

International Law Studies—Volume 3

International Law Discussions

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. Government,
the U.S. Department of the Navy or the Naval War College.

APPENDIX I.

THE UNITED STATES NAVAL WAR CODE OF 1900.

GENERAL ORDERS } NAVY DEPARTMENT,
No. 551. } WASHINGTON, *June 27, 1900.*

The following code of naval warfare, prepared for the guidance and use of the naval service by Capt. Charles H. Stockton, United States Navy, under the direction of the Secretary of the Navy, having been approved by the President of the United States, is published for the use of the Navy and for the information of all concerned.

JOHN D. LONG,
Secretary.

GENERAL ORDER } NAVY DEPARTMENT,
No. 150. } WASHINGTON, *February 4, 1904.*

By direction of the President, General Order No. 551, dated June 27, 1900, publishing a naval war code for the use of the Navy and for the information of all concerned, is hereby revoked.

WILLIAM H. MOODY,
Secretary.

NOTE.—The above orders relate to the following code, entitled "The Laws and Usages of War at Sea," which furnished the basis for the International Law Discussions of 1903.

THE LAWS AND USAGES OF WAR AT SEA.

SECTION I.—HOSTILITIES.

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ARTICLE 1. The general object of war is to procure the complete submission of the enemy at the earliest possible period with the least expenditure of life and property.

The special objects of maritime war are: The capture or destruction of the military and naval forces of the enemy; of his fortifications, arsenals, dry docks and dockyards; of his various military and naval establishments, and of his maritime commerce; to prevent his procuring war material from neutral sources; to aid and assist military operations on land, and to protect and defend the national territory, property, and sea-borne commerce.

ART. 2. The area of maritime warfare comprises the high seas or other waters that are under no jurisdiction, and the territorial waters of belligerents. Neither hostilities nor any belligerent right, such as that of visitation and search, shall be exercised in the territorial waters of neutral states.

The territorial waters of a state extend seaward to the distance of a marine league from the low-water mark of its coast line. They also include, to a reasonable extent, which is in many cases determined by usage, adjacent parts of the sea, such as bays, gulfs, and estuaries inclosed within headlands; and where the territory by which they are inclosed belongs to two or more states, the marine limits of such states are usually defined by conventional lines.

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ART. 3. Military necessity permits measures that are indispensable for securing the ends of the war and that are in accordance with modern laws and usages of war.

It does not permit wanton devastation, the use of poison, or the doing of any hostile act that would inake the return of peace unnecessarily difficult.

Noncombatants are to be spared in person and property during hostilities as much as the necessities of war and the conduct of noncombatants will permit.

The launching of projectiles and explosives from balloons, or by other new methods of a similar nature, is prohibited for a term of five years by the Declaration of The

Hague, to which the United States became a party. This rule does not apply when at war with a noncontracting power.

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ART. 4. The bombardment, by a naval force, of unfortified and undefended towns, villages, or buildings is forbidden, except when such bombardment is incidental to the destruction of military or naval establishments, public depots of munitions of war, or vessels of war in port, or unless reasonable requisitions for provisions and supplies essential, at the time, to such naval vessel or vessels are forcibly withheld, in which case due notice of bombardment shall be given.

The bombardment of unfortified and undefended towns and places for the nonpayment of ransom is forbidden.

ART. 5. The following rules are to be followed with regard to submarine telegraphic cables in time of war, irrespective of their ownership:

(a) Submarine telegraphic cables between points in the territory of an enemy, or between the territory of the United States and that of an enemy, are subject to such treatment as the necessities of war may require.

(b) Submarine telegraphic cables between the territory of an enemy and neutral territory may be interrupted within the territorial jurisdiction of the enemy.

(c) Submarine telegraphic cables between two neutral territories shall be held inviolable and free from interruption.

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ART. 6. If military necessity should require it, neutral vessels found within the limits of belligerent authority may be seized and destroyed or otherwise utilized for military purposes, but in such cases the owners of neutral vessels must be fully recompensed. The amount of the indemnity should, if practicable, be agreed on in advance with the owner or master of the vessel. Due regard must be had to treaty stipulations upon these matters.

ART. 7. The use of false colors in war is forbidden, and when summoning a vessel to lie to, or before firing a gun in action, the national colors should be displayed by vessels of the United States.

ART. 8. In the event of an enemy failing to observe the laws and usages of war, if the offender is beyond reach, resort may be had to reprisals, if such action should be considered a necessity; but due regard must always be had to the duties of humanity. Reprisals should not exceed in severity the offense committed, and must not be resorted to when the injury complained of has been repaired.

If the offender is within the power of the United States he can be punished, after due trial, by a properly constituted military or naval tribunal. Such offenders are liable to the punishments specified by the criminal law.

SECTION II.—BELLIGERENTS.

ART. 9. In addition to the armed forces duly constituted for land warfare, the following are recognized as armed forces of the state: Page 9.

(1) The officers and men of the Navy, Naval Reserve, Naval Militia, and their auxiliaries.

(2) The officers and men of all other armed vessels cruising under lawful authority.

ART. 10. In case of capture, the personnel of the armed forces or armed vessels of the enemy, whether combatants or noncombatants, are entitled to receive the humane treatment due to prisoners of war.

The personnel of all public unarmed vessels of the enemy, either owned or in his service as auxiliaries, are liable, upon capture, to detention as prisoners of war.

The personnel of merchant vessels of an enemy who, in self-defense and in protection of the vessel placed in their charge, resist an attack, are entitled, if captured, to the status of prisoners of war.

ART. 11. The personnel of a merchant vessel of an enemy captured as a prize can be held, at the discretion of the captor, as witnesses, or as prisoners of war when by training or enrollment they are immediately available for the naval service of the enemy, or they may be released from detention or confinement. They are entitled to their personal effects and to such individual property, not contraband of war, as is not held as part of the vessel, its equipment, or as money, plate, or cargo contained therein. Page 10

All passengers not in the service of the enemy, and all women and children on board such vessels should be released and landed at a convenient port at the first opportunity.

Any person in the naval service of the United State who pillages or maltreats, in any manner, any person found on board a merchant vessel captured as a prize, shall be severely punished.

ART. 12. The United States of America acknowledge and protect, in hostile countries occupied by their forces, religion and morality; the persons of the inhabitants, especially those of women, and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

SECTION III.—BELLIGERENT AND NEUTRAL VESSELS.

ART. 13. All public vessels of the enemy are subject to capture, except those engaged in purely charitable or scientific pursuits, in voyages of discovery, or as hospital ships under the regulations hereinafter mentioned.

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Cartel and other vessels of the enemy, furnished with a proper safe-conduct, are exempt from capture, unless engaged in trade or belligerent operations.

ART. 14. All merchant vessels of the enemy, except coast fishing vessels innocently employed, are subject to capture, unless exempt by treaty stipulations.

In case of military or other necessity, merchant vessels of an enemy may be destroyed, or they may be retained for the service of the Government. Whenever captured vessels, arms, munitions of war, or other material are destroyed or taken for the use of the United States before coming into the custody of a prize court, they shall be surveyed, appraised, and inventoried by persons as competent and impartial as can be obtained; and the survey, appraisal, and inventory shall be sent to the prize court where proceedings are to be held.

ART. 15. Merchant vessels of the enemy that have sailed from a port within the jurisdiction of the United States, prior to the declaration of war, shall be allowed to proceed to their destination, unless they are engaged in carrying contraband of war or are in the military service of the enemy.

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Merchant vessels of the enemy, in ports within the jurisdiction of the United States at the outbreak of war, shall be allowed thirty days after war has begun to load their cargoes and depart, and shall thereafter be permitted to proceed to their destination, unless they are engaged in carrying contraband of war or are in the military service of the enemy.

Merchant vessels of the enemy, which shall have sailed from any foreign port for any port within the jurisdiction of the United States before the declaration of war, shall be permitted to enter and discharge their cargo and thereafter to proceed to any port not blockaded.

ART. 16. Neutral vessels in the military or naval service of the enemy, or under the control of the enemy for military or naval purposes, are subject to capture or destruction.

ART. 17. Vessels of war of the United States may take shelter during war in a neutral port, subject to the limitations that the authorities of the port may prescribe as to the number of belligerent vessels to be admitted into the port at any one time. This shelter, which is allowed by

comity of nations, may be availed of for the purpose of evading an enemy, from stress of weather, or to obtain supplies or repairs that the vessel needs to enable her to continue her voyage in safety and to reach the nearest port of her own country.

ART. 18. Such vessel or vessels must conform to the regulations prescribed by the authorities of the neutral port with respect to the place of anchorage, the limitation of the stay of the vessel in port, and the time to elapse before sailing in pursuit or after the departure of a vessel of the enemy.

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No increase in the armament, military stores, or in the number of the crew of a vessel of war of the United States shall be attempted during the stay of such vessel in a neutral port.

ART. 19. A neutral vessel carrying the goods of an enemy is, with her cargo, exempt from capture, except when carrying contraband of war or endeavoring to evade a blockade.

ART. 20. A neutral vessel carrying hostile dispatches, when sailing as a dispatch vessel practically in the service of the enemy, is liable to seizure. Mail steamers under neutral flags carrying such dispatches in the regular and customary manner, either as a part of their mail in their mail bags, or separately as a matter of accommodation and without special arrangement or remuneration, are not liable to seizure and should not be detained, except upon clear grounds of suspicion of a violation of the laws of war with respect to contraband, blockade, or unneutral service, in which case the mail bags must be forwarded with seals unbroken.

SECTION IV.—HOSPITAL SHIPS—THE SHIPWRECKED, SICK AND WOUNDED.

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ART. 21. Military hospital ships—that is to say, vessels constructed or fitted out by the belligerent states for the special and sole purpose of assisting the wounded, sick, or shipwrecked, and whose names have been communicated to the respective powers at the opening or in the course of hostilities, and in any case before they are so employed, shall be respected, and are not liable to capture during the period of hostilities.

Such ships shall not be classed with warships, with respect to the matter of sojourn in a neutral port.

ART. 22. Hospital ships fitted out, in whole or in part, at the expense of private individuals, or of officially recognized relief societies, shall likewise be respected and exempt from capture, provided the belligerent Power to whom they are subject has given them an official commission and has notified the hostile Power of the names of

such ships at the beginning or in the course of hostilities, and in any case before they are employed.

These ships should be furnished with a certificate, issued by the proper authorities, setting forth that they were under the control of such authorities during their equipment and at the time of their final departure.

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ART. 23. The vessels mentioned in Articles 21 and 22 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

It is strictly forbidden to use these vessels for any military purpose.

These vessels must not in any way hamper the movements of the combatants.

During and immediately after engagements they act at their own risk and peril.

The belligerents have the right to control and visit such vessels; they may decline their cooperation, require them to withdraw, prescribe for them a fixed course, and place a commissioner on board; they may even detain them, if required by military necessity.

When practicable, the belligerents shall enter upon the log of hospital ships such orders as they may give them.

ART. 24. Military hospital ships shall be distinguished by being painted white outside, with a horizontal band of green about $1\frac{1}{2}$ meters wide.

The ships designated in Article 22 shall be distinguished by being painted white outside, with a horizontal band of red about $1\frac{1}{2}$ meters wide.

The boats of hospital ships, as well as small craft that may be devoted to hospital service, shall be distinguished by being painted in the same colors.

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Hospital ships shall, in general, make themselves known by hoisting, with their national flag, the white flag with a red cross prescribed by the Geneva Convention.

ART. 25. Merchant vessels, yachts, or neutral vessels that happen to be in the vicinity of active maritime hostilities, may gather up the wounded, sick, or shipwrecked of the belligerents. Such vessels, after this service has been performed, shall report to the belligerent commander controlling the waters thereabouts, for future directions, and while accompanying a belligerent will be, in all cases, under his orders; and if a neutral, be designated by the national flag of that belligerent carried at the foremast-head, with the red-cross flag flying immediately under it.

These vessels are subject to capture for any violation of neutrality that they may commit. Any attempt to carry off such wounded, sick, and shipwrecked, without permission, is a violation of neutrality. They are also subject, in general, to the provisions of Article 23.

ART. 26. The religious, medical, and hospital personnel of any vessel captured during hostilities shall be inviolable and not subject to be made prisoners of war. They shall be permitted, upon leaving the ship, to carry with them those articles and instruments of surgery which are their private property.

Such personnel shall continue to exercise their functions as long as may be necessary, whereupon they may withdraw when the commander in chief deems it possible to do so. Page 17.

The belligerents shall insure to such personnel, when falling into their hands, the free exercise of their functions, the receipt of salaries, and entire freedom of movement, unless a military necessity prevents.

ART. 27. Sailors and soldiers, embarked when sick or wounded, shall be protected and cared for by the captors, no matter to what nation they may belong.

ART. 28. The shipwrecked, wounded, or sick of the enemy, who are captured, are considered prisoners of war. The captor must decide, according to circumstances, whether it is expedient to keep them or send them to a port of his own country, to a neutral port, or even to a port of the enemy. In the last case, the prisoners thus returned to their country can not serve again during the period of the war.

ART. 29. The shipwrecked, wounded, or sick, who are landed at a neutral port with the consent of the local authorities, shall, unless there exists an agreement to the contrary between the neutral state and the belligerent states, agree that they will not again take part in the operations of war.

The expenses of hospital care and of internment shall be borne by the state to which such shipwrecked, wounded, or sick belong. Page 18.

SECTION V.—THE EXERCISE OF THE RIGHT OF SEARCH.

ART. 30. The exercise of the right of search during war shall be confined to properly commissioned and authorized vessels of war. Convoys of neutral merchant vessels, under escort of vessels of war of their own state, are exempt from the right of search, upon proper assurances, based on thorough examination, from the commander of the convoy.

ART. 31. The object of the visit or search of a vessel is:

- (1) To determine its nationality.
- (2) To ascertain whether contraband of war is on board.
- (3) To ascertain whether a breach of blockade is intended or has been committed.

(4) To ascertain whether the vessel is engaged in any capacity in the service of the enemy.

The right of search must be exercised in strict conformity with treaty provisions existing between the United States and other states, and with proper consideration for the vessel boarded.

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ART. 32. The following mode of procedure, subject to any special treaty stipulations, is to be followed by the boarding vessel, whose colors must be displayed at the time:

The vessel is brought to by firing a gun with blank charge. If this is not sufficient to cause her to lie to, a shot is fired across the bows, and in case of flight or resistance force can be used to compel the vessel to surrender.

The boarding vessel should then send one of its smaller boats alongside, with an officer in charge, wearing side arms, to conduct the search. Arms may be carried in the boat, but not upon the persons of the men. When the officer goes on board of the vessel he may be accompanied by not more than two men, unarmed, and he should at first examine the vessel's papers to ascertain her nationality, the nature of the cargo, and the ports of departure and destination. If the papers show contraband, an offense in respect of blockade, or enemy service, the vessels should be seized; otherwise she should be released, unless suspicious circumstances justify a further search. If the vessel be released, an entry in the log book to that effect should be made by the boarding officer.

ART. 33. Irrespective of the character of her cargo, or her purported destination, a neutral vessel should be seized if she—

(1) Attempts to avoid search by escape; but this must be clearly evident.

(2) Resists search with violence.

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(3) Presents fraudulent papers.

(4) Is not supplied with the necessary papers to establish the objects of search.

(5) Destroys, defaces, or conceals papers.

The papers generally expected to be on board of a vessel are:

(1) The register.

(2) The crew and passenger list.

(3) The log book.

(4) A bill of health.

(5) The manifest of cargo.

(6) A charter party, if the vessel is chartered.

(7) Invoices and bills of lading.

SECTION VI.—CONTRABAND OF WAR.

ART. 34. The term “contraband of war” includes only articles having a belligerent destination and purpose. Such articles are classed under two general heads:

(1) Articles that are primarily and ordinarily used for military purposes in time of war, such as arms and munitions of war, military material, vessels of war, or instruments made for the immediate manufacture of munitions of war.

(2) Articles that may be and are used for purposes of war or peace, according to circumstances.

Articles of the first class, destined for ports of the enemy or places occupied by his forces, are always contraband of war.

Articles of the second class, when actually and especially destined for the military or naval forces of the enemy, are contraband of war.

In case of war, the articles that are conditionally and unconditionally contraband, when not specifically mentioned in treaties previously made and in force, will be duly announced in a public manner.

ART. 35. Vessels, whether neutral or otherwise, carrying contraband of war destined for the enemy, are liable to seizure and detention, unless treaty stipulations otherwise provide.

ART. 36. Until otherwise announced, the following articles are to be treated as contraband of war:

Absolutely contraband.—Ordnance; machine guns and their appliances and the parts thereof; armor plate and whatever pertains to the offensive and defensive armament of naval vessels: arms and instruments of iron, steel, brass, or copper, or of any other material, such arms and instruments being specially adapted for use in war by land or sea; torpedoes and their appurtenances; cases for mines, of whatever material; engineering and transport materials, such as gun carriages, caissons, cartridge boxes, campaigning forges, canteens, pontoons; ordnance stores; portable range finders; signal flags destined for naval use; ammunition and explosives of all kinds and their component parts; machinery for the manufacture of arms and munitions of war; saltpeter; military accouterments and equipments of all sorts; horses and mules.

Conditionally contraband.—Coal, when destined for a naval station, a port of call, or a ship or ships of the enemy; materials for the construction of railways or telegraphs, and money, when such materials or money are destined for the enemy’s forces; provisions, when actually destined for the enemy’s military or naval forces.

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SECTION VII.—BLOCKADE.

ART. 37. Blockades, in order to be binding, must be effective; that is, they must be maintained by a force sufficient to render hazardous the ingress to or egress from a port.

If the blockading force be driven away by stress of weather, and return without delay to its station, the continuity of the blockade is not thereby broken. If the blockading force leave its station voluntarily, except for purposes of the blockade, or is driven away by the enemy, the blockade is abandoned or broken. The abandonment or forced suspension of a blockade requires a new notification of blockade.

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ART. 38. Neutral vessels of war must obtain permission to pass the blockade, either from the government of the state whose forces are blockading the port or from the officer in general or local charge of the blockade. If necessary, these vessels should establish their identity to the satisfaction of the commander of the local blockading force. If military operations or other reasons should so require, permission to enter a blockaded port can be restricted or denied.

ART. 39. The notification of a blockade must be made before neutral vessels can be seized for its violation. This notification may be general, by proclamation, and communicated to the neutral states through diplomatic channels; or it may be local and announced to the authorities of the blockaded port and the neutral consular officials thereof. A special notification may be made to individual vessels, which is duly indorsed upon their papers as a warning. A notification to a neutral state is a sufficient notice to the citizens or subjects of such state. If it be established that a neutral vessel has knowledge or notification of the blockade from any source, she is subject to seizure upon a violation or attempted violation of the blockade.

The notification of blockade should declare, not only the limits of the blockade, but the exact time of its commencement and the duration of time allowed a vessel to discharge, reload cargo, and leave port.

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ART. 40. Vessels appearing before a blockaded port, having sailed before notification, are entitled to special notification by a blockading vessel. They should be boarded by an officer, who should enter upon the ship's log or upon its papers, over his official signature, the name of the notifying vessel, a notice of the fact and extent of the blockade, and of the date and place of the visit. After this notice an attempt on the part of the vessel to violate the blockade makes her liable to capture.

ART. 41. Should it appear from the papers of a vessel, or otherwise, that the vessel had sailed for the blockaded port after the fact of the blockade had been communicated to the country of her port of departure, or after it had been commonly known at that port, she is liable to capture and detention as a prize. Due regard must be had in this matter to any treaties stipulating otherwise.

ART. 42. A neutral vessel may sail in good faith for a blockaded port, with an alternative destination to be decided upon by information as to the continuance of the blockade obtained at an intermediate port. In such case she is not allowed to continue her voyage to the blockaded port in alleged quest of information as to the status of the blockade, but must obtain it and decide upon her course before she arrives in suspicious vicinity; and if the blockade has been formally established with due notification, sufficient doubt as to the good faith of the proceeding will subject her to capture.

ART. 43. Neutral vessels found in port at the time of the establishment of a blockade, unless otherwise specially ordered, will be allowed thirty days from the establishment of the blockade, to load their cargoes and depart from such port.

ART. 44. The liability of a vessel purposing to evade a blockade, to capture and condemnation, begins with her departure from the home port and lasts until her return, unless in the meantime the blockade of the port is raised.

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ART. 45. The crews of neutral vessels violating or attempting to violate a blockade are not to be treated as prisoners of war, but any of the officers or crew whose testimony may be desired before the prize court should be detained as witnesses.

SECTION VIII.—THE SENDING IN OF PRIZES.

ART. 46. Prizes should be sent in for adjudication, unless otherwise directed, to the nearest suitable port, within the territorial jurisdiction of the United States, in which a prize court may take action.

ART. 47. The prize should be delivered to the court as nearly as possible in the condition in which she was at the time of seizure, and to this end her papers should be carefully sealed at the time of seizure and kept in the custody of the prize master.

ART. 48. All witnesses whose testimony is necessary to the adjudication of the prize should be detained and sent in with her, and if circumstances permit, it is preferable that the officer making the search should act as prize master.

The laws of the United States in force concerning prizes and prize cases must be closely followed by officers and men of the United States Navy.

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ART. 49. The title to property seized as prize changes only by the decision rendered by the prize court. But if the vessel or its cargo is needed for immediate public use, it may be converted to such use, a careful inventory and appraisal being made by impartial persons and certified to the prize court.

ART. 50. If there are controlling reasons why vessels that are properly captured may not be sent in for adjudication—such as unseaworthiness, the existence of infectious disease, or the lack of a prize crew—they may be appraised and sold, and if this can not be done, they may be destroyed. The imminent danger of recapture would justify destruction, if there should be no doubt that the vessel was a proper prize. But in all such cases all of the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered.

SECTION IX.—ARMISTICE, TRUCE, AND CAPITULATIONS, AND VIOLATIONS OF LAWS OF WAR.

ART. 51. A truce or capitulation may be concluded, without special authority, by the commander of a naval force of the United States with the commander of the forces of the enemy, to be limited, however, to their respective commands.

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A general armistice requires an agreement between the respective belligerent governments.

ART. 52. After agreeing upon or signing a capitulation the capitulator must neither injure nor destroy the vessels, property, or stores in his possession that he is to deliver up, unless the right to do so is expressly reserved to him in the agreement or capitulation.

ART. 53. The notice of the termination of hostilities, before being acted upon, must be officially received by a commander of a naval force.

Except where otherwise provided, acts of war done after the receipt of the official notice of the conclusion of a treaty of peace or of an armistice are null and void.

ART. 54. When not in conflict with the foregoing the regulations respecting the laws of war on land, in force with the armies of the United States, will govern the Navy of the United States when circumstances render them applicable.

ART. 55. The foregoing regulations are issued with the approval of the President of the United States, for the government of all persons attached to the naval service, subject to all laws and treaties of the United States that are now in force or may hereafter be established.