

International Law Studies—Volume 3

International Law Discussions

## APPENDIX II.

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### INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED STATES IN THE FIELD.

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GENERAL ORDERS, }  
No. 100. }

WAR DEPARTMENT,  
ADJUTANT GENERAL'S OFFICE,  
*Washington, April 24, 1863.*

The following "Instructions for the Government of Armies of the United States in the Field," prepared by FRANCIS LIEBER, LL. D., and revised by a Board of Officers, of which Major General E. A. HITCHCOCK is president, having been approved by the President of the United States, he commands that they be published for the information of all concerned.

BY ORDER OF THE SECRETARY OF WAR:

E. D. TOWNSEND,  
*Assistant Adjutant General.*

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#### SECTION I.

Martial law—Military jurisdiction—Military necessity—Retaliation.

##### 1.

A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the Martial Law of the invading or occupying army, whether any proclamation declaring Martial Law, or any public warning to the inhabitants, has been issued or not. Martial Law is the immediate and direct effect and consequence of occupation or conquest.

The presence of a hostile army proclaims its Martial Law.

##### 2.

Martial Law does not cease during the hostile occupation, except by special proclamation, ordered by the commander in chief; or by special mention in the treaty of peace concluding the war, when the occupation of a place or territory continues beyond the conclusion of peace as one of the conditions of the same.

## 3.

Martial Law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation.

The commander of the forces may proclaim that the administration of all civil and penal law shall continue either wholly or in part, as in times of peace, unless otherwise ordered by the military authority.

## 4.

Martial Law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not Martial Law; it is the abuse of the power which that law confers. As Martial Law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity—virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.

## 5.

Martial Law should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where actual hostilities exist, or are expected and must be prepared for. Its most complete sway is allowed—even in the commander's own country—when face to face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion.

To save the country is paramount to all other considerations.

## 6.

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: but all the functions of the hostile government—legislative, executive, or administrative—whether of a general, provincial, or local character, cease under Martial Law, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.

## 7.

Martial Law extends to property, and to persons, whether they are subjects of the enemy or aliens to that government.

## 8.

Consuls, among American and European nations, are not diplomatic agents. Nevertheless, their offices and persons will be subjected to Martial Law in cases of urgent necessity only: their

property and business are not exempted. Any delinquency they commit against the established military rule may be punished as in the case of any other inhabitant, and such punishment furnishes no reasonable ground for international complaint.

## 9.

The functions of Ambassadors, Ministers, or other diplomatic agents, accredited by neutral powers to the hostile government, cease, so far as regards the displaced government; but the conquering or occupying power usually recognizes them as temporarily accredited to itself.

## 10.

Martial Law affects chiefly the police and collection of public revenue and taxes, whether imposed by the expelled government or by the invader, and refers mainly to the support and efficiency of the army, its safety, and the safety of its operations.

## 11.

The law of war does not only disclaim all cruelty and bad faith concerning engagements concluded with the enemy during the war, but also the breaking of stipulations solemnly contracted by the belligerents in time of peace, and avowedly intended to remain in force in case of war between the contracting powers.

It disclaims all extortions 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.

## 12.

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 chief commander.

## 13.

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

## 14.

Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

## 15.

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 the war; it allows of the capturing of every armed enemy, and 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 the 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 an enemy's country affords 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. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.

## 16.

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. •

## 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:

## 18.

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 on the surrender.

## 19.

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.

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.

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.

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.

23.

Private citizens are no longer murdered, enslaved, or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant in the overruling demands of a vigorous war.

24.

The almost universal rule in remote times was, and continues to be with barbarous armies, that the private individual of the hostile country is destined to suffer every privation of liberty and protection, and every disruption of family ties. Protection was, and still is with uncivilized people, the exception.

25.

In modern regular wars of the Europeans, and their descendants in other portions of the globe, protection of the inoffensive citizen of the hostile country is the rule; privation and disturbance of private relations are the exceptions.

26.

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 every one who declines to do so. But whether they do so or not, the people and their civil officers owe strict obedience

to them as long as they hold sway over the district or country, at the peril of their lives.

## 27.

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.

## 28.

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.

## 29.

Modern times are distinguished from earlier ages by the existence, at one and the same time, of many nations and great governments related to one another in close intercourse.

Peace is their normal condition; war is the exception. The ultimate object of all modern war is a renewed state of peace.

The more vigorously wars are pursued the better it is for humanity. Sharp wars are brief.

## 30.

Ever since the formation and coexistence of modern nations, and ever since wars have become great national wars, war has come to be acknowledged not to be its own end, but the means to obtain great ends of state, or to consist in defense against wrong; and no conventional restriction of the modes adopted to injure the enemy is any longer admitted; but the law of war imposes many limitations and restrictions on principles of justice, faith, and honor.

## SECTION II.

Public and private property of the enemy—Protection of persons, and especially of women; of religion, the arts and sciences—Punishment of crimes against the inhabitants of hostile countries.

## 31.

A victorious army appropriates all public money, seizes all public movable property until further direction by its government, and sequesters for its own benefit or of that of its government all the revenues of real property belonging to the hostile government or nation. The title to such real property remains in abeyance during military occupation, and until the conquest is made complete.

## 32.

A victorious army, by the martial power inherent in the same, may suspend, change, or abolish, as far as the martial power extends, the relations which arise from the services due, according to the existing laws of the invaded country, from one citizen, subject, or native of the same to another.

The commander of the army must leave it to the ultimate treaty of peace to settle the permanency of this change.

## 33.

It is no longer considered lawful—on the contrary, it is held to be a serious breach of the law of war—to force the subjects of the enemy into the service of the victorious government, except the latter should proclaim, after a fair and complete conquest of the hostile country or district, that it is resolved to keep the country, district, or place permanently as its own and make it a portion of its own country.

## 34.

As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character—such property is not to be considered public property in the sense of paragraph 31; but it may be taxed or used when the public service may require it.

## 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.

## 36.

If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace.

In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured.

## 37.

The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants, especially those of women; and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.



This rule 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, lands, boats or ships, and churches, for temporary and military uses.

## 38.

Private property, unless forfeited by crimes or by offenses of the owner, can be seized only by way of military necessity, for the support or other benefit of the army or of the United States.

If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity.

## 39.

The salaries of civil officers of the hostile government who remain in the invaded territory, and continue the work of their office, and can continue it according to 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 revenue of the invaded territory, until the military government has reason wholly or partially to discontinue it. Salaries or incomes connected with purely honorary titles are always stopped.

## 40.

There exists no law or body of authoritative rules of action between hostile armies, except that branch of the law of nature and nations which is called the law and usages of war on land.

## 41.

All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field.

## 42.

Slavery, complicating and confounding the ideas of property, (that is of a *thing*,) and of personality, (that is of *humanity*,) exists according to municipal or local law only. The law of nature and nations has never acknowledged it. The digest of the Roman law enacts the early dictum of the pagan jurist, that “so far as the law of nature is concerned, all men are equal.” Fugitives escaping from a country in which they were slaves, villains, or serfs, into another country, have, for centuries past, been held free and acknowledged free by judicial decisions of European countries, even though the municipal law of the country in which the slave had taken refuge acknowledged slavery within its own dominions.

## 43.

Therefore, in a war between the United States and a belligerent which admits of slavery, if a person held in bondage by that belligerent be captured by or come as a fugitive under the protection of

the military forces of the United States, such person is immediately entitled to the rights and privileges of a freeman. To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being. Moreover, a person so made free by the law of war is under the shield of the law of nations, and the former owner or State can have, by the law of postliminy, no belligerent lien or claim of service.

## 44.

All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for 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.

## 45.

All captures and booty belong, according to the modern law of war, primarily to the government of the captor.

Prize money, whether on sea or land, can now only be claimed under local law.

## 46.

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.

## 47.

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.

## SECTION III.

Deserters—Prisoners of war—Hostages—Booty on the battle-field.

## 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.

## 49.

A prisoner of war is a public enemy armed or attached to the hostile army for active aid, who has fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender or by capitulation.

All soldiers, of whatever species of arms; all men who belong to the rising *en masse* of the hostile country; all those who are attached to the army for its efficiency and promote directly the object of the war, except such as are hereinafter provided for; all disabled men or officers on the field or elsewhere, if captured; all enemies who have thrown away their arms and ask for quarter, are prisoners of war, and as such exposed to the inconveniences as well as entitled to the privileges of a prisoner of war.

## 50.

Moreover, citizens who accompany an army for whatever purpose, such as sutlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war, and be detained as such.

The monarch and members of the hostile reigning family, male or female, the chief, and chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army or its government, are, if captured on belligerent ground, and if unprovided with a safe conduct granted by the captor's government, prisoners of war.

## 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.

## 52.

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.

If, however, 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.

## 53.

The enemy's chaplains, officers of the medical staff, apothecaries, hospital nurses and servants, if they fall into the hands of the American Army, are not prisoners of war, unless the commander has reasons to retain them. In this latter case, or if, at their own

desire, they are allowed to remain with their captured companions, they are treated as prisoners of war, and may be exchanged if the commander sees fit.

## 54.

A hostage is a person accepted as a pledge for the fulfillment of an agreement concluded between belligerents during the war, or in consequence of a war. Hostages are rare in the present age.

## 55.

If a hostage is accepted, he is treated like a prisoner of war, according to rank and condition, as circumstances may admit.

## 56.

A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

## 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.

## 58.

The law of nations knows of no distinction of color, and if an enemy of the United States should enslave and sell any captured persons of their army, it would be a case for the severest retaliation, if not redressed upon complaint.

The United States can not retaliate by enslavement: therefore death must be the retaliation for this crime against the law of nations.

## 59.

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 authorities.

All prisoners of war are liable to the infliction of retaliatory measures.

## 60.

It is against the usage of modern war 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.



## 61.

Troops that give no quarter have no right to kill enemies already disabled on the ground, or prisoners captured by other troops.

## 62.

All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none.

## 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.

## 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.

## 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 the protection of the laws of war.

## 66.

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.

## 67.

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.

## 68.

Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war.

Unnecessary or revengeful destruction of life is not lawful.

## 69.

Outposts, sentinels, or pickets are not to be fired upon, except to drive them in, or when a positive order, special or general, has been issued to that effect.

## 70.

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 law and usages of war.

## 71.

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 his misdeed.

## 72.

Money and other valuables on the person of a prisoner, such as watches or jewelry, as well as extra clothing, are regarded by the American Army as the private property of the prisoner, and the appropriation of such valuables or money is considered dishonorable, and is prohibited.

Nevertheless, if *large* sums are found upon the persons of prisoners, or in their possession, they shall be taken from them, and the surplus, after providing for their own support, appropriated for the use of the army, under the direction of the commander, unless otherwise ordered by the government. Nor can prisoners claim, as private property, large sums found and captured in their train, although they have been placed in the private luggage of the prisoners.

## 73.

All officers, when captured, must surrender their side arms to the captor. They may be restored to the prisoner in marked cases, by the commander, to signalize admiration of his distinguished bravery or approbation of his humane treatment of prisoners before his capture. The captured officer to whom they may be restored can not wear them during captivity.

## 74.

A prisoner of war, being a public enemy, is the prisoner of the government, and not of the captor. No ransom can be paid by a prisoner of war to his individual captor or to any officer in command. The government alone releases captives, according to rules prescribed by itself.

## 75.

Prisoners of war are subject to confinement or imprisonment such as may be deemed necessary on account of safety, but they are to be subjected to no other intentional suffering or indignity. The confinement and mode of treating a prisoner may be varied during his captivity, according to the demands of safety.

## 76.

Prisoners of war shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity.

They may be required to work for the benefit of the captor's government, according to their rank and condition.

## 77.

A prisoner of war who escapes may be shot or otherwise killed in his flight; but neither death nor any other punishment shall be inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of security shall be used after an unsuccessful attempt to escape.

If, however, 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 discovered to have plotted rebellion against the authorities of the captors, whether in union with fellow prisoners or other persons.

## 78.

If prisoners of war, having given no pledge nor made any promise on their honor, forcibly or otherwise escape, and are captured again in battle after having rejoined their own army, they shall not be punished for their escape, but shall be treated as simple prisoners of war, although they will be subjected to stricter confinement.

## 79.

Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.

## 80.

Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information or to punish them for having given false information.

## SECTION IV.

Partisans—Armed enemies not belonging to the hostile army—Scouts—Armed prowlers—War-rebels.

## 81.

Partisans are soldiers armed and wearing the uniform of their army, but belonging to a corps which acts detached from the main body for the purpose of making inroads into the territory occupied by the enemy. If captured, they are entitled to all the privileges of the prisoner of war.

## 82.

Men, or squads of men, who commit hostilities, whether by fighting, or 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 or pirates.

## 83.

Scouts, or single soldiers, if disguised in the dress of the country or in the uniform of the army hostile to their own, employed in obtaining information, if found within or lurking about the lines of the captor, are treated as spies, and suffer death.

## 84.

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.

## 85.

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.

## SECTION V.

**Safe-conduct—Spies—War-traitors—Captured messengers—Abuse of the flag of truce.**

## 86.

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.

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.

87.

Ambassadors, and all 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 subordinate officers.

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.

The spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.

89.

If a citizen of the United States obtains information in a legitimate manner and betrays it to the enemy, be he a military or civil officer, or a private citizen, he shall suffer death.

90.

A traitor under the law of war, or a war-traitor, is a person in a place or district under martial law who, unauthorized by the military commander, gives information of any kind to the enemy, or holds intercourse with him.

91.

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.

92.

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, and death is the penalty of his offense.

93.

All armies in the field stand in need of guides, and impress them if they can not obtain them otherwise.

94.

No person having been forced by the enemy to serve as guide is punishable for having done so.

## 95.

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, and shall suffer death.

## 96.

A citizen serving voluntarily as a guide against his own country commits treason, and will be dealt with according to the law of his country.

## 97.

Guides, when it is clearly proved that they have misled intentionally, may be put to death.

## 98.

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 the military authority permits, but no further. Instant expulsion from the occupied territory would be the very least punishment for the infraction of this rule.

## 99.

A messenger carrying written dispatches or verbal messages from one portion of the army, or from a besieged place, to another portion of the same army, or its government, if armed, and in the uniform of his army, and if captured, while doing so, in the territory occupied by the enemy, is treated by the captor as a prisoner of war. If not in uniform, nor a soldier, the circumstances connected with his capture must determine the disposition that shall be made of him.

## 100.

A messenger or agent who attempts to steal through the territory occupied by the enemy, to further, in any manner, the interests of the enemy, if captured, is not entitled to the privileges of the prisoner of war, and may be dealt with according to the circumstances of the case.

## 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.

## 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.

## 103.

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.

## 104.

A successful spy or war-traitor, safely returned to his own army, and afterwards captured as an enemy, is not subject to punishment for his acts as a spy or war-traitor, but he may be held in closer custody as a person individually dangerous.

## SECTION VI.

## Exchange of prisoners—Flags of truce—Flags of protection.

## 105.

Exchanges of prisoners take place—number for number—rank for rank—wounded for wounded—with added condition for added condition—such, for instance, as not to serve for a certain period.

## 106.

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.

## 107.

A prisoner of war is in honor bound truly to state to the captor his rank; and he is not to assume a lower rank than belongs to him, in order to cause a more advantageous exchange, nor a higher rank, for the purpose of obtaining better treatment.

Offenses to the contrary have been justly punished by the commanders of released prisoners, and may be good cause for refusing to release such prisoners.

## 108.

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 necessities.

Such arrangement, however, requires the sanction of the highest authority.

## 109.

The exchange of prisoners of war 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.

A cartel is voidable as soon as either party has violated it.

## 110.

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.

## 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.

## 112.

If the bearer of a flag of truce offer himself during an engagement, he can be admitted as a very rare exception only. It is no breach of good faith to retain such flag of truce, if admitted during the engagement. Firing is not required to cease on the appearance of a flag of truce in battle.

## 113.

If the bearer of a flag of truce, presenting himself during an engagement, is killed or wounded, it furnishes no ground of complaint whatever.

## 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.

## 115.

It is customary to designate by certain flags (usually yellow) the hospitals in places which are shelled, so that the besieging enemy may avoid firing on them. The same has been done in battles when hospitals are situated within the field of the engagement.

## 116.

Honorable belligerents often request that the hospitals within the territory of the enemy may be designated, so that they may be spared.

An honorable belligerent allows himself to be guided by flags or signals of protection as much as the contingencies and the necessities of the fight will permit.

## 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.



## 118.

The besieging belligerent has sometimes requested the besieged to designate the buildings containing collections of works of art, scientific museums, astronomical observatories, or precious libraries, so that their destruction may be avoided as much as possible.

## SECTION VII.

## The parole.

## 119.

Prisoners of war may be released from captivity by exchange, and, under certain circumstances, also by parole.

## 120.

The term "parole" designates the pledge of individual good faith and honor to do, or to omit doing, certain acts after he who gives his parole shall have been dismissed, wholly or partially, from the power of the captor.

## 121.

The pledge of the parole is always an individual, but not a private act.

## 122.

The parole applies chiefly to prisoners of war whom the captor allows to return to their country, or to live in greater freedom within the captor's country or territory, on conditions stated in the parole.

## 123.

Release of prisoners of war by exchange is the general rule; release by parole is the exception.

## 124.

Breaking the parole is punished with death when the person breaking the parole is captured again.

Accurate lists, therefore, of the paroled persons must be kept by the belligerents.

## 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.

## 126.

Commissioned officers only are allowed to give their parole, and they can give it only with the permission of their superior, as long as a superior in rank is within reach.

## 127.

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.

## 128.

No paroling on the battlefield; 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.

## 129.

In capitulations for the surrender of strong places or fortified camps the commanding officer, in cases of urgent necessity, may agree that the troops under his command shall not fight again during the war, unless exchanged.

## 130.

The usual pledge given in the parole is not to serve during the existing war, unless exchanged.

This pledge refers only to the active service in the field, against the paroling belligerent or his allies actively engaged in the same war. These cases of breaking the parole are patent acts, and can be visited with the punishment of death; but the pledge does not refer to internal service, such as recruiting or drilling the recruits, fortifying places not besieged, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic service for which the paroled officer may be employed.

## 131.

If the government does not approve of the parole, the paroled officer must return into captivity, and should the enemy refuse to receive him, he is free of his parole.

## 132.

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.

## 133.

No prisoner of war can be forced by the hostile government to parole himself, and no government is obliged to parole prisoners of war, or to parole all captured officers, if it paroles any. As the pledging of the parole is an individual act, so is paroling, on the other hand, an act of choice on the part of the belligerent.

## 134.

The commander of an occupying army may require of the civil officer of the enemy, and of its citizens, any pledge he may consider necessary for the safety or security of his army, and upon their failure to give it he may arrest, confine, or detain them.

## SECTION VIII.

## Armistice—Capitulation.

## 135.

An armistice is the cessation of active hostilities for a period agreed between belligerents. It must be agreed upon in writing, and duly ratified by the highest authorities of the contending parties.

## 136.

If an armistice be declared, without conditions, it extends no further than to require a total cessation of hostilities along the front of both belligerents.

If conditions be agreed upon, they should be clearly expressed, and must be rigidly adhered to by both parties. If either party violates any express condition, the armistice may be declared null and void by the other.

## 137.

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.

An armistice may be concluded for a definite time; or for an indefinite time, during which either belligerent may resume hostilities on giving the notice agreed upon to the other.

## 138.

The motives which induce the one or the other belligerent to conclude an armistice, whether it be expected to be preliminary to a treaty of peace, or to prepare during the armistice for a more vigorous prosecution of the war, does in no way affect the character of the armistice itself.

## 139.

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.

## 140.

Commanding officers have the right to conclude armistices binding on the district over which their command extends, but such armistice is subject to the ratification of the superior authority, and ceases so soon as it is made known to the enemy that the armistice is not ratified, even if a certain time for the elapsing between giving notice of cessation and the resumption of hostilities should have been stipulated for.

## 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.

## 142.

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.

## 143.

When an armistice is concluded between a fortified place and the army besieging it, it is agreed by all the authorities on this subject that the besieger must cease all extension, perfection, or advance of his attacking works as much so as from attacks by main force.

But as there is a difference of opinion among martial jurists, whether the besieged have the right to repair breaches or to erect new works of defense within the place during the armistice, this point should be determined by express agreement between the parties.

## 144.

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 the same.

## 145.

When an armistice is clearly broken by one of the parties, the other party is released from all obligation to observe it.

## 146.

Prisoners taken in the act of breaking an armistice must be treated as prisoners of war, the officer alone being responsible who gives the order for such a violation of an armistice. The highest authority of the belligerent aggrieved may demand redress for the infraction of an armistice.

## 147.

Belligerents sometimes conclude an armistice while their plenipotentiaries are met to discuss the conditions of a treaty of peace; but plenipotentiaries may meet without a preliminary armistice; in the latter case, the war is carried on without any abatement.

## SECTION IX.

## Assassination.

## 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.

## SECTION X.

### Insurrection—Civil War—Rebellion.

#### 149.

Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.

#### 150.

Civil war is war between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to be the legitimate government. The term is also sometimes applied to war of rebellion, when the rebellious provinces or portions of the state are contiguous to those containing the seat of government.

#### 151.

The term rebellion is applied to an insurrection of large extent, and is usually a war between the legitimate government of a country and portions of provinces of the same who seek to throw off their allegiance to it and set up a government of their own.

#### 152.

When humanity induces the adoption of the rules of regular war toward rebels, whether the adoption is partial or entire, it does in no way whatever imply a partial or complete acknowledgment of their government, if they have set up one, or of them, as an independent and sovereign power. Neutrals have no right to make the adoption of the rules of war by the assailed government toward rebels the ground of their own acknowledgment of the revolted people as an independent power.

#### 153.

Treating captured rebels as prisoners of war, exchanging them, concluding of cartels, capitulations, or other warlike agreements with them; addressing officers of a rebel army by the rank they may have in the same; accepting flags of truce; or, on the other hand, proclaiming martial law in their territory, or levying war taxes or forced loans, or doing any other act sanctioned or demanded by the law and usages of public war between sovereign belligerents, neither proves nor establishes an acknowledgment of the rebellious people, or of the government which they may have erected, as a public or sovereign power. Nor does the adoption of the rules of

war toward rebels imply an engagement with them extending beyond the limits of these rules. It is victory in the field that ends the strife and settles the future relations between the contending parties.

## 154.

Treating, in the field, the rebellious enemy according to the law and usages of war has never prevented the legitimate government from trying the leaders of the rebellion or chief rebels for high treason, and from treating them accordingly, unless they are included in a general amnesty.

## 155.

All enemies in regular war are divided into two general classes—that is to say, into combatants and noncombatants, or unarmed citizens of the hostile government.

The military commander of the legitimate government, in a war of rebellion, distinguishes between the loyal citizen in the revolted portion of the country and the disloyal citizen. The disloyal citizens may further be classified into those citizens known to sympathize with the rebellion without positively aiding it, and those who, without taking up arms, give positive aid and comfort to the rebellious enemy without being bodily forced thereto.

## 156.

Common justice and plain expediency require that the military commander protect the manifestly loyal citizens, in revolted territories, against the hardships of the war as much as the common misfortune of all war admits.

The commander will throw the burden of the war, as much as lies within his power, on the disloyal citizens of the revolted portion or province, subjecting them to a stricter police than the non-combatant enemies have to suffer in regular war; and if he deems it appropriate, or if his government demands of him that every citizen shall, by an oath of allegiance, or by some other manifest act, declare his fidelity to the legitimate government, he may expel, transfer, imprison, or fine the revolted citizens who refuse to pledge themselves anew as citizens obedient to the law and loyal to the government.

Whether it is expedient to do so, and whether reliance can be placed upon such oaths, the commander or his government have the right to decide.

## 157.

Armed or unarmed resistance by citizens of the United States against the lawful movements of their troops is levying war against the United States, and is therefore treason.