of armed forces 369
- Information, procured by means of spies 199n, 200
- Limited 172, 173, H. R., 22
- Military necessity admits of what 11, 12, n(190), n(332)
- does not admit of what 13, n(190)
- Prohibitions H. R., 22, 23, 25, 27, 28, 30, 44, 45, 46, 47, 50, 51, 52, 56
- Projectiles and explosives discharged from balloons, etc. 174,
175n, 212-215n, H. D., XIV, H. R., 25, H., IX
- Quarter, refusal to give 182, 183n, 368n, H. R., 23(d)
- Ruses and measures necessary for obtaining information permissible. 189, H. R., 24
- Ruses, legitimate, partial enumeration of 193
- Spies, civilians acting openly, etc., not considered as 199n, H. R., 29
- must act clandestinely or on false pretenses, etc. 199n, H. R., 29
- in zone of operations to be classed as 200, H. R., 29
- punishment of 206n, 208, H. R., 30
- soldiers not wearing disguise in enemy zone not 199n, H. R., 29
- who included in definition 199n, 201, H. R., 29
- Spy, assisting, or knowingly concealing, punishable 211
- immunity from punishment on subsequent capture 209, 210n, H. R., 31
- rejoining own army immune from punishment 209, 210n, H. R., 31
- sex makes no difference 201n
- trial necessary before punishment 208, H. R., 30
- Stratagems, Chapter VI, Section II, p. 60.
- Traitors, immunity from punishment not same as spy 210
- Treachery, punishment for by common law of war n(192)
- War rebels, etc. 370, 372

- Medical personnel.** (See under **Sanitary formations and establishments.**)
- Metz, capitulation at** App. A, p. 80
- Military commissions and courts-martial** 16n
- convention governing internment French Army by Switzer-
 land App. A, p. 146
- jurisdiction, kinds of n(14), 16n
- Military necessity:**
- Admits of 11, 12, n(190), n(332)
- Affects administration of occupied territory 302n
- American rule as to seizure, etc., property 12, n(332), n(336), n(337), 335
- Art, buildings devoted to, etc., use of 259
- Convoys of evacuation, breaking up of 150, 151, G. C., 17
- Destruction enemy's property, justified by 331,
 332, 343, 344, n(355), 357, H. R., 23, 53, 54
- Devastation, justified by, only n(332), 334, 343
- Does not admit of 13, n(190)
- Fixed sanitary establishments, use of buildings, etc. 146, 147, G. C., 15
- Guides, impressment of 187, 183, 321, 322n, 323n, H. R., 23, 24, 44
- Information of enemy and country 189, H. R., 24
- Justifies what 11, 12, n(190)
- Neutrals' property, seizure of, etc., regulated by 431n
- Private property, seizure of, regulated by 340
- Property, enemy, seizure or destruction of 331,
 332, 343, 344, n(355), 357, H. R., 23, 53, 54
- State real, may be destroyed, etc., by occupant n(355), 357
- Susceptible direct military use, seizure of, etc. 341, H. R., 53
 what included 342
- Property, war, seizure, etc., right to 332n
- Requisitions, amount to be taken limited by 348
 articles, limited only by 346n
- Retaliation indispensable in war 380
- Ruses of war, justified by 189, 192n, 193, H. R., 24
- Sanitary personnel, captured, return of, governed by 139, 140, 141, G. C., 12
- Submarine cables, seizure of, etc., justified by 344n, H. R., 54
- Treatment of diplomatic agents, etc., regulated by 427
- Military government** (see **Occupied territory**) n(14), n(16)
- offense, statutory, procedure 16
- under common law of war, procedure 16
- uniforms, etc., of prisoners of war 52, 55, H. R., 4
- Milligan, ex parte** n(14)
- Mines.** (See **Automatic submarine contact mines.**)
- Ministers of state** may be made prisoners of war 47 (a)
- Money, prize, rule as to** 337n
- Monuments, historic, destruction, etc., of forbidden** 358, H. R., 56
 protection to be given during bombardment 225, H. R., 27
 signs, visible to mark 225, 227, H. IX, 5, H. R., 27
- Municipalities, property of, treated as private property** 358, H. R., 56
- Munitions of war, commercial transactions in, by companies, neutral states** 403,
 405n, H. V, 7
- convoys of, in neutral territory 391, 395, H. V, 2
- neutrals obligations as to shipment 404n
- rule as to seizure of 341, 342, H. R., 53
- shipment from neutral territory, rule governing 403, H. V, 7
- N.**
- Name and rank, prisoners of war must state when** 57, H. R., 9
- National Red Cross of America:**
- Duty of state before employment 133, G. C., 10
- Incorporated by United States Congress n(133)
- Matériel, private property 148, 149, G. C., 16
- Only can be employed by United States n(133), 134
- Personnel, captured, pay of 142, 143, G. C., 13

- National Red Cross of America—Continued.**
- Personnel, recruiting in neutral territory 398
 - Recognized by statutes of United States n(135)
 - Subject to military laws and regulations n(133), G. C., 10
 - Volunteer aid societies 133, 137, 139, G. C., 10, 11, 12
 - War and Navy Departments may communicate with n(133)
- Nationals of belligerents may leave neutral territory** 399, 401n, H. V., 6
- neutral states are neutrals 425, H. V., 16
- Naval forces, bombardment by, in time of war.** 3(h), n(212), H. IX; app. 5, p. 174
- warfare, right of capture in 3(j), H. XI; app. 6, p. 177
- Necessity, military.** (See **Military necessity.**)
- Neutral, forfeiture of rights of** 429-430, H. V., 17, 18
- persons, rights and duties of 3(g), H. V; app. 3, p. 165
 - powers, rights and duties of 3(g), H. V
- Neutrality** (see **Neutrals and neutral states**) definition of 388
- failure to prevent violations of, effect 394n
 - law of United States concerning n(397), n(402), n(404)
 - proclamation of, should be issued 404n, H. V., 10
 - violations of may be resisted by force 392
- Neutrals, definition of** 425, H. V., 16
- in occupied territory, jurisdiction over 428
 - obligations of 426n
 - treatment of 426
 - railway material of belligerent, retention by 431n
- Neutral States aware, state of war, must take cognizance of** 389, H. III, 2
- belligerents may purchase supplies from companies, etc., of 403
 - 404, 405n, H. V., 7
 - forbidden to move troops, etc., across 391, H. V., 2
 - can impose terms before receiving belligerent troops 411,
 - 413n, 414, 415; H. V., 11
 - citizens of 425, H. V., 6
 - commercial transactions with belligerents, prohibited 404
 - by companies of, not forbidden 403,
 - 405n, H. V., 7
 - convoy of evacuation, consent of other belligerents not required 420n
 - medical personnel of 424
 - obligations, etc., concerning, by 418
 - 419n, 421, 422, 424, H. V., 14
 - convoys of munitions and supplies in territory of 391,
 - 395, H. V., 2
 - corps of combatants, formation of, in, by belligerents 396,
 - 400n, H. V., 4
 - correspondence of diplomats, etc., of, in belligerent territory 224n,
 - 427n
 - diplomatic agents, etc., of, treatment of 427n
 - duty of, concerning belligerent forces crossing frontier 411,
 - 412, H. V., 11
 - failure to prevent violations neutrality, effect of 394n
 - force may be used by, to resist violations of neutrality .. 392, H. V., 10
 - frontier may be patrolled by 393n
 - hostile expeditions must not be fitted out in territory of 396,
 - 404n2, H. V., 4
 - individuals not forbidden to cross frontier of, to assist belliger-
ents 399, 400n, H. V., 6
 - interned sick and wounded, Geneva Convention applies to 423,
 - H. V., 15
 - troops, arms, etc., disposition of 415n
 - maintenance of, rule governing 416n, H. V., 12
 - medical personnel of 424
 - prisoners of war brought with 417n, H. V., 13
 - treatment of, by 411-415n, H. V., 11
 - internment by, of belligerent forces (see under belligerents),
rules governing 411-416, H. V., 11, 12
 - of belligerent troops crossing frontier of 393,
 - 412n, 413, 414, 415, H. V., 14
 - French army by Switzerland n(413), app. p. 146

- Neutral States, munitions, etc., conveying, or shipping through territory of.** 391
 395, 403, H. V, 2, 7
- nationals of belligerents in territory of 399, 401n, H. V, 6
 acts by forfeiting rights as neutrals. 429, H. V, 17
 not forfeiting rights as neutrals. 430, H. V, 18
 are neutrals 425n, H. V, 16
- nationals of, in belligerent territory, treatment of 426n
 jurisdiction over 428
- notification state of war to be sent to 389n, H. III, 2
 telegraph may be used for ... 389, H. III, 2
- officers, active, not permitted to join belligerents 402n
 interned may be paroled by 411, 414n, H. V, 11
 retired n(402)
- prisoners of war, escaped, received by 417, H. V, 13
- proclamation of neutrality should be issued by 404 n3
- public complaints sent through 365
- recruiting agencies of belligerents in territory of, prohibited ... 396,
 397n, 400n, H. V, 4
 voluntary aid societies not prohibited.... 137,
 398, G. C., 11
- railway matériel of belligerent, retention by 431 n2, H. V, 19
 right to requisition by belligerents 431n
 2, 3, H. V, 19
 compensation for, requisitioned 431, H. V, 19
- sick and wounded entering territory of n(417),
 418, 421, 422, 423, H. V, 14, 15
- subjects of. (See Nationals, supra.)
- submarine cables in territory of, use of by belligerents 406,
 407, 408, 409n, 410, H. V, 3, 5, 8, 9
- supplies may be sold to belligerents by companies of 405n
 shipment of, to belligerents from territory of.. 403, H. V, 7
 must not be furnished by, to belligerents 404n
- telegraph, etc., lines in, use of, for belligerents' dispatches.. 406-410,
 H. V, 3, 5, 8, 9
- territory inviolable 390n, H. V, 1
- violation of neutrality of, on territory of, punishable by . 410, H. V, 5
- wireless apparatus, on territory of, use of, by belligerents.. 406-410,
 H. V, 3, 5, 8, 9
- Neutral zone in armistice** 270(c) n3
- News, appliances for, rule as to seizure of** 406-410,
 341, 342-344, H. V, 3, 5, 8, 9, H. R., 53
- censorship 305
- Newspaper correspondents, contractors, etc., status of** 46, H. R., 13
 pass for, form App. A, p. 35
- Noncombatants leaving besieged place may be sent back** 221, 222
 may form part of armed forces 42, H. R., 3
- Noncommissioned officers or privates, how paroled** 74

O.

- Obstruction of channels of communication, etc.** 12
- Occupation, military. (See Occupied territory.)**
- Occupied territory** H. R. 42 to 56 inclusive
- administration of, by what agency exercised 285,
 295n, H. R., 42, 43
- administrator, etc., of real property of enemy state. 355, H. R., 55
- allegiance, oath of, forbidden to require, of inhabitants... 313,
 H. R., 45
- assessment of taxes by occupant 307-311, H. R., 48, 49, 51
- authority over, vested in whom n(295), 296, 298, H. R., 43
- censorship, press, and correspondence 305
- citizen or subject of, communicating with enemy 204
- collection of taxes by occupant, rule for 307, 309, 352, H. R., 48, 51
- commercial relations, regulation of (see H. R. 23).... 303n, 304n

- Occupied territory, communicating with enemy by inhabitants of**..... n(201)
 202, 203, 204
- conquest and military occupation compared..... 289n
- contributions and requisitions may be levied by occupant..... 338n, 346, 351, 352, H. R., 49, 51, 52
- control of..... 287, 288, H. R., 43
- courts, local, jurisdiction..... 299n
- courts of law, rights of action in..... 303n, H. R., 23
- crimes committed in, jurisdiction over..... 296, 299n, H. R., 43
- debts of one belligerent to another, rule regarding..... n(303)
- devastation, etc., justified by military necessity..... n(332)
- disbursement of taxes by occupant..... n(309)
 307-310, 351, H. R., 48, 49
- dues, taxes, and tolls imposed for benefit of the State.... 307,
 H. R., 48
- enemy's property, classification and use of..... n(355)
- extent of..... 285, 291n, H. R., 42
- family honor, and rights, lives of persons, etc., to be respected..... 314n, H. R., 46
- religion, etc., United States rule..... 315
- foreign residents in, obligations of..... 202
- visitors in, obligations of..... 202
- forests in, use of..... 355, 356n, H. R., 55
- government of, character of..... 298
- legality of, how determined..... 298
- governmental functions in, effect of occupation on..... 297
- guerilla bands, effect of..... 294
- guides, impressment of. . 187, 189, 321, 322n, 323n, H. R., 23, 24, 44
- inhabitants can not be forced to give information of own army, etc..... 321, H. R., 44
- required to construct forts, etc.... 187,
 317, 320, H. R., 23, 52
- duties and obligations of..... 316
- intercourse, commercial..... 304
- may not be compelled to swear allegiance to occupant..... 313, H. R., 45
- required to take part in military operations..... 317, H. R., 23, 44, 52
- voluntarily construct forts, etc., for pay. 320n
- obedience of..... 312-316
- rights and duties of. 313n, 314n, 316, H. R., 23, 45, 46
- rights of action not to be declared suspended, etc..... 303, H. R., 23
- services which may be demanded of..... 317, 318,
 H. R., 52
- invasion and military occupation compared..... 288n
- labor, may be requisitioned to restore public works..... 319
- not be requisitioned to construct forts..... 317,
 320, H. R., 52
- laws, created by occupant..... 302n
- in force in..... 296, 299, H. R., 43
- to be respected, etc..... 296, 299, H. R., 43
- nature of, which are suspended..... 301
- of country suspended when..... 300, 301
- suspended, made known to inhabitants..... 301
- limitations on control of occupant over real property enemy..... 355, 356n, 357n, H. R., 55
- means of transportation, public and private, seizure, etc. . 306,
 341, H. R., 53
- military government of, necessity for..... 295, 296, H. R., 43
- military necessity**, affects, administration of..... 302n
- destruction, etc., of State property... 357,
 n(355), H. R., 23
- military occupation, defined..... 285, H. R., 42
- how determined..... 286n, 293
- municipal officials, should generally be retained..... 326

- Occupied territory, newspapers, censorship over..... 305, 341, H. R., 53
circulation of, may be regulated. 305, 341, H. R., 53
publication regulated or prohibited, etc. 305,
H. R., 53
seizure of..... H. R., 53
oath of allegiance, may not be required of inhabitants . . . 313,
H. R., 45
oath, officials may be required to take..... 324n
oath of neutrality required by British, etc..... n(313)
obedience, obligation of inhabitants..... 312, 316
obligations of inhabitants summarized by Japanese.... n(302)
obligations, reciprocal of occupants and inhabitants..... 313n,
314n, 316, H. R., 23, 43, 44, 45, 46, 47
occupant, obligation to defray expenses of administration. 307-
310, H. R., 48
obligations of..... 296, H. R., 43
powers of..... 298n
occupants may demand and enforce obedience of inhabi-
tants..... 296, 312, H. R., 43
occupation, consent of inhabitants not necessary to estab-
lish..... 291
duration of..... 293, 294
invested fort not bar to..... 291n
must be effective..... 290
proclamation not necessary to establish . . . 292, 293n
proclamation of, convenience of, and practice
concerning..... 292n, 293n
question of fact and temporary condition.... 289
occupying force, rights and obligations of..... 287
officials, oath may be required of..... 324
crimes and harmful acts of, punishment of..... 330
honorary, salaries suspended..... 327
of railways, etc., may be required to perform
service..... 318
policy of retaining..... 325
removal of..... 329
resignation of..... 328
salaries of, how paid..... 327, H. R., 48
political officials, etc., retention of..... 326, 329
postal service, regulation of..... 305, H. R., 53
press correspondence, censorship..... 305, 341, H. R., 53
property, State, destruction, etc., of . . . n(355), 357, H. R., 23, 55
susceptible military use, seizure, etc. . . . 341, H. R., 53
public utilities may be requisitioned..... 318
punishment of neutrals in..... 428
religious practices, etc., to be respected..... 318, H. R., 46
requisitions of services, class of which may be made..... 318
sovereignty of..... n(286), 287n, H. R., 43
taxes, dues, and tolls, certain, assessment, collection and
disbursement..... 307-311, H. R., 48
imposed for benefit of the State, collection,
and disbursement..... 307-311, H. R., 48
taxes, etc., "for the benefit of the State," include what.. 311
taxes, new, not to be levied by occupant (but see H. R., 49) 308
telegraphic and postal correspondence, censorship..... 305
uprising in not levee en masse..... 39
violation of laws of war..... 39
Officers, active, army of neutral powers not permitted to join belligerents . . . 402
commercial transaction by, in hostile country..... 338
interned in neutral territory..... 411, H. V., 11
parole of..... 411, 414, H. V., 11, H. R., 11
killing of, engaged in pillaging..... 340
parole of, how given..... 75
punishment of, for certain offenses..... 18
Opening of hostilities (see Commencement of hostilities). H. III, art. 1, 2, 3

P.

Parlementaire , abusing privileges.....	243, H. R., 33
accompanied by whom.....	245, 246, H. R., 32
authority for, in writing.....	241
belligerents , action by, in case of enemy's.....	243, H. R., 33
communication between, by.....	235-236, H. R., 32
method of reception of enemy's.....	246
must cease firing, after sending.....	249
communication between belligerents by.....	235-236, H. R., 32
definition of.....	235, 236, H. R., 32
detention of, causes for.....	243, 247, H. R., 33
escort of.....	236, 245, 246, H. R., 32
firing on.....	240
flag of truce, bearer of and persons accompanying.....	236, 245, H. R., 32
formalities in reception of.....	246
inviolability of, loss of.....	248, H. R., 34
manner of receiving.....	237n, 244n, 246
night, no provision for.....	242
public complaints, transmitted by.....	365
rights and privileges of.....	236, 246, H. R., 32
rules governing.....	236, 243, 248, H. R., 32, 33, 34
soldiers to be acquainted with reception and rights of.....	237n
treacherous act, committed by.....	248, H. R., 34
white flag, after raising, should be sent.....	239
wounding or killing of.....	240n
Paroles belligerent government, declaration of, concerning.....	72, 77n, 81, H. R., 10, 11
conditions stated in writing.....	73
noncommissioned officers or private, how given.....	74
officers, how given.....	75
officers interned by neutrals.....	411, 414n, H. V., 11
on battlefield, or in large numbers not permitted.....	76
prisoner can not be compelled to accept.....	81, H. R., 11
should be signed by prisoner, etc.....	73n
should fulfill certain conditions.....	73n
Pass for news correspondent.....	App. B, p. 35
frequently used instead of passport.....	279
Passport , character of.....	279
definition of.....	276n
form of.....	App. p. 103
Photograph, finger print or signature on.....	App. p. 103
revocation of.....	280
Patrolling of frontier by neutral state.....	393n
Peace , return of, not to be rendered unnecessarily difficult.....	13
Penalties for violations of laws of war by state.....	363, H. IV, 3
war crimes.....	375, 377, 378
Penalty for individual acts of inhabitants.....	353, H. R., 50
Perfidy , not permitted by military necessity.....	13
to be avoided in denouncing armistice.....	272
Permit frequently used for safe conduct.....	279
Persons , amenable to martial law.....	13, 17
neutral, rights and duties of.....	3 (g) H. V.
Photographs , on correspondents' pass and passport.....	n(276), App. p. 35, p. 103
Pillage , definition of.....	n(339)
formally forbidden.....	229, 339n, 340, H. R., 28, 47
Pirates of war, definition of.....	371
Place occupied by sanitary troops alone, not a defended place.....	214
Poison , use of.....	3 (b), 13, 176, 177, H., 23 (a)
Police of battlefield imposed on whom.....	110, 111, G. C., 3
Port Arthur , capitulation of.....	App. p. 85
Powers , neutral, rights and duties of.....	3(g), H. V.
of commanders in capitulation.....	252n
Preamble to Convention IV of The Hague, Oct. 18, 1907 (abbreviated P. H. IV).....	App. 2, p. 153

Press, public complaints published in.....	365
Prices, requisitioned articles to be fixed.....	349n
Prisoners of war.....	H. R., 4 to 20
armed prowlers not entitled to be treated as.....	373
board, lodging, and clothing for.....	59, 63, 416, H. R. 5, 7, H. V, 12
bureau of information for. (See Bureau of information for prisoners of war.)	
burial of, regard to grade and rank.....	90, H. R., 19
can not be forced to accept parole.....	81
captured supplies used in maintenance of, when.....	64
censorship over correspondence of.....	86
chaplains for, rule regarding.....	n(89)
citizens, rising en masse.....	47(d)
civilians as.....	46, 47, H. R., 13
confinement of, when authorized.....	59, H. R., 5
where authorized.....	59, 62, H. R., 5
conspiracy, mutiny, revolt, or insubordination.....	69, 70
correspondence of, censorship over.....	86
couriers, guides, etc.....	47 (c)
crimes committed before capture.....	71
death certificates of.....	90, H. R., 19
definition of.....	43
diplomatic agents.....	47 (b) (c)
entitled to what.....	63, 64, H. R., 7
escaping into neutral territory.....	417, H. V, 13
exchanges of, can not be demanded.....	91
how made, conditions, etc.....	93
rules regarding.....	91-97
spies, war traitors, and war rebels.....	96
substitutions for different grades of rank.....	94
surplus, after, disposition of.....	95
when made.....	92
execution of, when authorized.....	68, 70, 79
guarding of, object of.....	60
guides, couriers, etc.....	47 (c)
higher civil officials.....	47 (c)
highway robbers not entitled to be treated as.....	371
hostages taken to protect lives of, captured by irregular troops.....	387n
hostage to be treated as.....	387
information bureau. (See Bureau of information for prisoners of war.)	
inquiry office. (See Bureau of Information for prisoners of war.)	
insubordination of, how dealt with.....	67, 68, 69, H. R., 8
Interment of, regard to grade and rank.....	90, H. R., 19
interned, limits may be fixed for.....	59, 61, 411, H. R., 5, H. V, 11
restrictions as to movements.....	61
internment of, object of.....	61
labor of, rules regarding.....	65, 66, H. R. 6
shall not be connected with war operations.....	65, 66, H. R. 6
laws, regulations, and orders to which subject.....	67, H. R. 8
letters of, censorship over.....	86
maintenance, who is charged with.....	63, 416, H. R., 7, H. V, 12
may be paroled, when.....	72, 81, 411, 414, H. R., 10, 11, H. V, 11
interned where.....	59, 61, 62, 411, H. V, 11, H. R., 5
medical, pay of.....	n(88), 142, G. C., 13
military attachés and agents of neutrals.....	48n
jurisdiction over.....	50, 51, H. R., 4
uniforms, etc., considered private property of.....	52,
55, H. R., 4	
money of, disposition of.....	53n
must be humanely treated.....	50, H. R. 4
name and rank, must state, when.....	57, H. R., 9
not criminals.....	60

- Prisoners of war**, obligations of own government, to be governed by... 72, H. R., 10
 officers, pay of... 88, 142, H. R., 17, G. C., 13
 parole, violation of, by... 82, H. R., 12
 paroled, bound by what... 72, H. R., 10
 pay of... n(63), 88, 142, G. C., 13, H. R., 17
 pirates of war not entitled to be treated as... 371
 plotting rebellion, how punished... 67, 70, G. C., 8
 political leaders, journalists, clergymen, etc... 47(c)
 presents for, import and other duties on... 85 (a) H. R., 16
 property of, disposition of... 53n, 52, H. R., 4
 responsibility for... 54
 public officials may be made... 47
 questions to which bound to reply truthfully... 58, 57, H. R., 9
 relief societies for... 87, H. R., 15
 religious freedom... 89, H. R., 18
 repatriation of... 98, H. R., 20
 delayed when... 99
 retaliatory measures may be inflicted on... 383
 retention of property in capitulation... 254(d)
 return or card for... 83n, H. R., 14
 rules for treatment of... 44
 sick and wounded... 49, 418, 422, 423, H. R., 21, G. C., 2, H. V., 14, 15
 may be made... 107, 108, G. C., 2
 soldiers captured violating armistice are... 275
 status of... 50, 67, H. R., 4, 8
 subject to military jurisdiction... 50, 51, 67, H. R., 4, 8
 taken into neutral territory... 417n, 422, H. V., 13
 treatment of rules for... 44, 49, 50, 51, 67, G. C., 2, H. R., 48
 war rebels not entitled to privileges of... 370
 who can claim status of... 45n, 46, H. R., 13
 may be made and under what circumstances... 47
 treated as... 42, H. R., 3
 wills of, rules regarding... 90, H. R., 19
 work, of, conditions affecting settled, how... 65, 66, H. R., 6
 for public service... 65, 66, H. R., 6
 private service... 65, H. R., 6
 wages for, disposition of... 65, 66, H. R., 6
 wounded and sick... 49,
 417n, 418, 422, 423, G. C., 2, H. R., 21, H. V., 13, 14, 15
- Private property.** (See **Property.**)
- Privates or noncommissioned officers**, how paroled... 74
- Prize money**, rules as to... 337n
- Procedure**, reprisals, in case of... 385
- Proclamation of neutrality** should be issued... 404 n3
- Projectiles and explosives from balloons**... 212, 213n, 215n, 3(k), H. R., 25, H. D., XIV
 (bullets) which expand or flatten... 3(c), n2
 diffusing, asphyxiating, or deleterious gases... 3(b), n2
 explosive... 3(a), n(184), 185, H. R., 23, (e)
 throwing of, from balloons, etc., on forts, etc... 212n, 213n, 215n, H. R., 25
- Property**, captured, belongs to Government of captor... 337n
 confiscable, classification of... n(355), n(360)
 contributions in kind to be paid for... 345, H. R., 52
 destruction of, etc... 12,
 331, 332n, 333, 334, 339n, 341, 342, 343, 344n, H. R., 23, 46, 47, 53, 54
 enemy's appropriation of... 12, 331, 341, 344, H. R., 23, 53, 54
 classification of, real, etc... n(355)
 destruction of, etc... 12, 331, H. R., 23
 American rule... 12, n(332), 335
 British rule... n(332)
 German rule... n(332)
 military necessity affecting... 12, 331, 332n, 334,
 335, 340, 341, 342, 343, 344n, 357, H. R., 23, 53, 54
 state, real... 355-362n H. R., 55

- Property, enemy's, state, real, held by occupant, rule governing.** . . . 332, 355, H. R., 55
 limitations on control of. . . 356n, 357n, 358
 occupant, acts as administrator of. . . 355n, H. R., 55
municipal. . . . 358, 359, H. R., 56
 works of art, etc. n2 (359)
munitions of war. 341, 342, 343, H. R., 53
ownership unknown. 362n
private, classes of susceptible direct military use. 341, 342, 343, 344, H. R., 53, 54
 confiscation of. . . 336n, n(337), 339n, 340, 358, n(360), H. R., 46, 47, 56
 damage or destruction of, in case of capitulation. 254(c), 255n
 devastation of. n(332), 334, 343
 military use of. n(355), n(357), 359
 money, contributions, how levied. 351, 352, H. R., 49, 51
 must be respected. 333, H. R. 46
 pillage of forbidden. 229, 339n, H. R., 28, 47
 respect for, American rule. 12, 333, 335, H. R., 46
 seizure of. 331, 332, 340, 341, 344n, H. R., 23(g), 53, 54
 susceptible of direct military use. 341, H. R., 53
 to seizure, destruction of. 343
 use of, justified by military necessity. 332n, 334
 American rule as to. n(332), 335
 British rule as to. n(332)
 what may be requisitioned. 346n
public, military use of. n(355), 356, 357n
 movable, military use of. 360n, 361, H. R., 53
 respected, when. 361n
requisition of. 345, 346n, 347n, 348n, 349n, 350n, H. R., 52
 amount taken, rule as to. 348n
 method of. 347n
 enforcing. 350n
 rule as to. 345, H. R., 52
 what articles subject to. 346n
usable for transmission of news. 341, 342, 343, 344n, H. R., 53, 54
 transportation of persons and things. . . . 341, 342, 343, H. R., 53
Protocol concluded between Japan and Russia. App. E, p. 97
Publication of rules covering laws and customs of war on land. 5, H. IV, 1
Public buildings, etc. 355n, H. R., 55
Punishment, collective, on inhabitants of hostile territory. . . . 353, 354n, 386n, H. R., 50
 for unauthorized destruction private property. 340
 crimes in violation penal codes. 378
 violation, laws of war. 366
 rule for imposition of. 377
 trial should precede (see H. R., 30). 376
 of neutrals in occupied territory. 428
- Q.**
- Quarter, forbidden to declare no** 182n, 183, H. R., 23 (d)
 refusal to give. 368n
- R.**
- Railway matériel, neutrals and belligerent.** 431n
Railways, etc., destruction of, by inhabitants of hostile territory. 354n
 United States control over, in time of war. n(431)
Rank and name, prisoners of war must state, when. 57, H. R., 9
Rebels, war, definition of. 370
Recruiting in neutral territory prohibited. 396, 397n, 400, H. V., 4
 volunteer aid societies, personnel. 398, G. C., 11
Red Cross brassard and flag, wrongful use of. 171, 194, G. C., 28, H. R., 23 (f)
 legislation of signatory powers concerning use of. 170, G. C., 10

Regulars, irregulars, and deserters, status	40
Relief societies for prisoners of war	87, H. R., 15
Religion, buildings devoted to, destruction of	358, H. R., 56
protection to be given to	225, 228, H. R., 27
signs to indicate	225, 227, H. IX, 5, H. R., 27
use of	228, 359n
exercise of, by prisoners of war	89n, H. R., 18
Repatriation of prisoners of war	98, 99, H. R., 20
Reporters, sutlers, etc., when captured, status of	46, H. R., 13
Reprisals, abuse of flag of truce may result in	249n
definition of	379
form of	386
measure that may be resorted to in	386n
prisoners of war liable to	383
procedure before resorting to	385
rule governing resort to	123, 380, 381
who may commit illegal acts to justify	382
resort to	384
Requisitions, amounts taken	348n
and services	345, H. R., 52
bombardments to secure	n(212), n(350), H. IX, 3
hostages taken to insure compliance with	387
method of	347n
enforcing	350n
of neutrals' railway matériel	431n
prices for articles to be fixed	349n
restrictions as to	345, H. R., 52
rules as to	345, H. R., 52
what articles subject to	346n
Resources of country, attacks on	n(10), 11, 12
Retaliation indispensable in war	380
Revenge, cruelty, bad faith, etc.	18, 381
private, acts of, prohibited	18
Right of capture in naval warfare	3 (j), H. XI
Robbers, highway, definition of	371
Ruses, legitimate, partial enumeration of	193
Russia, armistice between Japan and	App. D, p. 97
protocol between Japan and	App. E, p. 97

S.

Safe conduct, character of	279
for ambassadors and diplomatic agents of neutrals	233
goods	278
persons	277n
form of	App. p. 103
permit frequently used for	279
photograph with	n(276)
revocation of	280
Safeguard, classes of	282n
description of	282
forms of	App. p. 104
inviolability of soldiers comprising	283n
object of	n(282)
Sanitary formations and establishments	G. C., App. 9, p. 186
Arms and ammunition of wounded	129n, G. C., 8
borne by, when	124, 126, 129, G. C., 8
not to be used against enemy to avoid capture	125
of guard for	124, 126, G. C., 8
Base hospitals, casual camps, etc.	120
medical supply depot	120
Boats of hospital ships, how painted	162, H. X, 5
Brassard and flag, Red Cross, legislation regarding use of	171, G. C., 28
Camps, convalescent and casual	120

Sanitary formations and establishments—Continued.

Cartridges and weapons in possession of.....	129, G. C., 8
Certificate of identity, form for (see 135).....	App. A, Chap. V, pp. 54, 55
Combatants, sheltering of, by.....	123, G. C., 7
Commanders in chief of belligerents, obligations of.....	168, G. C., 25
Contracting powers, obligations concerning.....	167, G. C., 24
Convoys, civil personnel, railway matériel, vessels, etc.....	150, G. C., 17
power of belligerent over.....	151
Convoys of evacuation—	
Captured, personnel to be returned.....	139, 150, G. C., 12, 17
In neutral territory.....	418, 419n, 420n, 421, 424, H. V., 14
Matériel may belong to whom.....	154
consist of what.....	154
Means of conveyance.....	152
must not be combined with transportation of troops, supplies, etc.....	152
what class subject to capture.....	154
Personnel civil requisitioned.....	153
medical.....	153
military guards.....	153, G. C., 8
of interned troops.....	424
railway.....	153, G. C., 9
who may be.....	153
Dead, duties of commanders concerning.....	165, G. C., 3
disposition of effects of.....	166, G. C., 4
examination of prior to interment.....	165, G. C., 4
identification marks or papers found on.....	166, G. C., 4
personal effects, letters, etc., disposition of.....	166, G. C., 4
pillage and maltreatment prohibited.....	165, G. C., 3
Distinctive emblem, brassards, by whom worn.....	155, 156, 157, G. C., 18, 19, 20
dimensions of.....	157n
medical department issues, etc.....	159
precautions in issue of.....	159
requirement for.....	156, 157, G. C., 19, 20
to be fixed.....	157, 158, G. C., 20
prevention of abuse of.....	170,
171, 194, G. C., 27, 28, H. R., 23 (f)	
where employed.....	158, G. C., 19
flag.....	156, 160, G. C., 19, 21
can only be displayed where.....	160, G. C., 21
for ambulances and for guidons.....	161
field hospitals.....	161
general hospitals.....	161
only, to be flown when captured.....	160, G. C., 21
Evacuation hospitals, hospital trains, etc.....	119
railway trains and vessels, etc., return of.....	150, G. C., 17
Field hospitals, part of mobile (see G. C., 6).....	119
"Fixed Establishments," defined.....	120
what constitute.....	120
Flag and brassard, Red Cross, legislation regarding use of.....	170, 171, G. C., 27, 28
Flags, how flown on hospital ships.....	162, 163, G. C., 22, H. X., 5
General hospitals, base hospitals, etc.....	120
Geneva Convention, obligatory on whom.....	167, G. C., 24
Governments, signatory, must acquaint troops and public of G. C.....	169, G. C., 26
Hospital boats.....	119
military, how distinguished.....	162
ships, flags flown on.....	162, 163, G. C., 22, H. X., 5
Identity, certificate, form for.....	App. A, Chap. V, pp. 54, 55
Ill-treatment of sick and wounded, etc., penal laws concerning.....	171, G. C., 28
Juridical situation of fixed establishments.....	n (149)
Legislation, concerning use of Red Cross emblem or name.....	170, 171, G. C., 27, 28
Letters, personal effects, etc., left by sick and wounded and on battle field.....	166, G. C., 4

Sanitary formations and establishments—Continued.

Matériel, buildings, etc., disposition of.....	147
fortification of.....	147
fixed establishments.....	146, 147, G. C., 15
medical, captured, disposition of.....	144, 145, G. C., 14
mobile sanitary formations.....	144, 145, G. C., 14
protected from destruction.....	n (332), G. C., 14, 17
Medical personnel, captured, obligation of.....	140
pay and allowances of.....	88n,
89n, 130, 139, 142, H. R., 17, 18, G. C., 9, 12, 13	
private property of.....	139, G. C., 12
returned to country, when.....	139, 140, 141, G. C., 12
units, to be respected and protected.....	118, G. C., 6
Military hospital ships, how distinguished.....	162
vehicles, not pertaining to, may be captured.....	150, G. C., 17
Mobile and fixed, to be respected and protected.....	118, G. C., 6
sanitary formations, defined.....	118, 119, G. C., 6
what are.....	119
Neutral countries rendering services, flags, for.....	163
Night distinguishing marks.....	n (161)
Not to be placed in line of enemy's fire, etc.....	123, G. C., 7
Obligations, G. C., etc., cease when.....	167, G. C., 24
Pay and allowances of captured, personnel.....	142, G. C., 13
volunteer aid societies.....	143
Personnel defined.....	131
medical, captured.....	139, 140, 141, 142, G. C., 12, 13
effects, arms and instruments of.....	139, G. C., 12
privileges of.....	130
volunteer aid societies, captured.....	143
Pickets and sentinels, may be armed.....	126, G. C., 8
Privileges of personnel.....	130, G. C., 9
guards.....	127, 130, 132, G. C., 9
Prohibited from committing harmful acts.....	122, 123, G. C., 7
Protection not forfeited by certain acts.....	124, 129, G. C., 8
Red Cross brassard and flag, improper use of ..	171, 194, H. R., 23(f), G. C., 27, 28
emblem only used for protection.....	164, G. C., 23
or name, legislation concerning use of....	170, 171, G. C., 27, 28
transport column.....	119
Regimental equipment, ambulance companies, etc.....	119
"Respect and protection," import of.....	121
Reserve medical supply.....	119
Self-defense, right to use arms in.....	124, G. C., 8
Sick and wounded. (See Sick and wounded.)	
Sentinels and pickets, may be armed.....	126, 127, G. C., 8
come from combatant forces.....	126, G. C., 8
orders required, should be written ..	126, 127, 128, G. C., 8
privileges of.....	127, 130, 132, G. C., 9
Spies, sheltering of by, forfeits protection, etc.....	123, G. C., 7
Volunteer aid societies. (See National Red Cross of America.)	
Weapons and cartridges in possession of.....	129, G. C., 8
Sanitary troops alone, occupying, place not defended.....	214
Santiago, capitulation of.....	App. B, p. 83
Savage tribes, employment of, when not authorized.....	41n
Science, etc., buildings devoted to, destruction of.....	358, H. R., 46
protection to be given to.....	225,
227, 358, H. IX, 5, H. R., 27	
use of.....	228, 359n
Sentences of death.....	17, n2(192), 377, 378
Sherman, Gen., armistice with Gen. Johnston.....	n(260)
Sick and wounded:	
Abandoned, sanitary personnel, etc., to be left with.....	105, 106, G. C., 1
Authorized to pass through neutral State.....	418-422, H. V., 14
Belligerent conveying own into neutral territory.....	421

Sick and wounded—Continued.

Capture of.....	107, 108, G. C., 2
Collected in buildings, protection to be given during bombardment.....	225, 226, 228, H. R., 27
Deaths of, belligerents mutually advise.....	114, G. C., 4
Duties of neutral powers concerning (see H. V.).....	101
Entering neutral State, rule governing.....	418-422, H. V., 14
obligations of neutrals.....	419n
Exceptions in favor of, may be made, etc.....	108, G. C., 2
Hospital, admissions of, to, belligerents mutually advise.....	114, G. C., 4
Hostages taken to insure treatment of.....	387
Ill-treatment of, penal code provide.....	171, G. C., 28
Inhabitants not officially attached to armies.....	104
Interned in neutral State.....	423, H. V., 15
Interments of, belligerents to mutually advise of.....	114, G. C., 4
In the field.....	3 (d) G. C.
Matériel and personnel, sanitary for, abandoned.....	105, 106, G. C., 1
May be made prisoners of war.....	107, 108, G. C., 2, H. R., 21
returned to own country by agreement.....	108, G. C., 2
sent to neutral country by agreement.....	108, G. C., 2
Military authorities may appeal to charity in behalf of.....	116, G. C., 5
Modification of Geneva Convention of 1864.....	117n
Officially attached to armies.....	102, G. C., 1
care of, obligatory on whom.....	102, G. C., 1
Personal effects, letters, etc., left by.....	166, G. C., 4
Personnel, and matériel, sanitary for abandoned.....	105, 106, G. C., 1
Pillage of, etc., penal laws concerning.....	171, G. C., 28
Prisoners of war, exceptions, etc., concerning capture, etc.....	108, G. C., 2
taken into neutral State.....	n (417), 422
Protection from robbery, etc.....	110, 171, G. C., 3, 28
Regulations concerning.....	100, H. R., 21, G. C.
Robbery and ill treatment of, on battlefield, punishable.....	112, 171, G. C., 3, 28
Rolls of, in hands of belligerent to be sent to enemy.....	113, G. C., 4
Search for on battlefield, obligation concerning.....	110, 111, G. C., 3
Status of, may be subject of agreement, etc.....	108, G. C., 2
Suggestions concerning treatment of.....	109
Sieges, assaults and bombardments. (See Bombardments, assaults and sieges.)	
Signs, to be used for art, etc., buildings during bombardment.....	225, H. R., 27
description of.....	227, H. IX., 5
Soldiers, captured violating armistice.....	275
composing safeguard, inviolability of.....	283n
individual reprisals not to be resorted to by.....	384
killing of, engaged in pillaging.....	340
parole for.....	74
punishment for, crimes punishable by penal codes.....	378n
Sovereigns, members of royal family etc., as prisoners of war.....	47
Spanish government's views on surrender of Santiago in 1898.....	n(252)
Special exemptions, when captured, persons enjoying.....	45n, G. C., 6-13
Spies (see under Means of injuring the enemy).....	199, etc., H. R., 29, 30, 31
traitors and war rebels, rules for exchange of.....	96
State of war, enemy subjects, legal status.....	24n
may be expelled.....	25n
interned.....	25
resident, right to control.....	25
existence of, to be publicly announced.....	21, 22, 23, 389, H. III., 2, 3
Status of newspaper correspondents, contractors, etc., when captured.....	46, H. R., 13
prisoners of war.....	50, 67, H. R., 4, 8
who can claim.....	45, H. R., 3
Submarine cables, destruction, etc., rule as to.....	344n, H. R., 54
in neutral state, use by belligerents.....	406-410n
contact mines, automatic. (See Automatic submarine contact mines.)	

Subsistence, may be requisitioned	345, 346, 347n, H. R., 52
Summary executions (see H. R. 30).....	40, 340
Supplies furnished belligerents by neutrals.....	430, H. V., 18
obligations of neutral states as to.....	404n
purchased from companies of neutral states.....	405n
shipment of, from neutral territory, rule governing.....	403, H. V., 7
Surrender of forts, etc., powers of commanders.....	252n
Suspension of arms at Belfort.....	App. G, p. 99
form of armistice.....	266n
burying the dead.....	App. C, p. 96
Sutlers, newspaper correspondents, contractors, etc., captured status of.....	46,
	H. R., 13

T.

Telegraph, etc., neutral state, use of, by belligerents.....	406-410n
Territory considered occupied, when.....	285, 290, H. R., 42
of neutral powers is inviolable.....	390n, H. V., 1
Torpedoes, kinds of forbidden.....	441, H. VIII, 1
Torture to extort confessions.....	13
Towns, pillage of, forbidden.....	229, H. R., 28
Trade, licenses to.....	281
Trade mark, Red Cross or Geneva Cross can not be used as.....	170, G. C., 27
Traitors, war rebels and spies, rules for exchange of (see under Means of injuring the enemy).....	96
Transactions for individual gain during war.....	18, 338
Transportation and appliances of communication.....	344,
406-410n, 431n, H. R., 53, 54, H. V., 3, 5, 8, 9, 19	
means of, rule as to seizure of.....	150,
341, 342, 343, 431n, H. R., 53, 54, H. V., 19, G. C., 17	
Treachery, examples of.....	n(178)
punishment for by common law of war.....	n(192)
Treason, and punishment for.....	202, 207, n(208)
war acts which are partial list.....	372
Treatment of prisoners of war. (See Prisoners of war.).....	
Treaty obligations, etc., during war.....	18
Trial for violation of laws of war should precede punishment (see H. R., 30).....	376
Troops crossing frontier to be interned by neutral.....	393n, 411, H. V., 11
not to cross neutral territory.....	391, H. V., 2
Truce, form of armistice, q. v.....	n(263)

U.

Undefended place, balloons or aeroplanes, use of to bombard, prohibited.....	212,
213, H. R., 25	
bombardments of, to secure requisitions.....	n(212), H. IX, 3
money contributions not au-	
thorized.....	n(212), H. IX, 4
having automatic submarine mines near.....	n(212), H. IX, 1
not to be bombarded.....	212, H. IX, 1; H. R., 25
sanitary troops alone, occupying makes.....	214
Uniform and insignia of enemy, improper use of forbidden.....	194, 196n, 197; H. R., 23(f)
Uniforms, etc. of prisoners of war.....	52, 55, H. R., 4
military includes what.....	55
Unknown ownership, property, treatment of.....	362n
United States control over railways in war.....	n1 (431)
neutrality laws.....	n(397), n(492), n(404)
Usufructuary, occupying state holding enemy's real property, acts as.....	355n, H. R., 55
Unwritten rules.....	P. H. IV, p. 154
development of.....	9
usage.....	P. H. IV, p. 154, 8

V.

Verdun, capitulation of, conditions prescribed in	n3 (252)
Vigilance to be maintained during armistice	273n
Voluntary Aid Society. (See National Red Cross of America.)	
relief for prisoners of war.....	87, H. R., 15
Violator of H. R., liability of	363, 364, H. IV, 3
Violence, kinds and degrees of permissible	9, 10

W.

Wages of prisoners of war for work, disposition of	65, 66
War crimes (see Crimes war and under laws of war)	366
criminals.....	366-378
War, existence of, notice to be sent to neutral powers	389, H. III, 2
fare, naval, right of capture in.....	3(j), H. XI, p. 177
methods to be employed in.....	10n, 11, 12, H. IV, p. 153
object of.....	10
on land, rules for, how developed.....	3, 9
written agreements relating to conduct of, enumerated.....	3
full texts of, where found.....	3n
subjects treated by.....	3(a) to 3(k), inclusive
public, definition of.....	n(10)
rebels, definition of.....	370
punishment of.....	370
traitors and spies, rules for exchange (see Means of injuring the enemy).....	96
treason, acts punished as.....	372
Weight of explosive projectiles	3(a)
Wills of prisoners of war	90, H. R., 19
Wireless apparatus, destruction, etc., rules as to	341, 342, 343, H. R., 53
in neutral state use by belligerents.....	406-410n
Wounded and sick. (See Sick and wounded.)	

Z.

Zone, danger, of submarine mines, mariners to be notified of when	437,
438, H. VIII, 3, 4	
neutral, in armistice.....	270(c), n(275), App. pp. 94, 97, 98



RULES OF LAND WARFARE.

CHANGES }
No. 1. }

WAR DEPARTMENT,
WASHINGTON, *May 11, 1915.*

Rules of Land Warfare, 1914, are changed as follows:

The forms of certificates of identity for noncombatants attached to armies and not wearing military uniforms, as shown in Appendix B, pages 36 and 37, and Appendix A, pages 54 and 55, are rescinded, and the forms shown on pages 2 and 3 of these changes are substituted therefor. (*C. R. L. W. No. 1, May 11, 1915.*)

[2270014, A. G. O.]

BY ORDER OF THE SECRETARY OF WAR:

H. L. SCOTT,
Major General, Chief of Staff.

OFFICIAL:

H. P. McCAIN,
The Adjutant General.

77747°-17

APPENDIX A (pages 54 and 55).

CERTIFICATE OF IDENTITY, } Place 19..
 No. Date

I certify that is attached to the sanitary
 (Given name.) (Surname.)
 service of the United States Army, is authorized to accompany
 the in the capacity of
 (Designate the organization to which attached.)
 (Describe function.)
, and is entitled to the privileges and im-
 munities provided in Chapter III of the International Red Cross
 Convention of 1906. A brassard, as described in Article 20
 thereof, which bears the same number as this certificate, has
 been issued to the person named. Identification data:

(Sex.) (Age.) (Color of eyes.) (Color of hair.) {Finger print, }
 (Height, approx.) (Weight, approx.) (Race.) { right index. }

Remarks:
 (Include here notation of scars, etc., visible
 when clothed, which will aid in identification.)
 (Signature line.)
 (Title, etc., line.)

Name No.
 Organization
 Capacity
 Sex
 Age
 Color of eyes
 Color of hair
 Height
 Weight
 Race
 Finger print, }
 right index. }

Remarks: (Note scars, etc.)
 Place
 Date
 Issued by

Medical Department, U. S. Army, Form 61.
 (Revised Apr. 14, 1915.)

To be 4 by 8 inches, perforated as indicated, bound in books to retain stubs, and printed on light-weight bond paper. Certificate to be numbered at time of issue to correspond to accompanying brassard and carried in a small metal container suspended around the neck.

APPENDIX B (pages 36 and 37).

CERTIFICATE OF IDENTITY, } Place.....	
Name.....	No.
Organization.....	Date 19..
Capacity	
Sex	I <i>certify</i> that is a civilian employee of (Name.)
Age	the Army of the United States in the capacity of (Describe function.)
Color of eyes.....	with..... He is entitled under the laws of war, if (Organization.)
Color of hair	captured, to the privileges of a prisoner of war. Identification data:
Height.....	(Sex.) (Age.) (Color of eyes.) (Color of hair.) {Finger print, right index. }
Weight.....	(Height, approx.) (Weight, approx.) (Race.)
Race.....	Remarks:
Finger print, right index. }	(Include here notation of scars, etc., visible
Remarks: (Note scars, etc.)	when clothed, which will aid in identification.)
Place	(Signature.)
Date	(Title.)
Issued by.....	

To be 4 by 8 inches, perforated as indicated, bound in books to retain stubs. To be printed on light-weight bond paper, corresponding numbers of certificates and stubs to be printed in sequence. Certificate to be carried in a small metal container suspended around the neck.