Introduction by the Editors

This book is a comprehensive collection of documents and other basic factual information on the 'laws of war' – that is to say, on those aspects of international law which relate to the conduct of armed conflict and military occupations. We believe there has long been a need for such a volume in a convenient and accessible form. The need is particularly great in view of the conclusion of new agreements: the 1977 UN Environmental Convention, the two 1977 Geneva Protocols, and the 1981 UN Weapons Convention.

The focus of this book is on the laws of war as they are currently applicable. Hence, we have included three main kinds of item: (1) the texts of international agreements which are formally in force today; (2) detailed lists of the states which are parties to the various international agreements; and (3) certain texts which, while not themselves constituting formal international agreements, are none the less an authoritative exposition of the law and have clear contemporary relevance.

THE TERM 'LAWS OF WAR'

The term 'laws of war' is taken in this volume as referring only to the rules governing the actual conduct of armed conflict (*jus in bello*) and not to the rules governing the resort to armed conflict (*jus ad bellum*). For most purposes, *jus ad bellum* can legitimately be regarded as a separate question meriting separate attention. The reason for this lies in the cardinal principle that *jus in bello* applies in cases of armed conflict whether the conflict is lawful or unlawful in its inception under *jus ad bellum*.

The term 'laws of war' is a well-recognized term of art, and not one of absolute precision. The application of the laws of war does not depend upon the recognition of the existence of a formal state of 'war', but (with certain qualifications) comprehends situations of armed conflict and military occupation in general, whether formally recognized as 'war' or not. This has come to be reflected in the terminology of the most recent documents, in which the term 'war' has been superseded by 'armed conflict', 'armed hostility', or other comparable terms. Although the term 'laws of armed conflict'

may therefore be more precise, the 'laws of war' is widely used and understood.[1]

THE DIFFERENT SOURCES OF THE LAW

The idea that the conduct of armed conflicts is governed by rules appears to have been found in almost all societies, without geographical limitation.[2]

The historical development of the laws of war has had an important impact on both the form and the content of the present law. While this volume focuses on the laws of war as they are currently applicable, a word about the historical background may be useful.

The regulation of armed conflict has occupied the attention of scholars, statesmen, and soldiers for thousands of years. The Greeks and Romans customarily observed certain humanitarian principles which have become fundamental rules of the contemporary laws of war.[3] During the Middle Ages, a law of arms was developed in Europe to govern discipline within armies as well as to regulate the conduct of hostilities.[4] As the body of international law began to develop in Europe, early writers (such as Legnano, Victoria, Belli, Ayala, Gentili, and Grotius)[5] gave priority to consideration of hostility in international relations. The work of Grotius, published during the Thirty Years War (1618-48), was inspired by the author's desire to ameliorate the practices witnessed during that war. It has since come to be regarded as perhaps the first systematic treatment of international law, and one in which the laws of war played a principal part. Over this period, the practice of states led to the gradual emergence of customary principles regarding

[1] The International Committee of the Red Cross (ICRC) has increasingly used the term 'international humanitarian law applicable in armed conflicts'. This term has found its way into some international agreements such as the 1977 *Final Act of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts* in connection with 1977 Geneva Protocols I and II.

[2] For example, see S. V. Viswanatha, *International Law in Ancient India*, Longmans Green, Bombay, 1925, pp. 108-200; Emmanuel Bello, *African Customary Humanitarian Law*, Oyez, London, and ICRC, Geneva, 1980, pp. 1-62; and Majid Khadduri, *War and Peace in the Law of Islam*, Johns Hopkins Press, Baltimore, Maryland, [1955], pp. 83-137.

[3] See Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome*, Macmillan, London, 1911, vol. II, pp. 166-384.

[4] See Maurice Keen, *The Laws of War in the Late Middle Ages*, Routledge and Kegan Paul, London, 1965.

[5] Giovanni da Legnano, *De Bello, de Represaliis et de Duello*, Bologna, 1477; Franciscus de Victoria, *Relectiones Theologicae*, Lyons, 1557; Pierino Belli, *De Re Militari et Bello Tractatus*, Venice, 1563; Balthazar Ayala, *De Jure et Officiis Bellicis et Disciplina Militari*, Douay, 1582; Alberico Gentili, *Commentationes de Jure Belli*, London, 1588-9, and *De Jure Belli, libri tres*, Hanau, 1598; and Hugo Grotius, *De Jure Belli ac Pacis, libri tres*, Paris, 1625.

the conduct of armed hostilities. These principles were preserved not only in the writings of scholars but also through the contribution of soldiers and the conduct of armed forces in the field.

International Agreements

Although the foundation of the contemporary legal regime is thus very old, it was only in the second half of the nineteenth century that the customary principles began to be codified in particular binding multilateral agreements. Since that time, such international agreements have taken the form of declarations, conventions, and protocols. The major agreements are mentioned below.

The first such agreement was the 1856 Paris Declaration on maritime war. Other agreements followed: the 1864 Geneva Convention on wounded and sick, and the 1868 St. Petersburg Declaration on explosive projectiles. The 1868 Additional Articles on wounded, and the 1874 Brussels Declaration on the laws and customs of war, were signed but did not enter into force.

The process of codification accelerated at the turn of the century. The First Hague Peace Conference, held in 1899, led to the conclusion of three conventions (two of which dealt with the laws of land and maritime war) and three declarations (relating to particular means of conducting warfare). Following the First Hague Peace Conference, states adopted the 1904 Hague Convention on hospital ships and the 1906 Geneva Convention on wounded and sick. The Second Hague Peace Conference, held in 1907, led to the conclusion of thirteen conventions (ten of which dealt with the laws of land and maritime war) and one declaration (relating to a particular method of conducting warfare). While no single conference since the Second Hague Peace Conference has succeeded in formulating as many conventions concerning the laws of war, the process of codification continued, with varying degrees of success. In 1909 the London Declaration on naval war was signed, but did not enter into force.

At the conclusion of the First World War the 1919 Treaty of Versailles as well as other peace treaties expressly recognized that certain methods of conducting warfare were prohibited. In 1922 the Treaty of Washington on submarine and gas warfare was signed, but did not enter into force. The 1925 Geneva Protocol on gas and bacteriological warfare, the 1929 Geneva Convention on wounded and sick, the 1929 Geneva Convention on prisoners of war, the 1930 London Treaty on naval armaments and warfare, and the 1936 London Procès-Verbal on submarine warfare were all signed in this inter-war period, and all of these agreements entered into force.

After the Second World War additional international agreements were concluded. In 1948 the UN Genocide Convention was adopted. Particular progress in codification was made at the 1949 Geneva diplomatic conference with the adoption of the four 1949 Geneva Conventions (relating to wounded and sick; wounded, sick, and shipwrecked; prisoners of war; and civilians). Further codification continued thereafter, with the 1954 Hague Convention and Protocol on the protection of cultural property, and the 1968 UN Convention on statutory limitations regarding war crimes. The most recent codification includes the 1977 UN Convention on the hostile use of environmental modification techniques; the two 1977 Geneva Protocols on victims of armed conflicts; and the 1981 UN Convention on specific conventional weapons.

Customary Law

Despite the importance of international agreements in the contemporary development of the law, any work concerning the laws of war which is limited to international agreements runs the risk of distorting not only the form but also the substance of the law. As noted above, the present laws of war emerged as customary rules from the practice of states. The codification of rules into particular agreements which began to occur in the second half of the nineteenth century did not displace customary law. During the very process of codification it was recognized that much of the law continued to exist in the form of unwritten customary principles. This was expressly enunciated in what has come to be known as the Martens Clause, which first appeared in the Preamble to 1899 Hague Convention II:

> Until a more complete code of the laws of war is issued, the high contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilised nations, from the laws of humanity, and the requirements of the public conscience.[6]

The Martens Clause is not merely of historical interest. Although there has been a great deal of subsequent codification of the laws of war, a significant part of the law continues to be in the form of customary principles. A common article in each of the four 1949 Geneva Conventions borrows from the very terminology of the Martens Clause in reaffirming that even if a party denounces the Convention, this:

[6] For the version of the Martens Clause which appeared in 1907 Hague Convention IV see below, p. 45.

> shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.[7]

Perhaps the most fundamental customary principle is that the right of belligerents to adopt means of injuring the enemy is not unlimited. This notion, which clearly rests at the very foundation of the laws of war, was incorporated in the 1874 Brussels Declaration and the 1880 Oxford Manual, and was formally codified in 1899 Hague Convention II and 1907 Hague Convention IV.

Three general customary principles seek to delineate legal limits on belligerent conduct: the principle of military necessity, the principle of humanity, and what is still called the principle of chivalry. The principle of military necessity provides that, strictly subject to the principles of humanity and chivalry, a belligerent is justified in applying the amount and kind of force necessary to achieve the complete submission of the enemy at the earliest possible moment and with the least expenditure of time, life, and resources. The principle of humanity prohibits the employment of any kind or degree of force not actually necessary for military purposes. The principle of chivalry denounces and forbids resort to dishonourable means, expedients, or conduct in the course of armed hostility. All three principles are integrally related and require an appropriate balance to be struck. In general, the law which has been codified is the product of such balancing; consequently, arguments of military necessity cannot be used as pretexts for evading applicable provisions of the law. In general, military necessity has been rejected as a defence for acts forbidden by the customary and conventional laws of war because such laws have, in any case, been developed with consideration for the concept of military necessity. The only exception to this arises with provisions which expressly contain the specific qualification that particular rules are only applicable if military circumstances permit. Where new law is in the process of being created, or where certain long-established general terms such as 'unnecessary suffering' are being interpreted, the balancing process continues to be applicable.

In general, customary international law is binding on all states. Principles of customary law may come to be codified in a particular agreement: in such a case, the principles remain binding on all states

[7] 1949 Geneva Convention I, Article 63; Convention II, Article 62; Convention III, Article 142; and Convention IV, Article 158. The same principle was reaffirmed in 1977 Geneva Protocol I, Article 1; 1977 Geneva Protocol II, Preamble; and 1981 UN Weapons Convention, Preamble.

as customary law, but those parties to the agreement are further bound through their treaty obligations. Customary law may also develop to bring the substance of pre-existing written agreements within its ambit; in such a case, the particular agreement (which is already binding upon all states which are parties to it) then becomes generally binding upon all states as customary law. Perhaps the best recognized example of this is 1907 Hague Convention IV. In its 1946 Judgment, the International Military Tribunal at Nuremberg stated that the provisions of the Convention were declaratory of the laws and customs of war.[8] In 1948 the International Military Tribunal for the Far East sitting in Tokyo expressed a similar view.[9]

Although the primary sources of the law are custom and treaties, the other areas in which evidence of the law may be found should not be ignored. They are discussed under separate headings below.

Judicial Decisions

The decisions of international and national judicial bodies, possessing the necessary jurisdiction to render legally binding decisions, have long played an important role in the clarification and development of the law. The International Military Tribunals which sat in Nuremberg and Tokyo following the Second World War are the best known, but in fact the overwhelming majority of those accused of committing crimes against international law during the Second World War were tried (during and after the war) by national courts or military courts established by occupying states. In addition, some members of armed forces were tried by their own national military courts. If attention is frequently focused on Second World War cases, it should be noted that in conflicts both before and since that time there have been very many judicial decisions relating to the laws of war. While the interpretation of the laws of war embodied in the decisions of these disparate tribunals has by no means always been consistent, the majority of such decisions have played an invaluable role in applying the law to particular circumstances, in thereby clarifying it, and in stimulating further efforts at codification. There is a particularly large number of important decisions relating to those parts of the law which govern military occupations.

[8] See the extract from the 1946 Nuremberg Judgment which includes this statement, below, p. 156.

[9] International Military Tribunal for the Far East, Judgment delivered 4-12 November 1948, duplicated transcript, p. 30.

National Manuals of Military Law

The most famous early example of a national manual outlining the laws of war for the use of armed forces, and one of the first attempts to codify the laws of land warfare, was the 1863 'Instructions for the Government of Armies of the United States in the Field' prepared by Dr Francis Lieber of Columbia University. This manual, which came to be known as the 'Lieber Code', was issued to the Union Army on 24 April 1863, and was applied by the forces of the United States during the American Civil War. It became the model for many other national manuals (for example, those of the Netherlands in 1871, France in 1877, Serbia in 1879, Spain in 1882, Portugal in 1890, and Italy in 1896), and it prepared the way for the calling of the 1874 Brussels Conference and the two Hague Peace Conferences of 1899 and 1907. National manuals have continued to be published to the present day and they frequently serve as the closest link which the laws of war maintain with the belligerent armed forces in the field.

Although such national manuals may also have some function in providing evidence of the law, they are in general bound to be viewed with some caution. For example, during the case of *USA* v. *Wilhelm List et al.* (the 'Hostages Case') following the Second World War, the defence attempted to counter the argument that superior orders are not a defence to an international law crime (one of the key legal bases of the Nuremberg Tribunals) by successfully showing that both the British and the American military manuals used during the Second World War had favoured obeying superior orders. The US Military Tribunal did not consider the statements in these two military manuals as conclusive on this point, and stated in its judgment:

> . . . army regulations are not a competent source of international law . . . It is possible, however, that such regulations, as they bear upon a question of custom and practice in the conduct of war, might have evidentiary value, particularly if the applicable portions had been put into general practice.[10]

Writings of Publicists

The writings of distinguished legal specialists (often called 'publicists') on the subject of the laws of war have been cited frequently as evidence of where the law stands on particular issues. Traditionally, the weight such writings have been given has depended on the stature of the legal specialist as well as the quality of the reasoning.

[10] *Trials of War Criminals Before the Nuernberg Military Tribunals*, US Government Printing Office, Washington, D.C., 1950, vol. XI, p. 1237.

The general importance of such writings has not decreased despite the fact that formal codifications have increased. Indeed, the importance of such writings has perhaps increased owing to the evident need to clarify the greater number of codified provisions, to relate the provisions of the various codifications to each other and to other sources of law, and to consider other problems. The attempt to interpret the bare provisions of codified agreements without the benefit of such interpretative writings may lead to an inaccurate view of the law. None the less, legal specialists may disagree, and, particularly in areas of controversy in the law, reliance upon the writings of a single specialist (or even a limited number of specialists) may be hazardous. Various writings of publicists which interpret different aspects of the laws of war are listed in the bibliography.

The Role of Various International Bodies

Non-governmental organizations, particularly those consisting of legal specialists, have played an important role in the clarification as well as development of the laws of war. For example, the Institute of International Law prepared both the 1880 Oxford Manual of Land War and the 1913 Oxford Manual of Naval War, and in 1971 adopted a resolution on the application of the laws of war to United Nations forces. In 1923 a Commission of Jurists meeting in The Hague drafted the Hague Rules of Aerial Warfare. In 1938 the International Law Association adopted a draft convention for the protection of the civilian population in time of war. The above are only some of the better-known expositions by such bodies. Particular mention should be made of the International Committee of the Red Cross (ICRC), which was founded, at the 1863 Geneva International Conference, with the express purpose of reducing the horror of warfare. Since that time, the ICRC has distinguished itself through its involvement with various investigations, reports, draft rules, conferences of government experts, and diplomatic conferences relating to humanitarian law. The ICRC has been particularly known for its work relating to the preparation of draft texts of what later became the Geneva Conventions of 1864, 1906, 1929, and 1949, and the Geneva Protocols of 1977. In addition, in 1970 the International Institute of Humanitarian Law was founded in San Remo by legal specialists and, since that time, has organized various conferences, meetings, and seminars of specialists, and has established several commissions relating to the laws of war.

Public international organizations, such as the League of Nations and the United Nations, have also played an important role in clarifying and developing the laws of war. Certain conferences, organized under the auspices of such organizations, have led to the conclusion of agreements on the laws of war. For example, the 1925 Geneva Protocol on gas warfare was adopted at a conference held under the auspices of the League of Nations; and the 1981 Convention on specific conventional weapons was adopted at a conference convened by the UN. Such organizations have prepared various drafts of agreements on the laws of war. For example, drafts of the 1948 Genocide Convention were prepared by the UN Secretary-General and the UN Economic and Social Council; and drafts of the 1977 Environmental Convention were prepared by the Conference of the Committee on Disarmament. Such organizations have adopted various resolutions on the laws of war. For example, in 1938 the League of Nations Assembly unanimously adopted a resolution on the law of air warfare; in 1946 the UN General Assembly unanimously adopted a resolution affirming the principles of international law recognized by the Charter and Judgment of the International Military Tribunal at Nuremberg; in 1947 the UN General Assembly adopted a resolution directing the International Law Commission (a subsidiary organ of the General Assembly) to prepare a draft code relating to the Nuremberg principles; and in 1948 the UN General Assembly adopted a resolution inviting the ILC to look into the feasibility of establishing an international criminal court in which cases involving the alleged commission of war crimes could be heard. Such organizations have also prepared various reports on the laws of war. For example, in 1950 the ILC adopted a formulation of the Nuremberg principles; and in 1969 the UN Secretary-General prepared his first report on respect for human rights in armed conflict.

Although regulations, draft rules, resolutions, and reports adopted by various international bodies may not possess legally binding force *per se*, they have played, and continue to play, an important role in clarifying the content of pre-existing customary or conventional law, and in influencing the development of the law.

APPLICATION TO STATES

In analysing the application of the laws of war to states, several distinctions should be drawn.

First, a distinction exists between an agreement generally entering into force and an agreement entering into force for particular parties. An agreement generally enters into force when, according to its terms, certain conditions are fulfilled (for example, when a certain number of signatory states have ratified the agreement). Hence, until such conditions are fulfilled, the agreement is not formally

in force even among states which have already ratified the agreement. Once the agreement generally enters into force, it is binding on all those states which have ratified the agreement, and becomes binding on all subsequent parties according to its terms (for example, when a signatory state deposits its instrument of ratification or when a non-signatory state deposits its instrument of accession).

Second, a distinction exists between an agreement entering into force as between parties and being applicable in a particular conflict. In general, the binding force of agreements is limited to states parties, and then only to the extent delineated by the terms of the agreement. For example, most of the earlier international agreements on the laws of war (such as the 1868 St. Petersburg Declaration, the 1899 Hague Declarations, the 1899 Hague Convention II, the 1906 Geneva Convention, and the 1907 Hague Conventions) contain a 'general participation clause', whereby the agreement is applicable only if all of the belligerents in the conflict are parties to the agreement. If one belligerent is not a party to the agreement, it is not technically applicable even though it has generally entered into force. In analysing the technical application of international agreements on the laws of war during armed hostilities, reference must therefore be made to any 'general participation clause' in conjunction with the identity of states parties and belligerents. However, reference must also be made to whether or not the agreement (or a part thereof) has come to be considered as codifying customary international law. To the extent that any international agreement (or a part thereof) embodies customary international law, it is binding upon all states whether or not it contains a 'general participation clause'. 1907 Hague Convention IV is a case in point. More recent agreements on the laws of war have avoided the 'general participation clause'. Some agreements, like the 1949 Geneva Conventions, remain binding as between parties even if one of the belligerents is a non-party. Moreover, they are applicable to any non-party which accepts and applies the provisions of the agreement.

APPLICATION TO INDIVIDUALS AS WELL AS STATES

Where the laws of war are applicable in a particular armed conflict, they are binding not only upon states as such but also upon individuals, and in particular, the individual members of armed forces. The notion that individuals bear direct responsibility for violations of the laws of war is one which arose with the development of the law. The first major attempt to punish war crimes took place following the First World War, and the legal ramifications of individual responsibility began to receive their most famous expression in the

course of the Second World War, during which Allied governments issued several individual and joint declarations relating to the punishment of war criminals.

The first inter-Allied declaration was signed in London in 1942 by the representatives of several Allied European governments, and stated that the punishment of war crimes was one of the principal war aims of the Allied governments. In 1943, the Moscow Declaration stated the intention of the Allied governments to adjudicate and punish war criminals in the countries in which the crimes were committed, with the exception that major war criminals (whose offences had no particular geographical location) would be dealt with by a joint decision of the Allied governments. In the same year, the London Conference established the United Nations War Crimes Commission to investigate war crimes, and the Commission first met in 1944. In 1945, Allied governments met in London to implement the Moscow Declaration, and the result was an agreement relating to the prosecution and punishment of the major war criminals of the European Axis powers. The agreement provided for the establishment of an International Military Tribunal (eventually convened at Nuremberg) in accordance with a charter, annexed to the agreement, which set forth principles to be applied by the Tribunal in reaching its judgment. The Nuremberg Charter recognized that individual responsibility applied to 'crimes against peace' (violations of *jus ad bellum*), 'war crimes', and 'crimes against humanity' (both the latter comprehending violations of *jus in bello*). While the Charter recognized that the defence of superior orders could operate as a mitigating factor in the determination of punishment, such a plea would not remove individual responsibility. The Judgment of the Nuremberg Tribunal, delivered in 1946, pronounced its provisions relating to individual responsibility to be declaratory of customary international law.

With regard to the war in the Pacific, the 1945 Potsdam Proclamation stated the intention of the Allied governments to prosecute and punish war criminals. In 1946, the Far Eastern Commission delegated to the Supreme Allied Commander the power to appoint special international military courts for the trial of war criminals in the Far East. In the same year, the Supreme Allied Commander issued a proclamation establishing an International Military Tribunal for the Far East, and approved the Charter of the Tribunal, which was convened in Tokyo. The Tokyo Charter and the Judgment of the Tokyo Tribunal, delivered in 1948, affirmed the provisions of the Nuremberg Charter and Judgment relating to individual responsibility.

Despite the criticisms which some have raised with respect to the

International Military Tribunals, the notion that individual responsibility is a part of customary international law remains unchallenged.

APPLICATION IN NON-INTERNATIONAL CONFLICTS

The distinction between international and non-international armed conflicts, which is perhaps easier to draw in theory than in practice, has played an important role in the development and application of the law. Before the mid-twentieth century, the principal international agreements governing the laws of war applied only to armed conflict between states and had no formal bearing (according to their specific terms) on non-international armed conflicts. However, certain regional agreements (such as the 1928 Havana Convention on civil strife) related to internal conflicts. Also, customary international law provided that the laws of war might become applicable to a non-international conflict through the doctrine of 'recognition of belligerency'.

According to this doctrine, the government of a state in which an insurrection existed could recognize the belligerency of the insurgent faction, and the laws of war would thereby become applicable. A third state could also recognize the belligerency of the insurgent faction, and such state would then be subject to the rights and duties of neutrality embodied in the laws of war. The recognition of the belligerent status of insurgent forces by a third state did not imply recognition of that group as the legitimate sovereign, but only transformed the situation in terms of the application of the laws of war. Recognition of belligerency by the lawful government would not impose a legal obligation upon third states to do the same. Equally, the lawful government would not be legally bound by the decision of third states to recognize the belligerency of an insurgent faction, although such recognition by a number of third states might influence the legal government to take that action. Practical as well as legal difficulties could obviously arise when the legal government refused to recognize the belligerent status of a particular group with which it was engaged in armed conflict, even though such recognition had been granted by other states. Difficulties could also arise with the existence of contradictory points of view as to whether or not recognition of belligerency could be implied from certain acts of the legal government.

In general, the doctrine of recognition of belligerency appears to have fallen into decline. However, certain international agreements adopted since the mid-twentieth century have established a basic written regime for *jus in bello interno*, not dependent upon

recognition of belligerency, which provides that certain fundamental humanitarian principles may be applicable in non-international armed conflicts. Common Article 3 of the four 1949 Geneva Conventions provides that in the case of an armed conflict not of an international character occurring in the territory of one of the parties to the Conventions, each party to the conflict shall be bound to apply, as a minimum, certain fundamental humanitarian provisions. By referring expressly to 'parties to the conflict', and not merely to states parties to the Convention, common Article 3 attempts to ensure that insurgents engaged in armed conflict against a lawful government would be bound to observe the same provisions as those which would bind the lawful government. However, common Article 3 is only applicable in cases where there is a genuine 'armed conflict' as distinct from riots, isolated or sporadic acts of violence, or other acts of a similar nature.

Article 19 of the 1954 Hague Cultural Property Convention provides for the application, in a non-international armed conflict, of at least those provisions of the Convention which relate to respect for cultural property. Again, the application of Article 19 depends upon the existence of an 'armed conflict'.

The 1977 Geneva Protocol II relating to non-international armed conflicts is intended to develop and supplement common Article 3 of the 1949 Geneva Conventions without modifying its existing conditions of application. Thus, it too depends upon the existence of an 'armed conflict'. The Protocol begins with a more extensive list of fundamental guarantees than those provided under common Article 3 of the 1949 Geneva Conventions, and proceeds thereafter to define those rights and duties, albeit in a rather rudimentary form.

In addition, insurgent forces may unilaterally declare their acceptance of at least certain aspects of the laws of war, such as the 1949 Geneva Conventions, and the laws of war may thereby be relevant to non-international armed conflicts.

PRACTICAL IMPACT OF THE LAWS OF WAR

Advocates of far-ranging proposals to secure the complete abolition of the use of armed force have often been sceptical of the apparent reformism of the approach underlying the laws of war, supporting instead a variety of ideas such as the complete legal prohibition of the use of force, the achievement of general and complete disarmament, pacifism, or a new international political order which may include world government. The underlying concept is not new in that plans for peace date from ancient times. Without addressing the value of any of these ideas, at present none of them seems likely

either to abolish the numerous causes of conflict in the world, or to ensure that in all such conflicts as do occur, only non-violent methods of struggle are used. Therefore, the need to mitigate the worst effects of armed conflict, by attempting to maintain the idea that there are standards of civilization by which conduct may be judged, is likely to remain. The legal regime embodying these standards is by no means prejudicial to various proposals to limit the use of force, and may even contribute to the achievement of the broader objectives referred to above.

Those who suggest that the rules of warfare cannot be reconciled with existing fundamental rules governing the legality of the use of force (such as the 1928 Kellogg-Briand Pact and the 1945 UN Charter) neglect two important points. First, neither the Kellogg-Briand Pact nor the UN Charter embodies an absolute prohibition of the use of force. Second, and more important, the laws of war are applicable whether or not a particular armed conflict may be regarded as lawful under *jus ad bellum*. The value of the laws of war lies in the attempt to bring humanitarian considerations to bear, whatever the circumstances.

It is sometimes suggested that the laws of war make little practical difference to the conduct of armed conflicts and military occupations. Cicero's maxim *inter arma silent leges* (in war the law is silent) is often quoted. Such pessimistic views need to be taken seriously, reflecting as they do two sombre realities. First, war is by definition an exercise in violent coercion and is precisely characterized by the breakdown of certain legal norms and constraints. Second, the era in which the modern laws of war have largely developed, namely the last 100 years, has also seen extreme developments both in the conduct of war and in the types of weaponry. There have been all too many violations of the laws of war which have often involved appalling consequences, including the crippling and destruction of life and the devastation of property. It is not surprising that there is a widespread pessimism as to the role which the laws of war are able to play in governing the activities of statesmen and soldiers.

However, there is much evidence that the laws of war have exerted at least some influence on the conduct of armed hostilities. They have helped to bring about a degree of acceptance and observance of certain valuable basic ideas: for example, that prisoners of war are to have their lives spared and to be treated humanely; that a state may be entitled to be neutral *vis-à-vis* an armed conflict involving other states; that military occupation of another country's territory must be regarded as provisional, and involves duties as well

as rights for the occupant; that certain places (e.g. hospitals) are not legitimate targets in warfare; that persons not taking an active part in a conflict (e.g. children) should be spared from the consequences as much as possible; and that torture is wrong.

Critics may argue that states involved in conflicts will always put their vital interests first, and the law will be violated if it clashes with those interests. But in fact the position is not nearly so simple. The law has been created by states with their general interests and the particular interests of their armed forces in mind. Thus it is not an abstract and external imposition on the international system, but rather a direct outgrowth of it.

The factors which lead states and armed forces involved in armed conflicts or occupations to comply with the law are complex. They include a need to be viewed as acting in accord with internationally agreed norms, or with ethical beliefs widely held within the state; a hope that compliance with the law will be reciprocated; and also a fear that if the law is violated, there may be adverse military consequences (such as reprisals, that is, otherwise illegal acts of retaliation carried out in response to illegal acts of warfare and intended to cause the enemy to comply with the law); adverse political consequences (such as loss of friends and allies), and also judicial consequences (trials, whether before national or international tribunals). Even if these factors do not work equally all of the time, or do not apply equally at all levels of decision-making, they are seldom wholly absent. At the very least, the law provides a standard of conduct which states need to consider in the formulation and implementation of their policies. This, in and of itself, may influence decisions in subtle but important ways.

In so far as the laws of war are complied with, this may arguably be due to the wide range of factors mentioned above rather than to the specific mechanisms for compliance which have been built into some of the international agreements contained in this volume. Yet the specific mechanisms should not be ignored. For example, the four 1949 Geneva Conventions contain extensive (albeit little used) provisions for the long-established diplomatic device of the 'protecting power' – that is, a state (or an impartial, humanitarian organization acting as a substitute) which is authorized by a belligerent state to carry out various duties in its interests in relation to an opposing state. In addition, the 1949 Geneva Conventions allow for activities (which have often included monitoring duties) by impartial, humanitarian organizations such as the International Committee of the Red Cross.

To say that the laws of war have had some practical impact is

not to say that the state of the law itself is by any means satisfactory. The written laws of war contain manifest imperfections. First, the existence of different interpretations of various legal provisions may preclude a common understanding of existing law. For example, not only have states maintained different interpretations of certain provisions of the 1925 Geneva Protocol on gas warfare since the date of signature, but also some states have changed their positions over time. Second, many aspects of warfare and military occupation have been inadequately dealt with by the written law: for example, the cruelties of certain long-standing forms of hostilities, such as siege warfare. Technological developments in the methods of conducting war have increased the extent to which the written law is inadequate or absent. Although such developments have led to the codification of new law at various times, the ongoing nature of technological change may make such codification as exists vulnerable to the passage of time: for example, the principal reference in 1907 Hague Declaration (XIV) is to the use of balloons in air warfare. Even though certain general principles which have been codified (for example the prohibition of means of warfare causing unnecessary suffering) can be applied to new weapons, it has been extremely difficult to achieve any consensus in particular cases. However, the state of the law cannot be properly judged by referring to the written law alone. As noted above, the laws of war comprehend customary (as well as formally codified) law, and a significant part of the laws of war continues to be in the form of custom. Such customary law may assist in interpreting provisions of the written law, may address aspects of armed conflict and military occupation which have been inadequately dealt with by the written law, and may clarify the application of certain general principles (whether formally codified or not) to particular means of armed conflict and military occupation. Although customary law (created through state practice) may thereby strengthen the written legal regime, it should not be overlooked that state practice may also derogate from earlier written or customary law. If such state practice is widespread, the question would arise as to whether a new custom could be regarded as superseding the earlier law.

PRINCIPLES OF SELECTION IN THIS VOLUME

Documents Included

Although this volume is a collection of documents, it is not a documentary history. Emphasis is firmly placed on the laws of war which remain applicable today, and the content of the contemporary

written legal regime is set forth in a relatively wide and representative variety of types of document. To facilitate easy reference, the documents are placed in chronological order.

Because of the central importance of binding international agreements in the contemporary law governing the conduct of armed conflict, we have made as complete a selection of this type of document as space permits. We have provided a complete and unabridged text of each international agreement. Any minor omissions (for example, most annexes) have been noted at the relevant point.

To ensure that attention is not focused exclusively on formally binding agreements, various other types of document are included where they may clarify some aspect of the laws of war: the 1923 Hague Rules of Air Warfare, extracts from the 1946 Judgment of the International Military Tribunal at Nuremberg, the 1971 resolution of the Institute of International Law on the application of the laws of war to UN forces, and the 1978 Red Cross fundamental rules of international humanitarian law applicable in armed conflicts. As with the international agreements, so with these documents (with the one exception of the Nuremberg Judgment) we have provided complete and unabridged texts.

Documents Omitted

Many types of document having an important bearing on the laws of war have been omitted for reasons of space. Some of the most notable types of document are referred to below.

Some multilateral agreements on the laws of war have been omitted in cases where their relevance is more historical than contemporary: for example, the 1899 and 1907 Hague Declarations on the discharge of projectiles and explosives from balloons.

Multilateral agreements on the laws of war which have been superseded by later agreements, so far as most or all of the states parties are concerned, have been omitted. For example, on the question of the laws of land warfare in general, 1907 Hague Convention IV was preceded by 1899 Hague Convention II; on the question of wounded and sick on land, 1949 Geneva Convention I was preceded by the 1864 Geneva Convention and its revisions of 1906 and 1929; on the question of wounded, sick and shipwrecked at sea, 1949 Geneva Convention II was preceded by 1899 Hague Convention III and 1907 Hague Convention X; and on the question of prisoners of war, 1949 Geneva Convention III was preceded by the 1929 Geneva Convention.

Regional agreements on the laws of war have been omitted. Such agreements include: the 1935 Roerich Pact on cultural property;

the 1937 Nyon Agreement on submarine warfare; the 1928 Havana Convention on maritime neutrality; the 1928 Havana Convention on duties and rights of states during civil strife, and its 1957 Protocol; and the 1938 Scandinavian Rules of Neutrality.

Agreements of an essentially bilateral character on the laws of war have been omitted: for example, the 1854 Washington Convention on the rights of neutrals at sea, signed by Russia and the USA.

Agreements relating to *jus ad bellum* (the law governing resort to armed conflict) have been omitted. Among the notable agreements of this type are 1899 Hague Convention I on the pacific settlement of disputes; 1907 Hague Convention I on the pacific settlement of disputes; 1907 Hague Convention II on the limitation of force in recovering contract debt; 1907 Hague Convention III on the opening of hostilities; the 1919 Covenant of the League of Nations; the 1928 General Treaty For the Renunciation of War as an Instrument of National Policy, otherwise known as the Kellogg-Briand Pact or the Pact of Paris; and the 1945 Charter of the United Nations.

Agreements relating to arms control and disarmament, including those with provisions on the demilitarization or neutralization of particular areas, have been omitted. Arms control and disarmament agreements do not expressly address the actual conduct of armed conflict; rather, they establish some controls over the production, testing, stockpiling, transfer or deployment of the weapons by which armed conflict might be conducted. For example, the 1972 Biological Weapons Convention prohibits the development, production, and stockpiling of certain weapons, rather than regulating their use in warfare *per se*. Such agreements may have considerable implications for the conduct of armed conflict, and their terms may remain applicable during situations of armed conflict and military occupation.

Agreements on general human rights have been omitted, but may be relevant to situations of armed conflict and occupation. For example, the 1966 International Covenant on Civil and Political Rights contains provisions which are expressly applicable in time of 'public emergency which threatens the life of the nation'; and the 1950 European Convention on Human Rights makes explicit reference to rights 'in time of war or other public emergency threatening the life of the nation'.

UN General Assembly resolutions relating to armed conflict have also been omitted. Among the better known are Resolution 95 (I) of 11 December 1946, 'Affirmation of the Principles of International Law Recognized by the Charter of the Nuremberg

Tribunal'; Resolution 1653 (XVI) of 24 November 1961, 'Declaration on the Prohibition of the Use of Nuclear and Thermo-nuclear Weapons'; and Resolution 2675 (XXV) of 9 December 1970, 'Basic Principles for the Protection of Civilian Populations in Armed Conflicts'.

Unilateral declarations made by states, national judicial decisions, national laws and regulations relating to the laws of war, and national manuals of military law have, despite their considerable importance, also been omitted.

FOOTNOTES

All footnotes in this volume are written by us and are not to be taken as being a formal part of the documents themselves.

THE PREFATORY NOTES

Each document in this volume is preceded by a prefatory note in which we have attempted to set forth the chain of events leading to the adoption of the document and, where relevant, other information. These prefatory notes are of an informal character, intended solely to put the documents in context. They are in no sense definitive legal commentaries.

In the case of binding international agreements, each prefatory note is followed by a list which includes the date of the original signature, the date of entry into force, the official Depositary, and the authentic (i.e. official) language or languages.

In addition, in respect of all documents we have listed the treaty collection or publication from which the document is reprinted. In cases where English is not one of the official languages of a document, we have used a translation. If there are several recognized English translations, we have compared them and have used the one which we consider to be the clearest and most faithful to the original. Finally, a partial list of other sources in which the document may be found is included: some of these contain useful further information, such as records or final acts of the conferences which adopted the document, or the texts of annexes omitted from this volume.

THE CONCLUDING NOTES

Each binding international agreement in this volume is followed by concluding notes which set forth: (i) an alphabetical list of states signing, ratifying, acceding or notifying succession to such agreement, with the respective dates; (ii) a figure for the total number of states included in the lists as having at any time become bound:

(iii) a note on entry into force for states parties; (iv) any subsequent denunciations of the agreement; and (v) any reservations, declarations, and objections. These concluding notes are based on information obtained from the official Depositaries, whether governments or international organizations. We have checked the information in various treaty series and other sources, and where any serious and unexplained discrepancy has appeared, we have raised it with the Depositary. Where a discrepancy continued to exist, we have used the information supplied by the Depositary unless compelling reasons suggested otherwise. We are grateful to the Depositaries for their painstaking responses to our numerous queries. The information in the concluding notes is up to date as of 1 January 1981. The complete texts of the concluding notes, as published here, have all been submitted to the respective Depositaries and checked by them.

Lists of States

The name of each state in these lists is in general derived from the name by which it was officially known at the time of its adherence to a particular international agreement. For example, following earlier agreements 'Siam' is listed, while following later ones 'Thailand' is listed. Thus, while we have relied heavily on the Depositaries for the information used in the lists, we have tried to resist the tendency of some of the Depositaries to modernize the names of states in their lists. In those rather few cases where we considered it useful, we have provided in parentheses some additional indentification of states: for example, 'Congo, Democratic Republic of (now Zaïre)'. However, for convenience we have used short versions of the names of many states: for example, 'Netherlands' rather than 'The Kingdom of The Netherlands'.

In the lists of states, we have included all those states which have at any time been recognized by Depositaries as signing or adhering. We have made no attempt of our own to distinguish states whose international status is unquestioned from those whose status has been or is disputed. We have also included states which have ceased to exist: we have done so not only because of historical interest, but also because in many cases adherence by states which have later ceased to exist may still have a bearing on the question of succession.

Succession

The lists of states include certain states bound by succession. The question as to which states are bound to particular international agreements through succession poses a special problem. On a theoretical level, the doctrine of state succession in international law is fraught with difficulties. In particular cases, governments may differ as to whether a state should be formally regarded as having succeeded to a particular international agreement. Hence, the attempt to list all states bound to any particular international agreement through succession is bound to be perilous. Where a specific instrument of succession has been deposited and its legal efficacy has been recognized by the Depositary, such a state has been listed. The date for succession given in the lists is the date of deposit of the instrument of succession. This is not necessarily the date on which succession was regarded as having taken effect, which in many instances is earlier – for example, the date of independence. States other than those listed may be regarded by some as being bound through succession, either if a specific instrument of succession exists which may not be formally recognized by the Depositary, or if no such specific instrument of succession exists, but succession may be implied through a general declaration or treaty regarding succession to international obligations, or through other action on the part of the state concerned.

Reservations, Declarations, and Objections

At the time of signature, ratification, accession, or succession to an international agreement, any state party may submit reservations (which purport to exclude or modify the legal effect of certain provisions of the agreement in their application to that state); or interpretative declarations (which set forth that state's understanding of certain terms of the agreement). Also, at any time, any state party may submit objections (which object to the reservations or declarations made by other states).

The manner in which reservations, declarations, and objections may operate to alter the legal effect of an international agreement merits brief comment. The question as to whether an interpretative declaration forms a part of an international agreement so as to qualify its operation is difficult. Moreover, in practice, the distinction between declarations and reservations may be hard to draw. The question of the validity of a reservation, in terms of its compatibility with the objects and purposes of the agreement, is complicated. In general, any agreement may expressly provide whether or not, or to what extent, reservations are acceptable, and, if acceptable, whether or not unanimous or majority acceptance of each reservation is required. If the agreement contains no such express provision, it is necessary to look to the number of negotiating states and the purposes and objects of the agreement to determine whether

the application of the agreement in its entirety between all parties is intended, and, therefore, acceptance of any reservation by all parties is required. If it is determined that the 'unanimity principle' is unwarranted, then any reserving state becomes bound to the agreement in relation to (i) any other party accepting the reservation, (ii) any other party failing to make an objection to the reservation, and possibly (iii) any party making an objection to such reservation which fails to definitely express that, as a consequence, no treaty relationship exists. Consequently, where such reservations exist, any particular treaty may represent a series of international relationships.

Important as reservations, declarations, and objections are, reprinting their full texts, with all of their introductory and concluding diplomatic language, may get in the way of understanding their substance, and may inhibit comparative analysis. Therefore, in those cases where it is possible without sacrificing the meaning, we have provided abbreviated or summarized versions of such statements rather than the full texts. In many such cases, a full text may be found in certain other sources (e.g. treaty series), including any referred to in the concluding notes. Any translations of such statements into English are, except where otherwise noted, either from the Depositaries or from such other sources as may be referred to in the concluding notes: nevertheless, in some of these cases translations of these texts into English are unofficial. Finally, where there are statements having the character of declarations or objections, we have generally followed the practice of some Depositaries in listing such statements together with reservations: in such cases, we have put all of them under the single heading 'Reservations etc.'.

1. 1856 Paris Declaration Respecting Maritime Law

PREFATORY NOTE

In the centuries preceding the Crimean War, maritime rules adopted by various European states did not reflect a generally and continuously accepted regime relating to the treatment of enemy vessels and property as distinguished from neutral vessels and property. With the outbreak of the Crimean War in 1854, all belligerents proclaimed that they would not authorize privateering (the use of privately owned and manned ships to attack and capture enemy vessels and property). In addition, France and Great Britain, as allies, felt the need to harmonize their hitherto different rules on the capture of property at sea. To this end, France declared that neutral property aboard enemy vessels would not be liable to seizure, and Great Britain declared that enemy property aboard neutral ships would not be liable to seizure. This regime was originally only intended to govern the Crimean War. However, when the representatives of seven states assembled at the Congress of Paris from 25 February to 16 April 1856 to conclude terms of peace, they adopted, as the last act of the Congress, the Declaration of Paris.

The Declaration stated that privateering was abolished, prohibited seizure of either enemy or neutral property (except contraband) aboard neutral ships, prohibited seizure of neutral property (except contraband) aboard enemy ships, and stated that blockades must be effective in the sense of being maintained by a force capable of actually preventing access to the enemy coast.

Although the Declaration was only signed by seven states, virtually all other maritime powers acceded to it over time, and many non-parties acted in accordance with the rules, which acquired the status of customary international law. For example, the USA, which sought complete immunity for belligerent merchant ships, did not formally adhere to the Declaration, but followed its provisions and at the outbreak of the First World War considered them binding upon all belligerents.

Because the Declaration has never been formally abandoned, it may still be formally regarded as valid. However, the practical significance of the Declaration has been called into question by practices of belligerents, particularly in the two world wars. First, privateering (which the Declaration prohibits) has become a less salient issue, because the conversion of merchant ships into warships has come to play the same functional role as that formerly played by privateering. Second, the significance of the provisions relating to the exemption of goods from seizure has been reduced by the Declaration's excepting contraband — a category of goods subject to confiscation which was not defined in the Declaration and has since been widened considerably by increasingly extensive lists of items to be considered contraband. Third, the requirement that all blockades be effective is less significant because of controversy over the extent to which access must be prevented: in fact a large measure of discretion has been exercised by belligerents in interpreting this provision. Moreover, in both world wars belligerents resorted (technically as reprisals)

'long-distance blockade'. The 'long-distance blockade', while accomplishing the same purpose as the traditional blockade, did not conform to the customary requirements for the latter, but was rather an extensive naval war zone in which ships were liable to destruction. In such circumstances certain provisions of the Declaration are of reduced significance.

Date of signature: 16 April 1856
Entry into force: 16 April 1856
Depositary: Not specified in the text. The UK Foreign and Commonwealth Office states that the UK is Depositary. In addition, the French Ministry of Foreign Affairs states that it has received certain instruments of accession.
Authentic language: French
Text reprinted from: LXI *UKPP* (1856) 153
Also published in: 15 *Martens NRG, 1ère sér.* (1720-1857) 791-2 (Fr.);
46 *BFSP* (1855-1856) 26-7 (Fr.);
1 *AJIL* (1907) Supplement 89-90 (Eng.);
115 *CTS* (1856) 1-3 (Fr.)

Declaration Respecting Maritime Law

THE Plenipotentiaries who signed the Treaty of Paris of the thirtieth of March, one thousand eight hundred and fifty-six, assembled in Conference, —

Considering:

That maritime law, in time of war, has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties in such a matter, gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts;

That it is consequently advantageous to establish a uniform doctrine on so important a point;

That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated, than by seeking to introduce into international relations fixed principles in this respect;

The above-mentioned Plenipotentiaries, being duly authorized, resolved to concert among themselves as to the means of attaining this object; and, having come to an agreement, have adopted the following solemn Declaration:—

1. Privateering is, and remains, abolished;

2. The neutral flag covers enemy's goods, with the exception of contraband of war;

3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;

4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The Governments of the undersigned Plenipotentiaries engage to bring the present Declaration to the knowledge of the States which have not taken part in the Congress of Paris, and to invite them to accede to it.

Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof, will be crowned with full success.

The present Declaration is not and shall not be binding, except between those Powers who have acceded, or shall accede, to it.

Done at Paris, the sixteenth of April, one thousand eight hundred and fifty-six.

CONCLUDING NOTES

Signatures and Accessions[1]

State	Date of Signature[2]	Date of Accession (*a*)[3]
Anhalt-Dessau-Coethen		17 June 1856 *a*
Argentine Republic		1 October 1856 *a*
Austria	16 April 1856	
Baden		30 July 1856 *a*
Bavaria		4 July 1856 *a*
Belgium		6 June 1856 *a*
Brazil		18 March 1858 *a*
Bremen		11 June 1856 *a*
Brunswick		7 December 1857 *a*
Chile		13 August 1856 *a*
Denmark		25 June 1856 *a*
Ecuador		6 December 1856 *a*
France	16 April 1856	
Frankfort		17 June 1856 *a*
Germanic Confederation		10 July 1856 *a*

[1] Information supplied in communications from the UK Foreign and Commonwealth Office, and the French Ministry of Foreign Affairs, between December 1979 and January 1981.

[2] The Declaration became binding upon the seven signatory states without need of ratification. Ratification is not always necessary to bring an agreement into effect. Signature alone may suffice where (as in this case) the intent is for signature to bring the document into effect, or where the document expressly states that signature is sufficient.

[3] There have not been any instruments of succession

State	Date of Signature		Date of Accession (*a*)	
Great Britain	16 April	1856		
Greece			20 June	1856 *a*
Guatemala			30 August	1856 *a*
Haiti			17 September	1856 *a*
Hamburg			27 June	1856 *a*
Hanover			31 May	1856 *a*
Hesse-Cassel			4 June	1856 *a*
Hesse-Darmstadt			15 June	1856 *a*
Japan			30 October	1886 *a*
Lubeck			20 June	1856 *a*
Mecklenburg-Schwerin			22 July	1856 *a*
Mecklenburg-Strelitz			25 August	1856 *a*
Mexico[4]			13 February	1909 *a*
Modena			29 July	1856 *a*
Nassau			18 June	1856 *a*
Netherlands			7 June	1856 *a*
Oldenburg			9 June	1856 *a*
Parma			20 August	1856 *a*
Peru			23 November	1857 *a*
Portugal			28 July	1856 *a*
Prussia	16 April	1856		
Roman States			2 June	1856 *a*
Russia	16 April	1856		
Sardinia	16 April	1856		
Saxe-Altenburg			9 June	1856 *a*
Saxe-Coburg-Gotha			22 June	1856 *a*
Saxe-Meiningen			30 June	1856 *a*
Saxe-Weimar			22 June	1856 *a*
Saxony			16 June	1856 *a*
The Two Sicilies			31 May	1856 *a*
Spain[4]			18 January	1908 *a*
Sweden and Norway			13 June	1856 *a*
Switzerland			28 July	1856 *a*
Turkey	16 April	1856		
Tuscany			5 June	1856 *a*
Wurtemberg			25 June	1856 *a*

Total Number of Parties Listed: 51

Note A. *New Granada* and *Uruguay* assented to the entire Declaration, and *Venezuela* to the second, third, and fourth points only, but there is no record that their respective legislatures ratified the Declaration or that formal instruments of accession were deposited.

[4] Spain and Mexico formally acceded to the entire Declaration on these dates. They had, however, previously declared that they accepted the second, third, and fourth points

Note B. *USA* expressed readiness to accede to the Declaration provided it were added, with reference to privateering, that the private property of subjects or citizens of belligerent nations was exempt from capture at sea by the respective naval forces.

Note on Entry into Force for States Parties

The Declaration entered into force for each state on the date of its respective signature or accession.

Denunciations

None

Reservations

None

State	Date of Signature	Date of Ratification (*r*), Accession (*a*), or Succession (*s*)	
Greece	29 July 1899	4 April 1901	*r*
Italy	29 July 1899	4 September 1900	*r*
Japan	29 July 1899	6 October 1900	*r*
Luxembourg	29 July 1899	12 July 1901	*r*
Mexico	29 July 1899	17 April 1901	*r*
Montenegro	29 July 1899	16 October 1900	*r*
Netherlands	29 July 1899	4 September 1900	*r*
Nicaragua		11 October 1907	*a*
Norway[4]	29 July 1899	4 September 1900	*r*
Persia	29 July 1899	4 September 1900	*r*
Portugal (Decl. 2)	29 July 1899	4 September 1900	*r*
(Decl. 3)		29 August 1907	*a*
Romania	29 July 1899	4 September 1900	*r*
Russia	29 July 1899	4 September 1900	*r*
Serbia	29 July 1899	11 May 1901	*r*
Siam	29 July 1899	4 September 1900	*r*
South Africa[2]		10 March 1978	*s*
Spain	29 July 1899	4 September 1900	*r*
Sweden[4]	29 July 1899	4 September 1900	*r*
Switzerland	29 July 1899	29 December 1900	*r*
Turkey	29 July 1899	12 June 1907	*r*
USSR[2, 3]		7 March 1955	*s*
Yugoslavia[2, 5]		8 April 1969	*s*

Total Number of Parties Listed: 33 for Declaration 2; 34 for Declaration 3.

Note on Entry into Force for States Parties

Both Declaration 2 and Declaration 3 entered into force on 4 September 1900 for the states which ratified them on that day. For each of the other ratifying states, and for each of the acceding states, each Declaration formally entered into force on the date of ratification or accession.

Denunciations

None

Reservations

None

[4] Signature for Norway and Sweden was in the name of the United Kingdoms of Sweden and Norway.

[5] Yugoslavia, in a note received by the Netherlands Ministry of Foreign Affairs on 8 April 1969, confirmed that it considers itself a party to the Conventions and Declarations of The Hague of 29 July 1899, ratified by Serbia.

5. 1907 Hague Convention IV Respecting the Laws and Customs of War on Land

PREFATORY NOTE

The 1907 Hague Conventions and Declaration: General

The Final Act of the First Hague Peace Conference of 1899 proposed that a subsequent conference be held to consider matters on which agreement had not been reached. The initiative for convening the second conference was made by President Theodore Roosevelt of the USA in 1904. Russia did not take the leading role because of its involvement in the war with Japan in 1904–5. However, in 1906, after the conclusion of the Russo-Japanese War, Tsar Nicholas II invited states to attend a Second Hague Peace Conference with the primary objective of limiting armaments. This second Conference, attended by representatives of forty-four states, met from 15 June to 18 October 1907. Once again no general agreement on arms limitation was reached, but the Conference was successful in adopting thirteen conventions (three of which revised the three 1899 Conventions), and one declaration (which renewed 1899 Hague Declaration 1 on balloons, which had expired). 1907 Hague Conventions I, II, III, X, and XII and the 1907 Hague Declaration have been omitted from this volume: Conventions I, II, and III are not part of the laws of war *per se*; Convention X is discussed in the prefatory note to 1949 Geneva Convention II; and Convention XII did not enter into force.

The Final Act of the Second Hague Peace Conference proposed that a third conference be held within a period corresponding to the time elapsed since the first conference. Unfortunately, the timetable alluded to wound up being that for the outbreak of the First World War, and the Third Hague Peace Conference was never held.

1907 Hague Convention IV

Before 1899, agreements relating to the laws of land warfare had only addressed specialized areas of the law (such as wounded, and explosive projectiles); and although the 1874 Brussels Conference, convened on the initiative of Tsar Alexander II of Russia, had led to the adoption of a relatively comprehensive declaration concerning the laws of land warfare, the 1874 Brussels Declaration was never ratified and did not enter into force.

The immediate precursor of 1907 Hague Convention IV was 1899 Hague Convention II Respecting the Laws and Customs of War on Land. This had been adopted at the First Hague Peace Conference and had entered into force on 4 September 1900. The 1899 Convention was of particular importance in the development of the laws of war in that it represented the first successful effort of the international community to codify a relatively comprehensive regime governing the laws of land warfare. The provisions of 1907 Hague Convention IV represent a slight revision of those embodied in 1899 Hague Convention II.

Most articles of the Regulations annexed to the Conventions are identical, and only a few contain substantial changes. The texts of both conventions are usefully juxtaposed in J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907*.

Several points should be noted about the applicability of 1907 Hague Convention IV. It was intended to replace 1899 Hague Convention II as between states parties to both agreements. However, eighteen states parties to the 1899 Convention did not become parties to the 1907 Convention (Argentina, Bulgaria, Chile, Colombia, Ecuador, Greece, Honduras, Italy, Korea, Montenegro, Paraguay, Persia, Peru, Serbia, Spain, Turkey, Uruguay, Venezuela). They or their successor states (e.g. Yugoslavia) remain formally bound by the 1899 Convention. The application of each convention was made more complex by the inclusion of a 'general participation clause' (Article 2). However, identifying formal states parties to one convention or the other and applying the general participation clauses is only of limited importance in cases where conventions are regarded as representing customary international law, and hence binding on all states. The International Military Tribunal at Nuremberg in 1946 expressly recognized 1907 Hague Convention IV as declaratory of customary international law.

While representing a relatively comprehensive agreement on the law of land warfare, 1907 Hague Convention IV (like 1899 Hague Convention II) was not regarded as a complete code of the applicable law. What has come to be known as the Martens Clause, appearing in the Convention's Preamble, declares that cases not included in the Regulations annexed to the Convention remain governed by customary international law relating to the conduct of warfare.

Date of signature:	18 October 1907
Entry into force:	26 January 1910
Depositary:	Netherlands
Authentic language:	French
Text reprinted from:	J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907*, Oxford University Press, New York, 3rd edn., 1918, pp. 100-27. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in:	3 *Martens NRG, 3ème sér.* (1862-1910) 461-503 (Fr. Ger.); 100 *BFSP* (1906-1907) 338-59 (Fr.); *UKTS* 9 (1910), Cd. 5030 (Eng. Fr.); CXII *UKPP* (1910) 59 (Eng. Fr.); 2 *AJIL* (1908) Supplement 90-117 (Eng. Fr.); 205 *CTS* (1907) 227-98 (Fr.)

Convention (IV) Respecting the Laws and Customs of War on Land

His Majesty the German Emperor, King of Prussia; [etc.]:

Seeing that, while seeking means to preserve peace and prevent

armed conflicts between nations, it is likewise necessary to bear in mind the case where the appeal to arms has been brought about by events which their care was unable to avert;

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization;

Thinking it important, with this object, to revise the general laws and customs of war, either with a view to defining them with greater precision or to confining them within such limits as would mitigate their severity as far as possible;

Have deemed it necessary to complete and explain in certain particulars the work of the First Peace Conference, which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and govern the usages of war on land.

According to the views of the high contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to concert regulations covering all the circumstances which arise in practice;

On the other hand, the high contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders.

Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

The high contracting Parties, wishing to conclude a fresh Convention to this effect, have appointed the following as their plenipotentiaries:

[Here follow the names of plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following:

Article 1

The contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the laws and customs of war on land, annexed to the present Convention.

Article 2

The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

Article 3

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Article 4

The present Convention, duly ratified, shall as between the contracting Powers, be substituted for the Convention of the 29th July, 1899, respecting the laws and customs of war on land.

The Convention of 1899 remains in force as between the Powers which signed it, and which do not also ratify the present Convention.

Article 5

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a procès-verbal signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the procès-verbal relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph the said Government shall at the same time inform them of the date on which it received the notification.

Article 6

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

Article 7

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the procès-verbal of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

Article 8

In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

Article 9

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 5, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 6, paragraph 2), or of denunciation (Article 8, paragraph 1) were received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts.

In faith whereof the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

Annex to the Convention

Regulations Respecting the Laws and Customs of War on Land

SECTION I – ON BELLIGERENTS

CHAPTER I – *The Qualifications of Belligerents*

Article 1

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognizable at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination 'army'.

Article 2

The inhabitants of a territory which has not been occupied,[1] who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

Article 3

The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II – *Prisoners of War*

Article 4

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

[1] In the authentic French text: 'La population d'un territoire non occupé . . .' The official UK translation renders these words, more faithfully than the US translation used here, as 'inhabitants of a territory not under occupation . . .'

Article 5

Prisoners of war may be interned in a town, fortress, camp, or other place, and bound not to go beyond certain fixed limits; but they can not be confined except as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist.

Article 6

The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army, or, if there are none in force, at a rate according to the work executed.

When the work is for other branches of the public service or for private persons the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance.

Article 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards board, lodging, and clothing on the same footing as the troops of the Government who captured them.

Article 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary.

Escaped prisoners who are retaken before being able to rejoin their own army or before leaving the territory occupied by the army which captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of the previous flight.

Article 9

Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed.

Article 10

Prisoners of war may be set at liberty on parole if the laws of their country allow, and, in such cases, they are bound, on their personal honor, scrupulously to fulfil, both towards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

Article 11

A prisoner of war can not be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

Article 12

Prisoners of war liberated on parole and recaptured bearing arms against the Government to whom they had pledged their honor, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and can be brought before the courts.

Article 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.

Article 14

An inquiry office for prisoners of war is instituted on the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents in their territory. It is the function of this office to reply to all inquiries about the prisoners. It receives from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The office must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is likewise the function of the inquiry office to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned.

Article 15

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

Article 16

Inquiry offices enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by the State railways.

Article 17

Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained, the amount to be ultimately refunded by their own Government.

Article 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever

church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

Article 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

Article 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPTER III – *The Sick and Wounded*

Article 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.[2]

SECTION II – HOSTILITIES

CHAPTER I – *Means of Injuring the Enemy, Sieges, and Bombardments*

Article 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

Article 23

In addition to the prohibitions provided by special Conventions, it is especially forbidden –

(*a*) To employ poison or poisoned weapons;

(*b*) To kill or wound treacherously individuals belonging to the hostile nation or army;

(*c*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;

(*d*) To declare that no quarter will be given;

(*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(*f*) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

[2] This was a reference to the 1906 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, which replaced the 1864 Geneva Convention as between states parties to both agreements.

(*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

(*h*) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

Article 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

Article 25

The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

Article 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

Article 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, building dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

Article 28

The pillage of a town or place, even when taken by assault, is prohibited.

CHAPTER II – *Spies*

Article 29

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of

obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, intrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory.

Article 30

A spy taken in the acts shall not be punished without previous trial.

Article 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

CHAPTER III — *Flags of Truce*

Article 32

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and interpreter who may accompany him.

Article 33

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all the necessary steps to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily.

Article 34

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

CHAPTER IV — *Capitulations*

Article 35

Capitulations agreed upon between the contracting Parties must take into account the rules of military honor.

Once settled, they must be scrupulously observed by both parties.

CHAPTER V — *Armistices*

Article 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

Article 37

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

Article 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

Article 39

It rests with the contracting Parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the inhabitants and between the inhabitants of one belligerent State and those of the other.

Article 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

Article 41

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders or, if necessary, compensation for the losses sustained.

SECTION III — MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE

Article 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

Article 43

The authority of the legitimate power having in fact passed into

the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety,[3] while respecting, unless absolutely prevented, the laws in force in the country.

Article 44

A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defense.

Article 45

It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.

Article 46

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property can not be confiscated.

Article 47

Pillage is formally forbidden.

Article 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

Article 49

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

Article 50

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they can not be regarded as jointly and severally responsible.

Article 51

No contribution shall be collected except under a written order, and on the responsibility of a commander-in-chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

[3] In the authentic French text: 'l'ordre et la vie publics'.

Article 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

Article 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of munitions of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.

Article 54

Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

Article 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

Article 56

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

CONCLUDING NOTES

Signatures, Ratifications, Accessions, and Successions[4]

State (* denotes Reservation: see below)	Date of Signature	Date of Ratification (*r*), Accession (*a*), or Succession (*s*)
Argentina	18 October 1907	–
*Austria-Hungary	18 October 1907	27 November 1909 *r*
Belgium	18 October 1907	8 August 1910 *r*
Bolivia	18 October 1907	27 November 1909 *r*
Brazil	18 October 1907	5 January 1914 *r*
Bulgaria	18 October 1907	–
Byelorussian SSR[5]		4 June 1962 *s*
Chile	18 October 1907	–
China		10 May 1917 *a*
Colombia	18 October 1907	–
Cuba	18 October 1907	22 February 1912 *r*
Denmark	18 October 1907	27 November 1909 *r*
Dominican Republic	18 October 1907	16 May 1958 *r*
Ecuador	18 October 1907	–
El Salvador	18 October 1907	27 November 1909 *r*
Ethiopia		5 August 1935 *a*
Fiji[5]		2 April 1973 *s*
Finland[6]		30 December 1918 *a*
France	18 October 1907	7 October 1910 *r*
*Germany	18 October 1907	27 November 1909 *r*
German Democratic Republic[5]		9 February 1959 *s*
Great Britain	18 October 1907	27 November 1909 *r*
Greece	18 October 1907	–
Guatemala	18 October 1907	15 March 1911 *r*
Haiti	18 October 1907	2 February 1910 *r*
Italy	18 October 1907	–
*Japan	18 October 1907	13 December 1911 *r*
Liberia		4 February 1914 *a*

[4] Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981. For a list, supplied by the same source, of eighteen states bound by the very similar terms of 1899 Hague Convention II, see the prefatory note above, p. 44.

[5] By letters dated 1 April 1980 and 16 March 1981 the Netherlands Ministry of Foreign Affairs confirmed that these cases constituted successions. *Re* USSR and Byelorussia, see above, p. 41, n. 3.

[6] By letter dated 12 May 1980 the Netherlands Ministry of Foreign Affairs stated (*a*) Finland's accession on 30 December 1918 to this and other 1907 Hague Conventions and to the 1907 Hague Declaration was initially regarded as provisional, pending the final resolution of Finland's international status; (*b*) after consultation with the other contracting powers, the Depositary stated on 9 June 1922 that Finland's accession should be regarded as final and complete; and (*c*) the Conventions and the Declaration entered into force for Finland on 9 June 1922.

State (* denotes Reservation: see below)	Date of Signature	Date of Ratification (*r*), Accession (*a*), or Succession (*s*)
Luxembourg	18 October 1907	5 September 1912 *r*
Mexico	18 October 1907	27 November 1909 *r*
*Montenegro	18 October 1907	–
Netherlands	18 October 1907	27 November 1909 *r*
Nicaragua		16 December 1909 *a*
Norway	18 October 1907	19 September 1910 *r*
Panama	18 October 1907	11 September 1911 *r*
Paraguay	18 October 1907	–
Persia	18 October 1907	–
Peru	18 October 1907	–
Poland		9 May 1925 *a*
Portugal	18 October 1907	13 April 1911 *r*
Romania	18 October 1907	1 March 1912 *r*
*Russia	18 October 1907	27 November 1909 *r*
Serbia	18 October 1907	–
Siam	18 October 1907	12 March 1910 *r*
South Africa[5]		10 March 1978 *s*
Sweden	18 October 1907	27 November 1909 *r*
Switzerland	18 October 1907	12 May 1910 *r*
*Turkey	18 October 1907	–
Uruguay	18 October 1907	–
USA	18 October 1907	27 November 1909 *r*
USSR[5]		7 March 1955 *s*
Venezuela	18 October 1907	–

Total Number of Parties Listed: 37

Note on Entry into Force for States Parties

In accordance with Article 7, the Convention entered into force on 26 January 1910 for the states which had ratified it sixty days earlier, on 27 November 1909. For each of the other ratifying states, and for each of the acceding states (apart from Finland), the Convention formally entered into force sixty days after the date indicated in the right-hand column above.

Denunciations

None

Reservations

Austria-Hungary, *Germany*, *Japan*, *Montenegro*, and *Russia* all, at signature, made reservation of Article 44 of the annexed Regulations. At ratification, all of them (with the exception of Montenegro, which did not ratify) maintained their reservations.

Turkey, at signature, made reservation of Article 3 of the Convention. It did not ratify the Convention.

6. 1907 Hague Convention V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land

PREFATORY NOTE

The term 'neutrality' in the laws of war refers to the legal position of states which do not actively participate in a given armed conflict: it may thus describe the position of a large number of states during a large number of conflicts. It should be distinguished from other uses of the term, for example to describe the permanent status of a state neutralized by special treaty. In this latter case, particular duties arise in peace as well as in war, and in war the state may have a treaty obligation to remain neutral.

The concept of neutrality in war emerged with the early development of international maritime law. The rapid growth and increasing importance of international trade in the eighteenth and nineteenth centuries, which led maritime states to seek a means of resisting belligerent interference with neutral trade, became the foundation for the contemporary development of neutrality. By the end of the nineteenth century the legal status of neutrality on land and sea was widely accepted, but there were divergent views about specific neutral rights and duties.

Neutral rights and duties in land warfare had been the subject of several articles in 1899 Hague Convention II on land warfare, but were then much more extensively enumerated in 1907 Hague Convention V. At the time of its adoption, 1907 Hague Convention V was regarded as being largely declaratory of customary international law. To the extent that the Convention may be considered customary international law, it would be binding on all states and its 'general participation clause' (Article 20) would cease to be relevant. In hostilities since 1907, including both world wars, the Convention was frequently referred to by both neutrals and belligerents.

However, many developments since the conclusion of the Convention have raised questions about the traditional concept of neutrality and the customary law relating to it. Only a few such developments can be mentioned here. The Convention puts much emphasis on the idea of impartiality towards all belligerents. But when the 1919 Covenant of the League of Nations and the 1928 Kellogg-Briand Pact placed certain restrictions on the right to resort to force, this inevitably raised questions as to the legitimacy of impartiality in the face of an unlawful resort to force. During the Second World War, certain neutral states, without going so far as to actually join in the hostilities, took non-violent discriminatory measures against states regarded as unlawfully resorting to force. This departure from parts of the traditional law of neutrality has at times been called 'qualified neutrality', and some contend that a new legal category of 'non-belligerency' began to emerge, releasing neutral states from certain traditional neutral duties but still requiring avoidance of active participation in hostilities. However, others suggest that the concept of non-belligerency

while describing the actual behaviour of some states, runs counter to the traditional requirement of impartiality and at present does not possess full standing in international law. In this view, the traditional notion of impartiality remains an important characteristic of neutrality in the true sense of the term.

The adoption of the United Nations Charter in 1945 increased the controversy over the status of the traditional concept of neutrality. Some suggest that the customary law of neutrality is incompatible with the international legal regime established by the UN Charter. This contention rests on the combined effect of Article 2(5) which requires UN members to give the UN every assistance in any action it takes, Article 25 which requires UN members to accept and comply with the decisions of the Security Council, and the articles in Chapter VII. The preferable view is to regard the traditional concept of neutrality as having been modified, but not totally superseded, by the UN Charter. As far as UN member states are concerned, they would be free to be neutral if, in a given armed conflict, the UN (for whatever reason) does not act under Chapter VII of the Charter. Such an outcome is particularly likely in the many cases in which the Security Council is unable (for example, through use of the veto) to reach agreement. As for the position of non-members, Article 2(6) provides that the UN shall ensure that non-members act in accordance with the principles set forth in Article 2. However, if the term 'ensure' is interpreted as meaning 'influence' rather than 'coerce', then non-members may remain neutral even if the UN acts. In all such situations, the law relating to neutrality is applicable.

The continuing validity of the concept of neutrality is indicated by the many references to neutral states, neutral territory, etc., which are to be found in international agreements concluded since the establishment of the United Nations: for example, the four 1949 Geneva Conventions refer to neutral powers, countries, and territory; and 1977 Geneva Protocol I refers to 'neutral and other States not Parties to the conflict'.

Date of signature:	18 October 1907
Entry into force:	26 January 1910
Depositary:	Netherlands
Authentic lanuage:	French
Text reprinted from:	J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907*, Oxford University Press, New York, 3rd edn., 1918, pp. 133-40. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in:	3 *Martens NRG, 3ème sér.* (1862-1910) 504-32 (Fr. Ger.); 100 *BFSP* (1906-1907) 359-64 (Fr.); 2 *AJIL* (1908) Supplement 117-27 (Eng. Fr.); 205 *CTS* (1907) 299-304 (Fr.)

Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land

His Majesty the German Emperor, King of Prussia; [etc.]:

With a view to laying down more clearly the rights and duties of neutral Powers in case of war on land and regulating the position of the belligerents who have taken refuge in neutral territory;

Being likewise desirous of defining the meaning of the term 'neutral', pending the possibility of settling, in its entirety, the position of neutral individuals in their relations with the belligerents;

Have resolved to conclude a Convention to this effect, and have, in consequence, appointed the following as their plenipotentiaries:

[Here follow the names of the plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following provisions:

CHAPTER I — *The Rights and Duties of Neutral Powers*

Article 1

The territory of neutral Powers is inviolable.

Article 2

Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

Article 3

Belligerents are likewise forbidden to —

(*a*) Erect on the territory of a neutral Power a wireless telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea;

(*b*) Use of any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages.

Article 4

Corps of combatants can not be formed nor recruiting agencies opened on territory of a neutral Power to assist the belligerents.

Article 5

A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory.

Article 6

The responsibility of a neutral Power is not engaged by the fact of persons crossing the frontier separately to offer their services to one of the belligerents.

Article 7

A neutral Power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet.

Article 8

A neutral Power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals.

Article 9

Every measure of restriction or prohibition taken by a neutral Power in regard to the matters referred to in Articles 7 and 8 must be impartially applied by it to both belligerents.

A neutral Power must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraphy apparatus.

Article 10

The fact of a neutral Power resisting, even by force, attempts to violate its neutrality can not be regarded as a hostile act.

CHAPTER II – *Belligerents Interned and Wounded Tended in Neutral Territory*

Article 11

A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

Article 12

In the absence of a special convention to the contrary, the neutral Power shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

Article 13

A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.

Article 14

A neutral Power may authorize the passage over its territory of the sick and wounded belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor war material. In such a case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.

The sick or wounded brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral Power so as to ensure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.

Article 15

The Geneva Convention applies to sick and wounded interned in neutral territory.

CHAPTER III – *Neutral Persons*

Article 16

The nationals of a State which is not taking part in the war are considered as neutrals.

Article 17

A neutral can not avail himself of his neutrality –

(*a*) If he commits hostile acts against a belligerent;

(*b*) If he commits acts in favor of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent State could be for the same act.

Article 18

The following acts shall not be considered as committed in favor of one belligerent in the sense of Article 17, letter (*b*):

(*a*) Supplies furnished or loans made to one of the belligerents, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from these territories;

(*b*) Services rendered in matters of police or civil administration.

CHAPTER IV – *Railway Material*

Article 19

Railway material coming from the territory of neutral Powers, whether it be the property of the said Powers or of companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral Power may likewise, in case of necessity, retain and utilize to an equal extent material coming from the territory of the belligerent Power.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.

CHAPTER V – *Final Provisions*

Article 20

The provisions of the present Convention do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

Article 21

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a procès-verbal signed by the representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the procès-verbal relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, and of the instruments of ratification shall be immediately sent by the Netherland Government, through the diplomatic channel, to 'the Powers invited to the Second Peace

Conference as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph, the said Government shall at the same time inform them of the date on which it received the notification.

Article 22

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies its intention in writing to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall immediately forward to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

Article 23

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the procès-verbal of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

Article 24

In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers, informing them at the same time of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

Article 25

A register kept by the Netherland Ministry of Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 21, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 22, paragraph 2) or of denunciation (Article 24, paragraph 1) have been received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts from it.

In faith whereof the plenipotentiaries have appended their signatures to the present Convention.