

Project of an International Declaration concerning The Laws and Customs of War

27 August 1874

On military authority over hostile territory

Article 1. 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. 2. The authority of the legitimate Power being suspended and having in fact passed into the hands of the occupants, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety.

Art. 3. With this object he shall maintain the laws which were in force in the country in time of peace, and shall not modify, suspend or replace them unless necessary.

Art. 4. The functionaries and employees of every class who consent, on his invitation, to continue their functions, shall enjoy his protection. They shall not be dismissed or subjected to disciplinary punishment unless they fall in fulfilling the obligations undertaken by them, and they shall not be prosecuted unless they betray their trust.

Art. 5. The army of occupation shall only collect the taxes, dues, duties, and tolls imposed for the benefit of the State, or their equivalent, if it is impossible to collect them, and, as far as is possible, in accordance with the existing forms and practice. It shall devote them to defraying the expenses of the administration of the country to the same extent as the legitimate Government was so obligated.

Art. 6. 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 the operations of the war.

Railway plant, land telegraphs, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of war material, even if belonging to companies or to private persons, are likewise material which may serve for military operations and which cannot be left by the army of occupation at the disposal of the enemy. Railway plant, land telegraphs, as well as steamers and other ships above mentioned shall be restored and compensation fixed when peace is made.

Art. 7. 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. 8. 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 or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science should be made the subject of legal proceedings by the competent authorities.

Who should be recognized as belligerents combatants and non-combatants

Art. 9. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. That they be commanded by a person responsible for his subordinates;
2. That they have a fixed distinctive emblem recognizable at a distance;
3. That they carry arms openly; and
4. That they conduct their operations in accordance with the laws and customs of war.

In countries where militia constitute the army, or form part of it, they are included under the denomination ' army '.

Art. 10. The population 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 9, shall be regarded as belligerents if they respect the laws and customs of war.

Art 11. The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both shall enjoy the rights of prisoners of war.

Means of injuring the enemy

Art. 12. The laws of war do not recognize in belligerents an unlimited power in the adoption of means of injuring the enemy.

Art. 13. According to this principle are especially ' forbidden ':

- (a) Employment of poison or poisoned weapons;
- (b) Murder by treachery of individuals belonging to the hostile nation or army;

(c) Murder of an enemy who, having laid down his arms or having no longer means of defense, has surrendered at discretion;

(d) The declaration that no quarter will be given;

(e) The employment of arms, projectiles or material calculated to cause unnecessary suffering, as well as the use of projectiles prohibited by the Declaration of St. Petersburg of 1868;

(f) Making 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) Any destruction or seizure of the enemy's property that is not imperatively demanded by the necessity of war.

Art. 14. Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country (excepting the provisions of Article 36) are considered permissible.

Sieges and bombardments

Art. 15. Fortified places are alone liable to be besieged. Open towns, agglomerations of dwellings, or villages which are not defended can neither be attacked nor bombarded.

Art. 16. But if a town or fortress, agglomeration of dwellings, or village, is defended, the officer in command of an attacking force must, before commencing a bombardment, except in assault, do all in his power to warn the authorities.

Art. 17. In such cases all necessary steps must be taken to spare, as far as possible, buildings dedicated to art, science, or charitable purposes, 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 by distinctive and visible signs to be communicated to the enemy beforehand

Art. 18. A town taken by assault ought not to be given over to pillage by the victorious troops.

Spies

Art. 19. A person can only be considered a spy when acting clandestinely or on false pretenses he obtains or endeavours to obtain information in the districts occupied by the enemy, with the intention of communicating it to the hostile party.

Art. 20. A spy taken in the act shall be tried and treated according to the laws in force in the army which captures him.

Art. 21. A spy who rejoins the army to which he belongs and who is subsequently captured by the enemy is treated as a prisoner of war and incurs no responsibility for his previous acts.

Art. 22. 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 should not be considered spies, if they are captured by the enemy: soldiers (and also civilians, carrying out their mission openly) entrusted with the delivery of dispatches intended either for their own army or for the enemy's army.

To this class belong likewise, if they are captured, persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

Prisoners of war

Art. 23. Prisoners of war are lawful and disarmed enemies.

They are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

Any act of insubordination justifies the adoption of such measures of severity as may be necessary. All their personal belongings except arms shall remain their property.

Art. 24. Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits; but they can only be placed in confinement as an indispensable measure of safety.

Art. 25. Prisoners of war may be employed on certain public works which have no direct connection with the operations in the theatre of war and which are not excessive or humiliating to their military rank, if they belong to the army, or to their official or social position, if they do not belong to it.

They may also, subject to such regulations as may be drawn up by the military authorities, undertake private work.

Their wages shall go towards improving their position or shall be paid to them on their release. In this case the cost of maintenance may be deducted from said wages.

Art. 26. Prisoners of war cannot be compelled in any way to take any part whatever in carrying on the operations of the war.

Art. 27. The Government into whose hands prisoners of war have fallen charges itself with their maintenance.

The conditions of such maintenance may be settled by a reciprocal agreement between the belligerent parties.

In the absence of this agreement, and as a general principle, prisoners of war shall be treated as regards food and clothing, on the same footing as the troops of the Government which captured them.

Art. 28. Prisoners of war are subject to the laws and regulations in force in the army in whose power they are.

Arms may be used, after summoning, against a prisoner of war attempting to escape. If recaptured he is liable to disciplinary punishment or subject to a stricter surveillance.

If, after succeeding in escaping, he is again taken prisoner, he is not liable to punishment for his previous acts.

Art. 29. Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

Art. 30. The exchange of prisoners of war is regulated by a mutual understanding between the belligerent parties.

Art. 31. Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honour, scrupulously to fulfill, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases their own Government ought neither to require of nor accept from them any service incompatible with the parole given.

Art. 32. A prisoner of war cannot 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. 33. Any prisoner of war liberated on parole and recaptured bearing arms against the Government to which he had pledged his honour may be deprived of the rights accorded to prisoners of war and brought before the courts.

Art. 34. Individuals in the vicinity of armies but not directly forming part of them, such as correspondents, newspaper reporters, sutlers, contractors, etc., can also be made prisoners. These prisoners should however be in possession of a permit issued by the competent authority and of a certificate of identity.

The sick and wounded

Art. 35. The obligations of belligerents with respect to the service of the sick and wounded are governed by the Geneva Convention of 22 August 1864, save such modifications as the latter may undergo.

On the military power with respect to private persons

Art. 36. The population of occupied territory cannot be forced to take part in military operations against its own country.

Art. 37. The population of occupied territory cannot be compelled to swear allegiance to the hostile Power.

Art. 38. Family honour and rights, and the lives and property of persons, as well as their religious convictions and their practice, must be respected.
Private property cannot be confiscated.

Art. 39. Pillage is formally forbidden.

On taxes and requisitions

Art. 40. As private property should be respected, the enemy will demand from communes or inhabitants only such payments and services as are connected with the generally recognized necessities of war, in proportion to the resources of the country, and not implying, with regard to the inhabitants, the obligation of taking part in operations of war against their country.

Art. 41. The enemy in levying contributions, whether as an equivalent for taxes (see Article 5) or for payments that should be made in kind, or as fines, shall proceed, so far as possible, only in accordance with the rules for incidence and assessment in force in the territory occupied.

The civil authorities of the legitimate Government shall lend it their assistance if they have remained at their posts.

Contributions shall be imposed only on the order and on the responsibility of the commander in chief or the superior civil authority established by the enemy in the occupied territory.
For every contribution, a receipt shall be given to the person furnishing it.

Art. 42. Requisitions shall be made only with the authorization of the commander in the territory occupied.

For every requisition indemnity shall be granted or a receipt delivered.

On parlementaires

Art. 43. A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag, accompanied by a trumpeter (bugler or drummer) or also by a flag-bearer. He shall have a right to inviolability as well as the trumpeter (bugler or drummer) and the flag-bearer who accompany him.

Art. 44. The commander to whom a parlementaire is sent is not in all cases and under all conditions obliged to receive him.

It is lawful for him to take all the necessary steps to prevent the parlementaire taking advantage of his stay within the radius of the enemy's position to the prejudice of the latter, and if the parlementaire has rendered himself guilty of such an abuse of confidence, he has the right to detain him temporarily.

He may likewise declare beforehand that he will not receive parlementaires during a certain period. Parlementaires presenting themselves after such a notification, from the side to which it has been given, forfeit the right of inviolability.

Art. 45. The parlementaire 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 treason.

Capitulations

Art. 46. The conditions of capitulations are discussed between the Contracting Parties. They must not be contrary to military honour. Once settled by a convention, they must be scrupulously observed by both parties.

Armistices

Art. 47. 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. 48. The 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. 49. An armistice must be officially and without delay notified to the competent authorities and to the troops. Hostilities are suspended immediately after the notification.

Art. 50. It rests with the Contracting Parties to settle, in the terms of the armistice, what communications may be held between the populations.

Art. 51. The violation of the armistice by one of the parties gives the other party the right of denouncing it.

Art. 52. A violation of the terms of the armistice by individuals 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.

Interned belligerents and wounded cared for by neutrals

Art. 53. A neutral State 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. 54. In the absence of a special convention, the neutral State 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. 55. A neutral State may authorize the passage through its territory of the wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war.

In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for the purpose.

Art. 56. The Geneva Convention applies to sick and wounded interned in neutral territory.