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Documents on Prisoners of War

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DOCUMENT NO. 36

1907 HAGUE CONVENTION XI RELATIVE TO CERTAIN RESTRICTIONS WITH REGARD TO THE EXERCISE OF THE RIGHT OF CAPTURE IN NAVAL WAR
(18 October 1907)

SOURCES

36 Stat. 2396
1 Bevans 711
100 BFSP 422
2 AJIL Supp. 167

NOTE

Even though it does not specifically so provide, and probably was not so intended, this convention actually had the effect of codifying a rule of customary international law under which members of the civilian crews of captured enemy merchant vessels, if enemy nationals, were detained by their captors but were denied prisoner-of-war status and protections. It was only as a result of the provisions of Article 4A(5) of the 1949 Geneva Prisoner-of-War Convention (DOCUMENT NO. 108) that the right of these individuals to prisoner-of-war status, as a minimum, was established.

EXTRACTS

ARTICLE 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 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.

ARTICLE 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.

ARTICLE 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 person.

ARTICLE 8.

The provisions of the three preceding Articles do not apply to ships taking part in the hostilities.