

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.

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

Article 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 war ships with respect to the matter of sojourn in a neutral port.

Article 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.

Article 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.

Article 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.

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.

Article 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 foremasthead, 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.

Article 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.

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.

Article 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.

Article 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.

Article 29.

The shipwrecked, wounded, or sick who are landed at a neutral port with the consent of the local authorities, shall, unless there exist 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.

(a) Should there be inserted after Article 22 an article which is as follows: "Hospital ships, fitted out in whole or in part at the expense of private individuals or of officially recognized societies of neutral states, shall be respected and exempt from capture, provided the neutral power to whom they are subject has given them an official commission and has notified the belligerent powers of the names of such ships at the beginning or in the course of hostilities and in any case before they are employed?"

An article embodying the provisions of Article 3 of The Hague Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22, 1864, which is to the intent of the article as stated in situation 21 (a), should be inserted, as the article is binding upon the Navy of the United States in

accordance with the proclamation of November 1, 1901, by the President. This article is as follows:

ART. 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.

This article should be made number 23.

In Article 22, after "societies," the words "of a belligerent state" should be inserted.

The numbering of the following articles, 23, 24, 25, 26, 27, 28 should be advanced one number.

The first line of present Article 23 (new 24) should read: "The vessels mentioned in Articles 21, 22, and 23," etc.

Article 24, line four, should read "in articles 22 and 23."

Article 25, last line, should read "24" in place of "23."

(b) Would the desire that the further movements of a vessel or vessels of war be secret be sufficient reason to justify a commander in requiring hospital ships to withdraw?

The desire for secrecy of movement would be sufficient reason to require the withdrawal of hospital ships under the fifth clause of present Article 23.

(c) Article VI of The Hague Convention is as follows:

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.

As the United States has adopted this rule, should the regulations prescribed in Article 25 be changed or stricken out? Consider whether, in view of the fact that the United States has adopted the above Article VI of The Hague Convention, which allows neutral vessels to take on board sick, etc., and to be exempt from capture for so doing, the second sentence of Article 25 of the Naval War Code can be enforced. Certain states have already objected to an attempt to compel a neutral vessel engaged in this service to fly a flag of a belligerent.

It is necessary to consider the course of discussion upon Article VI of The Hague Convention, which is set forth by Captain Mahan in his report to the United States Commission in July, 1899:

The general desirability of giving to hospital vessels the utmost immunity consistent with the vigorous prosecution of war was generally conceded and met, in fact, with no opposition; but it was justly remarked at the outset that measures must be taken to put under efficient control of the belligerents all hospital ships fitted out by private benevolence, or by neutrals, whether associations or individuals. It is evident that unless such control is explicitly affirmed, and unless the various cases that may arise, in which it may be needed, are, as far as possible, foreseen and provided for, incidents may well occur which will bring into inevitable discredit the whole system of neutral vessels, hospital or others, devoted to the benevolent assistance of the sufferers in war.

The first suggestion, offered almost immediately, was that the simplest method of avoiding such inconvenience would be for the said neutral vessels, being engaged in service identical with that of belligerent hospital vessels to which it was proposed to extend the utmost possible immunity, should frankly enter the belligerent service by hoisting the flag of the belligerent to which it offered its services. This being permitted by general consent, and for purposes purely humanitarian, would constitute no breach of neutrality, while the control of either belligerent, when in presence, could be exercised without raising those vexed questions of neutral rights which the experience of maritime warfare shows to be among the most difficult and delicate problems that belligerents have to encounter.

This proposition was supported by me as being the surest mode of avoiding difficulties easy to be foreseen, and which in my judgment are wholly unprovided for by the articles adopted by the Conference. The neutral ship is, by common consent, permitted to identify itself with the belligerent and his operations for certain laudable purposes; why not for the time assume the belligerent's flag? The reasoning of the opposition was that such vessels should be considered in the same light as national vessels, and that to require them to hoist a foreign flag would be derogatory (*porterait atteinte*) to the sovereignty of the State to which they belonged. This view prevailed. (Holls, Peace Conference at The Hague, p. 498.)

As The Hague rule reads, neutral vessels are not liable to capture for taking on board sick, wounded, or shipwrecked, but are liable to capture for any violation of neutrality. Nothing is specified in regard to the action of the neutral vessel after the time of taking on board the sick, etc., unless such vessel violates neutrality.

It can not be supposed, however, that such a vessel will be given greater freedom by the belligerent than is given to a vessel which a neutral, under Article III of The Hague Convention, fits out as a hospital ship. These neutral vessels are subject to the regulations of present Article 23, which gives to the belligerent the right of control. It is reasonable that as much authority be considered as resting in the belligerent in regard to neutral vessels not commissioned as hospital ships, but for the time being acting as such or as rescue ships.

It would be sufficient to give Article VI of The Hague Convention with the statement that such vessels are in general subject to the provisions of present Article 23. The more detailed specifications in regard to treatment would better be left to the time of the event. The reporting to the commander, etc., is liable to be confusing at a time of action. Article 25 should be worded to conform to The Hague 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." To this should be added the last two clauses of present Article 23.

(d) Should the word "considered" in the second line of Article 28 be retained?

The word "considered" implies that while the state of those captured may be something other than prisoners of war, yet they are regarded by the United States as such.

The word should be stricken out. They *are* prisoners of war.

(e) Should Article 29 be retained?

Article 29 is in effect Article 10 of The Hague Convention, which was not adopted by the United States and not approved by several other nations. This Article 10 reads as follows:

The shipwrecked, wounded, or sick who shall be landed at a neutral port, with the consent of the local authorities, must, in the absence of a contrary arrangement between the neutral state and the belligerents, be guarded by the neutral state, so that they can not

again take part in the military operations. The expense of entertainment and detention shall be borne by the state to which the wounded, shipwrecked, or sick shall belong. (Holls, Peace Conference at The Hague, p. 127.)

As this appears as "excluded" in the Convention to which the United States is a party, it should not be made a part of the United States Naval War Code until there is international agreement upon its terms.

(f) Would it not be best to insert The Hague Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention in place of Section IV of the code?

As the United States has formally adopted the provisions of The Hague Convention bearing on Section IV, and as those provisions are therefore in effect for the officers of the United States Navy, it would seem better not to have two sets of rules upon the same subject, but rather to have actual rules with such supplementary statements as may seem essential. Therefore The Hague Rules as named should be inserted in place of Section IV.

(g) The provisions of the above-mentioned Hague Convention are binding only upon contracting powers. Would it not be better to thus limit the provisions of the code?

The provisions of the code should follow those of The Hague Convention.

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

Article 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.

(a) Should the right of convoy be restricted to states with which the United States has treaties allowing this right, or should it remain general?