

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.

international projet." The code is particularly adapted to serve such a purpose.

9. The United States would be following a course consistent with its past history and consistent with its attitude at the Hague Conference in urging an international agreement upon the rules of war at sea.

As a result of all of these and other considerations it was the opinion unanimously given by those in attendance upon the summer session of 1903 of the Naval War College that it would be advisable:

(1) That the proper steps be taken for the calling of an international conference for the consideration of the matters referred at the Hague Conference and for the formulation of international rules for war at sea.

(2) That the Naval War Code of the United States be offered as a tentative formulation of the rules which should be considered.

(3) That pending the calling of an international conference upon the laws and usages of war at sea, General Order 551 be withdrawn in order that the delegates from the United States might be unrestrained.

(4) That if the Code be reprinted before the conference is called, it be issued not as an order, but, with revisions, as a statement of the rules which may be expected to prevail in case of war upon the sea.

Respectfully yours,

GEORGE GRAFTON WILSON.

Summary of suggested changes.

Changes in articles of the code are suggested as follows:

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.

In maritime operations the usual measures for attaining this object are: to capture or destroy the military and naval forces of the enemy; his fortifications, arsenals, dry docks, and dockyards; his various military and naval establishments, and his maritime commerce and communications;—to prevent his procuring war material from neutral sources;—to cooperate with the Army in military operations on land, and to protect and defend the national territory, property, and sea-borne commerce.

ARTICLE 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, or the doing of any hostile act that would make 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 such noncombatants will permit.

By the Declaration of The Hague, signed July 29, 1899, to which the United States is a party, it is provided that:

The contracting powers agree to prohibit, for a term of five years, the launching of projectiles and explosives from balloons, or by other new methods of similar nature.

The present Declaration is only binding on the contracting powers in case of war between two or more of them.

It shall cease to be binding from the time when in a war between the contracting powers one of the belligerents is joined by a non-contracting power.

ARTICLE 4. The bombardment, by a naval force, of unfortified and undefended towns, villages, or buildings is forbidden, though such towns, villages, or buildings are liable to the damages incidental to the destruction of military or naval establishments, public depots of munitions of war, or vessels of war in port, and such towns, villages, or buildings are liable to bombardment when reasonable requisitions for provisions and supplies at the time essential to the naval force are 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.

ARTICLE 5. Unless under satisfactory censorship or otherwise exempt, the following rules are established with regard to the treatment of 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 or at any point outside of neutral jurisdiction if the necessities of war require.

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

Article 7 following should be omitted from the code pending an international agreement upon the use of colors at sea. The reasons are given under the discussion above (p. 37).

(ARTICLE 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.)

ARTICLE 8. (See discussion, p. 42).

ARTICLE 9. It was decided that Article 9 was unessential in the code and should be omitted. The discussion is summarized above (p. 44). The proposed revision was as follows:

(ARTICLE 9. With the armed forces duly constituted for land warfare, the following are recognized as armed forces of the state:

(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.)

ARTICLE 10. In case of capture the following become prisoners of war and are entitled to the humane treatment due to such prisoners:

(1) The armed forces duly constituted for land warfare.

(2) The personnel of duly authorized armed vessels of the enemy, whether combatants or noncombatants.

(3) The personnel of all public or private unarmed vessels engaged in the service of the enemy.

(4) The personnel of private vessels of an enemy who, for defense or in protection of a vessel placed in their charge, resist attack.

ARTICLE 11. The personnel of a private 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.

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.

If any person in the Navy strips off the clothes of, or pillages, or in any manner maltreats any person taken on board a prize, he shall suffer such punishment as a court-martial may adjudge.

(This last clause is No. 17 of Articles for the Government of the Navy.)

ARTICLE 12. The United States of America acknowledge and protect, in hostile countries occupied by their forces, private property, 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. (See discussion, p. 50.)

ARTICLE 14. All private 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, private 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.

ARTICLE 15. In absence of treaty governing the case, the treatment to be accorded private vessels of an enemy sailing prior to the beginning of a war, to or from a port of the United States, or sojourning in a port of the United States at the beginning of the war, will be determined by special instructions from the Navy Department. (See discussion, p. 57.)

ARTICLE 19. A neutral vessel carrying the goods of the enemy is, with her cargo, exempt from capture,

except when carrying contraband of war, endeavoring to evade a blockade, or guilty of unneutral service.

In place of Section IV the following articles of The Hague Convention, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22, 1864, should be inserted:

ARTICLE I. Military hospital ships, that is to say, ships constructed or assigned by States specially and solely for the purpose of assisting the wounded, sick, or shipwrecked, and the names of which shall have been communicated to the belligerent powers at the beginning or during the course of hostilities, and in any case before they are employed, shall be respected, and can not be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ARTICLE II. Hospital ships, equipped wholly or in part at the cost of private individuals or officially recognized relief societies, shall likewise be respected and exempt from capture, provided the belligerent Power to whom they belong has given them an official commission and have notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships should be furnished with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ARTICLE III. Hospital ships, equipped wholly or in part at the cost of private individuals or officially recognized societies of neutral countries, shall be respected and exempt from capture if the neutral Power to whom they belong has given them an official commission and notified their names to the belligerent powers at the commencement of or during hostilities, and in any case before they are employed.

ARTICLE IV. The ships mentioned in Articles I, II, and III shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents independently of their nationality.

The Governments engage not to use these ships for any military purpose.

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

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and visit them; they can refuse their help, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall inscribe in the sailing papers of the hospital ships the orders they give them.

ARTICLE V. The military hospital ships shall be distinguished by being painted white outside, with a horizontal band of green about a meter and a half in breadth.

The ships mentioned in Articles II and III shall be distinguished by being painted white outside, with a horizontal band of red about a meter and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships shall make themselves known by hoisting, together with their national flag, the white flag with a red cross, provided by the Geneva Convention.

ARTICLE VI. Neutral merchantmen, yachts, or vessels having or taking on board sick, wounded, or shipwrecked of the belligerents can not be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.

ARTICLE VII. The religious, medical, or hospital staff of any captured ship is inviolable, and its members can not be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.

This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander in chief considers it possible.

The belligerents must guarantee to the staff that has fallen into their hands the enjoyment of their salaries intact.

ARTICLE VIII. Sailors and soldiers who are taken on board when sick or wounded, to whatever nation they belong, shall be protected and looked after by the captors.

ARTICLE IX. The shipwrecked, wounded, or sick of one of the belligerents who fall into the hands of the other, are prisoners of war. The captor must decide, according to circumstances, if it is best to keep them or send them to a port of his own country, to a neutral port, or even to a hostile port. In the last case prisoners thus repatriated can not serve as long as the war lasts.

ARTICLE X. (Excluded.)

ARTICLE XI. The rules contained in the above articles are binding only on the contracting powers in case of war between two or more of them.

The said rules shall cease to be binding from the time when in a war between the contracting powers one of the belligerents is joined by a noncontracting power.

ARTICLE 31. The object of the visit and 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 guilty of unneutral service or 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.

ARTICLE 37. Blockade is a measure of war between belligerents, and in order to be binding must be effective; that is, it 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.

ARTICLE 43. Neutral vessels found in port at the time of the establishment of a blockade will be allowed a specified number of days from the establishment of the blockade, to load their cargoes and depart from such port.

(Articles of the code will need to be renumbered in accordance with changes suggested above.)