

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.

Article 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.

Article 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.

Article 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.

Article 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.

Sections VIII and IX accord with general practice and therefore no changes are recommended in these sections.

GENERAL CONCLUSIONS.

The general conclusions as drawn from the discussions in the conferences in international law are briefly indicated in the following preliminary report of the work of the conferences.

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President Naval War College, Newport, R. I.

DEAR SIR: I present herewith a brief review of the results of the conferences in international law, held during the summer session of 1903, of the Naval War College.

There was used as the basis for these conferences the set of rules issued to the Navy in 1900 and having the title page, "A Naval War

Code, prepared by Captain Charles H. Stockton, United States Navy, president of the Naval War College, and prescribed for the use of the Navy. Washington: Government Printing Office. 1900.”

For these conferences the opinions and criticisms of those interested in the code were, so far as obtainable, gathered and presented to the officers in attendance. These included opinions from officials and others in foreign states as well as from citizens of the United States, from acknowledged authorities in international law, and from those who in time of war would be affected or whose action would be determined by these rules.

The aim of the conference was to consider the Naval War Code of 1900 from all points of view, seriously and frankly, with reference to its adaptability to the purpose for which it was drawn and its probable effect in case of war to which the United States might be a party.

From the extended discussions of the session of 1903 and from the consideration of the conclusions of writers and others who have expressed opinions upon the code there come into prominence several points which seem to deserve particular and immediate notice:

1. The Naval War Code is binding upon the Navy of the United States, though it is not binding upon any state with which the United States may be at war.

2. The Naval War Code contains some provisions upon which there is not at present any international agreement, and upon which there are differences of opinion among the authorities upon international law.

3. In case of war, the Navy of the United States might be placed in a position such that the enemy would be free to commit certain acts not forbidden by international law, but sanctioned by general practice, which acts the Navy of the United States could not do because forbidden by the code.

4. Certain articles of the code should in any case be amended and rewritten.

5. The Navy Department, by General Order 551, of June 27, 1900, published the code, under the approval of the President of the United States, “for the use of the Navy and for the information of all concerned.” The code is therefore regarded as the official statement of the United States upon matters of maritime warfare. As such it has received careful and approving attention abroad.

6. It is an almost unanimous opinion at home and abroad that there should be a code for maritime warfare.

7. The Hague Convention of 1898 recommended that various matters relating to maritime warfare upon which the Code of the United States touches, as well as some not included, be referred to a subsequent conference. Among these matters were some particularly urged upon the Conference of 1898 by the delegates from the United States.

8. The Naval War Code of 1900 was originally drawn with the hope that it possibly “should be presented to other countries as an

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.