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Documents on Prisoners of War

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The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. Government,
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**RULES OF AERIAL WARFARE DRAFTED BY AN INTERNATIONAL
COMMISSION OF JURISTS ESTABLISHED BY THE 1922
WASHINGTON DIPLOMATIC CONFERENCE ON THE LIMITATION
OF ARMAMENT**

(The Hague, 19 February 1923)

SOURCES

17 AJIL Supp. 245

32 AJIL Supp. 1

Greenspan, *The Modern Law of Land Warfare* 650 (1959)

NOTE

Although the Diplomatic Conference which convened in Washington in 1922 had as its objective an agreement limiting armaments, during the course of its discussions it decided to create an International Commission of Jurists to study two subjects dealing not with limitations of armaments, but with the conduct of war: the use of radio telegraphy; and air warfare. The Commission, meeting at The Hague from November 1922 to February 1923, drafted a set of rules in each area. Neither set was ever included in any effective international document; but each has unquestionably had its impact on the evolution of its particular facet of the law of war. Much remains in the area of custom; but provisions of conventional law may be found in Article 4A(4) of the 1949 Geneva Prisoner-of-War Convention (DOCUMENT NO. 108) and in Article 42 of the 1977 Protocol I (DOCUMENT NO. 175).

EXTRACTS

ARTICLE 20

When an aircraft has been disabled, the occupants when endeavoring to escape by means of parachute must not be attacked in the course of their descent.

ARTICLE 36

When an enemy military aircraft falls into the hands of a belligerent, the members of the crew and the passengers, if any, may be made prisoners of war.

The same rule applies to the members of the crew and the passengers, if any, of an enemy public non-military aircraft, except that in the case of public non-military aircraft devoted exclusively to the transport of passengers, the passengers will be entitled to be released unless they are in the service of the enemy, or are enemy nationals fit for military service.

If an enemy private aircraft falls into the hands of a belligerent, members of the crew who are enemy nationals or who are neutral nationals in the service of the enemy, may be made prisoners of war. Neutral members of the crew, who are not in the service of the enemy, are entitled to be released if they sign a written undertaking not to serve in any enemy aircraft while hostilities last.

Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerent so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

ARTICLE 38

Where under the provisions of Articles 36 and 37 it is provided that members of the crew or passengers may be made prisoners of war, it is to be understood that, if they are not members of the armed forces, they shall be entitled to treatment not less favorable than that accorded to prisoners of war.

ARTICLE 43

The personnel of a disabled belligerent military aircraft rescued outside neutral waters and brought into the jurisdiction of a neutral state by a neutral military aircraft and there landed shall be interned.

ARTICLE 61

The term "military" throughout these rules is to be read as referring to all branches of the forces, *i.e.* the land forces, the naval forces and the air forces.

ARTICLE 62

Except so far as special rules are here laid down and except also so far as the provisions of Chapter VII of these rules or international conventions indicate that maritime law and procedure are applicable, aircraft personnel engaged in hostilities come under the laws of war and neutrality applicable to land troops in virtue of the custom and practice of international law and of the various declarations and conventions to which the states concerned are parties.