

International Law Studies—Volume 60

Documents on Prisoners of War

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DOCUMENT NO. 27

DECLARATION OF BRUSSELS

(27 August 1874)

SOURCES1 AJIL Supp. 96
65 BFSP 1059**NOTE**

The international (European) community having successfully negotiated the 1864 Geneva Red Cross Convention (DOCUMENT NO. 24) and the 1868 Declaration of St. Petersburg (prohibiting the use of explosive or fulminating projectiles weighing less than 400 grams), the Tsar of Russia convened a Diplomatic Conference at Brussels in July 1874 with the considerably broader objective of deliberating on the draft of "an international agreement respecting the laws and customs of war." Although the Declaration which resulted from the deliberations of that conference, many of the provisions of which bear a striking resemblance to Lieber's Code (DOCUMENT NO. 23), never became effective for lack of ratifications, it is the obvious progenitor of the 1899 Hague II Regulations (DOCUMENT NO. 28) and of the 1907 Hague IV Regulations (DOCUMENT NO. 33).

EXTRACTS

IX. The laws, rights, and duties of war are applicable not only to the army, but likewise to militia and corps of volunteers complying with the following conditions:

1. That they have at their head a person responsible for his subordinates;
2. That they wear some settled distinctive badge recognizable at a distance;
3. That they carry arms openly; and
4. That, in their operations, they conform to the laws and customs of war.

In those countries where the militia forms the whole or part of the army, they shall be included under the denomination of "army."

X. The population of a non-occupied territory, who, on the approach of the enemy, of their own accord take up arms to resist the invading troops, without having had time to organize themselves in conformity with Article IX, shall be considered as belligerents, if they respect the laws and customs of war.

XI. The armed forces of the belligerents may be composed of combatants and non-combatants. In the event of being captured by the enemy, both one and the other shall enjoy the rights of prisoners of war.

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

XXII. Military men (*les militaires*) who have penetrated within the zone of operations of the enemy's army, with the intention of collecting information, are not considered as spies if it has been possible to recognize their military character.

In like manner military men (and also non-military persons carrying out their mission openly) charged with the transmission of despatches either to their own army or to that of the enemy, shall not be considered as spies if captured by the enemy.

To this class belong, also, if captured, individuals sent in balloons to carry despatches, and generally to keep up communications between the different parts of an army, or of a territory.

XXIII. Prisoners of war are lawful and disarmed enemies. They are in the power of the enemy's Government, but not of the individuals or of the corps who made them prisoners.

They should be treated with humanity.

Every act of insubordination authorizes the necessary measures of severity to be taken with regard to them.

All their personal effects except their arms are considered to be their own property.

XXIV. Prisoners of war are liable to internment in a town, fortress, camp, or in any locality whatever, under an obligation not to go beyond certain fixed limits; but they may not be placed in confinement (*enfermés*) unless absolutely necessary as a measure of security.

XXV. Prisoners of war may be employed on certain public works which have no immediate connection with the operations in the theater of war, provided the employment be not excessive, nor 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.

The pay they receive will go towards ameliorating their position or will be placed to their credit at the time of their release. In this case the cost of their maintenance may be deducted from their pay.

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

XXVII. The Government, in whose power are the prisoners of war undertakes to provide for their maintenance.

The conditions of such maintenance may be settled by a mutual understanding between the belligerents.

In default of such an understanding, and as a general principal, prisoners of war shall be treated, as regards food and clothing, on the same footing as the troops of the Government who made them prisoners.

XXVIII. 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 attempting to escape. If retaken, he is subject to summary punishment (*peines disciplinaires*) or to a stricter surveillance.

If, after having escaped, he is again made prisoner, he is not liable to any punishment for his previous escape.

XXIX. Every prisoner is bound to declare, if interrogated on the point, his

true name and rank, and in the case of his infringing this rule he will incur a restriction of the advantages granted to the prisoners of the class to which he belongs.

XXX. The exchange of prisoners of war is regulated by mutual agreement between belligerents.

XXXI. Prisoners of war may be released on parole if the laws of their country allow it, and in such a case are bound on their personal honour to fulfil scrupulously, as regards their own Government, as well as that which made them prisoners, the engagements they have undertaken.

In the same case their own Government should neither demand nor accept from them any service contrary to their parole.

XXXII. A prisoner of war cannot be forced to accept release on parole, nor is the enemy's Government obliged to comply with the request of a prisoner claiming to be released on parole.

XXXIII. Every prisoner of war liberated on parole, and retaken carrying arms against the Government to which he had pledged his honour, may be deprived of the rights accorded to prisoners of war, and may be brought before the tribunals.

XXXIV. Persons in the vicinity of armies, but who do not directly form part of them, such as correspondents, newspaper reporters, "vivandiers," contractors, etc., may also be made prisoners of war.

These persons should, however, be furnished with a permit issued by a competent authority, as well as with a certificate of identity.

XXXV. The duties of belligerents, with regard to the treatment of sick and wounded, are regulated by the Convention of Geneva of the 22d August, 1864, subject to the modifications which may be introduced into that convention.

LIII. The neutral State receiving in its territory troops belonging to the belligerent armies will intern them, so far as it may be possible away from the theater of war.

They may be kept in camps, or even confined in fortresses or in places appropriated to this purpose.

It will decide whether the officers may be released on giving their parole not to quit the neutral territory without authority.

LIV. In default of a special agreement, the neutral State which receives the belligerent troops will furnish the interned with provisions, clothing, and such aid as humanity demands.

The expenses incurred by the internment will be made good at the conclusion of peace.

LV. The neutral State may authorize the transport across its territory of the wounded and sick belonging to the belligerent armies, provided that the trains which convey them do not carry either the *personnel* or *material* of war.

In this case the neutral State is bound to take the measures necessary for the safety and control of the operation.

LVI. The Convention of Geneva is applicable to the sick and wounded interned on neutral territory.