THE LAW
OF
LAND WARFARE
A list of the treaties relating to the conduct of land warfare which have been ratified by the United States, with the abbreviated titles used in this Manual, is set forth on page iii. The official English texts or a translation of the principal treaty provisions are quoted verbatim in bold type in the relevant paragraphs throughout the Manual. It should be noted, however, that the official text of the Hague Conventions of 18 October 1907 is the French text which must be accepted as controlling in the event of a dispute as to the meaning of any provision of these particular conventions. (See TM 27-251.)

The 1949 Geneva Conventions for the Protection of War Victims have been ratified by the United States and came into force for this country on 2 February 1956. The effect of these four conventions upon previous treaties to which the United States is a party is discussed in detail in paragraph 5 of the text. Each of the Hague Conventions of 1899 and 1907 and each of the Geneva Conventions of 1906, 1929, and 1949 will, of course, continue in force as between the United States and such of the other parties to the respective conventions as have not yet ratified or adhered to the latter, superseding convention(s) governing the same subject matter. Moreover, even though States may not be parties to, or strictly bound by, the 1907 Hague Conventions and the 1929 Geneva Convention relative to the Treatment of Prisoners of War, the general principles of these conventions have been held declaratory of the customary law of war to which all States are subject. For this reason, the United States has adopted the policy of observing and enforcing the terms of these conventions in so far as they have not been superseded by the 1949 Geneva Conventions which necessarily govern the relations between the parties to the latter (see pars. 6 and 7 of the text).

The essential provisions of each of the earlier conventions mentioned above have been substantially incorporated into the more recent and more comprehensive conventions on the same subject matter, so that observance of the latter will usually include observance of the former. For this reason, only the more recent 1949 Geneva Conventions and the relevant provisions of the 1907 Hague Conventions are quoted in this Manual.
Pertinent information concerning the current status of ratifications, adherences, reservations, and denunciations (withdrawals) will be transmitted by higher authority to commanders in the field, as occasions arise, thus rendering unnecessary the inclusion of such data in this Manual, and avoiding the frequent changes that such inclusion would entail.

Whenever possible, this Manual should be used in conjunction with TM 27-251, Treaties Governing Land Warfare.

FM 27-5, Civil Affairs/Military Government, which deals with military government policy and administration, should be consulted in connection with chapter 6 of the present Manual.
ABBREVIATIONS

GWS Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949.

GWS Sea Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949.

GPW Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949.


H. III Hague Convention No. III Relative to the Opening of Hostilities, 18 October 1907.

H. IV Hague Convention No. IV Respecting the Laws and Customs of War on Land, 18 October 1907.

HR Annex to Hague Convention No. IV, 18 October 1907, embodying the Regulations Respecting the Laws and Customs of War on Land.


H. IX Hague Convention No. IX Concerning Bombardment by Naval Forces in Time of War, 18 October 1907.


FIELD MANUAL
No. 27-10

DEPARTMENT OF THE ARMY
WASHINGTON 25, D. C., 18 July 1956

THE LAW OF LAND WARFARE

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CHAPTER 1
BASIC RULES AND PRINCIPLES

Section I. GENERAL

1. Purpose and Scope

The purpose of this Manual is to provide authoritative guidance to military personnel on the customary and treaty law applicable to the conduct of warfare on land and to relationships between belligerents and neutral States. Although certain of the legal principles set forth herein have application to warfare at sea and in the air as well as to hostilities on land, this Manual otherwise concerns itself with the rules peculiar to naval and aerial warfare only to the extent that such rules have some direct bearing on the activities of land forces.

This Manual is an official publication of the United States Army. However, those provisions of the Manual which are neither statutes nor the text of treaties to which the United States is a party should not be considered binding upon courts and tribunals applying the law of war. However, such provisions are of evidentiary value insofar as they bear upon questions of custom and practice.

2. Purposes of the Law of War

The conduct of armed hostilities on land is regulated by the law of land warfare which is both written and unwritten. It is inspired by the desire to diminish the evils of war by:

a. Protecting both combatants and noncombatants from unnecessary suffering;

b. Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and

c. Facilitating the restoration of peace.

3. Basic Principles

a. Prohibitory Effect. The law of war places limits on the exercise of a belligerent's power in the interests mentioned in paragraph 2 and requires that belligerents refrain from employing any kind or degree of violence which is not actually necessary for military purposes and that they conduct hostilities with regard for the principles of humanity and chivalry.
The prohibitory effect of the law of war is not minimized by "military necessity" which has been defined as that principle which justifies those measures not forbidden by international law which are indispensable for securing the complete submission of the enemy as soon as possible. Military necessity has been generally rejected as a defense for acts forbidden by the customary and conventional laws of war inasmuch as the latter have been developed and framed with consideration for the concept of military necessity.

b. Binding on States and Individuals. The law of war is binding not only upon States as such but also upon individuals and, in particular, the members of their armed forces.

4. Sources

The law of war is derived from two principal sources:

a. Lawmaking Treaties (or Conventions), such as the Hague and Geneva Conventions.

b. Custom. Although some of the law of war has not been incorporated in any treaty or convention to which the United States is a party, this body of unwritten or customary law is firmly established by the custom of nations and well defined by recognized authorities on international law.

Lawmaking treaties may be compared with legislative enactments in the national law of the United States and the customary law of war with the unwritten Anglo-American common law.

5. Lawmaking Treaties

a. Treaties to Which the United States Is a Party. The United States is a party to the following conventions pertinent to warfare on land:

(1) Hague Convention No. III of 18 October 1907, Relative to the Opening of Hostilities (36 Stat. 2259, Treaty Series 538), cited herein as H. III.

(2) Hague Convention No. IV of 18 October 1907, Respecting the Laws and Customs of War on Land (36 Stat. 2277; Treaty Series 539), cited herein as H. IV, and the Annex thereto, embodying the Regulations Respecting the Laws and Customs of War on Land (36 Stat. 2295; Treaty Series 539), cited herein as HR.

(3) Hague Convention No. V of 18 October 1907, Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (36 Stat. 2310; Treaty Series 540), cited herein as H. V.
(4) Hague Convention No. IX of 18 October 1907, Concerning Bombardment by Naval Forces in Time of War (36 Stat. 2351; Treaty Series 542), cited herein as H. IX.


(8) Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments of 15 April 1935 (49 Stat. 3267; Treaty Series 899), cited herein as the Roerich Pact. Only the United States and a number of the American Republics are parties to this treaty.

(9) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (T. I. A. S. 3362), cited herein as GWS.


(11) Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (T. I. A. S. 3364), cited herein as GPW.


b. Effect of the Geneva Convention of 1949. GWS replaces the previous Geneva Wounded and Sick Conventions of 22 August 1864, 6 July 1906, and 27 July 1929 in relations between parties to GWS (see GWS, art. 59). GWS Sea replaces Hague Convention No. X of 18 October 1907, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906 in relations between parties to GWS Sea (see GWS Sea, art. 58). GPW replaces GPW 1929 in relations between parties to GPW (see GPW, art 134); in relations between parties to H. IV and the corresponding convention of 1899 and which are also parties to GPW, it is complementary.

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to Chapter II of the HR (see GPW, art. 185). GC, in relations between parties to H. IV and the corresponding convention of 1899, is supplementary to Sections II and III of the HR (see GC, art. 154).

6. Custom

Evidence of the customary law of war, arising from the general consent of States, may be found in judicial decisions, the writings of jurists, diplomatic correspondence, and other documentary material concerning the practice of States. Even though individual States may not be parties to or otherwise strictly bound by H. IV and GPW 1929, the former convention and the general principles of the latter have been held to be declaratory of the customary law of war, to which all States are subject.

The Preamble to the HR specifically provides:

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.

Similarly, a common article of the Geneva Conventions of 1949 (GWS, art. 63; GWS Sea, art. 62; GPW, art. 142; GC, art. 158) provides that the denunciation of (withdrawal from) any of the Geneva Conventions of 1949, **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. Force of the Law of War


Technically, each of the lawmaking treaties regarding the conduct of warfare is, to the extent established by its terms, binding only between the States that have ratified or acceded to, and have not thereafter denounced (withdrawn from), the treaty or convention and is binding only to the extent permitted by the reservations, if any, that have accompanied such ratification or accession on either side. The treaty provisions quoted in this manual in bold-face type are contained in treaties which have been ratified without reservation, except as otherwise noted, by the United States.

These treaty provisions are in large part but formal and specific applications of general principles of the unwritten law. While solemnly obligatory only as between the parties thereto, they may be said also to represent modern international public opinion as to how
belligerents and neutrals should conduct themselves in the particulars indicated.

For these reasons, the treaty provisions quoted herein will be strictly observed and enforced by United States forces without regard to whether they are legally binding upon this country. Military commanders will be instructed which, if any, of the written rules herein quoted are not legally binding as between the United States and each of the States immediately concerned, and which, if any, for that reason are not for the time being to be observed or enforced.

b. Force of Treaties Under the Constitution. Under the Constitution of the United States, treaties constitute part of the "supreme Law of the Land" (art. VI, clause 2). In consequence, treaties relating to the law of war have a force equal to that of laws enacted by the Congress. Their provisions must be observed by both military and civilian personnel with the same strict regard for both the letter and spirit of the law which is required with respect to the Constitution and statutes enacted in pursuance thereof.

c. Force of Customary Law. The unwritten or customary law of war is binding upon all nations. It will be strictly observed by United States forces, subject only to such exceptions as shall have been directed by competent authority by way of legitimate reprisals for illegal conduct of the enemy (see par. 497). The customary law of war is part of the law of the United States and, insofar as it is not inconsistent with any treaty to which this country is a party or with a controlling executive or legislative act, is binding upon the United States, citizens of the United States, and other persons serving this country.

8. Situations to Which Law of War Applicable

a. Types of Hostilities. War may be defined as a legal condition of armed hostility between States. While it is usually accompanied by the commission of acts of violence, a state of war may exist prior to or subsequent to the use of force. The outbreak of war is usually accompanied by a declaration of war (see par. 20).

Instances of armed conflict without declaration of war may include, but are not necessarily limited to, the exercise of armed force pursuant to a recommendation, decision, or call by the United Nations, in the exercise of the inherent right of individual or collective self-defense against armed attack, or in the performance of enforcement measures through a regional arrangement, or otherwise, in conformity with appropriate provisions of the United Nations Charter.

b. Customary Law. The customary law of war applies to all cases of declared war or any other armed conflict which may arise between the United States and other nations, even if the state of war is not recognized by one of them. The customary law is also applicable
to all cases of occupation of foreign territory by the exercise of armed force, even if the occupation meets with no armed resistance.

c. Treaties. Treaties governing land warfare are applicable to various forms of war and armed conflict as provided by their terms. The Hague Conventions apply to "war." Common Article 2 of the Geneva Conventions of 1949 states:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof. (GWS, GWS Sea, GPW, GC, art. 2.)

d. Special Case of Civil Wars. See paragraph 11.


As the customary law of war applies to cases of international armed conflict and to the forcible occupation of enemy territory generally as well as to declared war in its strict sense, a declaration of war is not an essential condition of the application of this body of law. Similarly, treaties relating to "war" may become operative notwithstanding the absence of a formal declaration of war.

10. When Law of Land Warfare Ceases To Be Applicable

The law of land warfare generally ceases to be applicable upon:

a. The termination of a war by agreement, normally in the form of a treaty of peace; or

b. The termination of a war by unilateral declaration of one of the parties, provided the other party does not continue hostilities or otherwise decline to recognize the act of its enemy; or

c. The complete subjugation of an enemy State and its allies, if prior to a or b; or

d. The termination of a declared war or armed conflict by simple cessation of hostilities.

However, certain designated provisions of the Geneva Conventions of 1949 (see GC, art. 6; par 249 herein) continue to be operative, not-
withstanding the termination of any antecedent hostilities, during the continuance of a military occupation. Insofar as the unwritten law of war and the Hague Regulations extend certain fundamental safeguards to the persons and property of the populations of occupied territory, their protection continues until the termination of any occupation having its origin in the military supremacy of the occupant, notwithstanding the fact the Geneva Convention relative to the Protection of Civilian Persons may have ceased to be applicable.

11. Civil War

a. Customary Law. The customary law of war becomes applicable to civil war upon recognition of the rebels as belligerents.


In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
The application of the preceding provisions shall not affect the legal status of the Parties to the conflict. (GWS, GPW, GWS, Sea, GC, art. 3.)

12. Military Government and Martial Law Distinguished

In the practice of the United States, military government is the form of administration which may be established and maintained for the government of areas of the following types that have been subjected to military occupation:

a. Enemy territory.

b. Allied territory recovered from enemy occupation, when that territory has not been made the subject of a civil affairs agreement (see par. 354).

c. Other territory liberated from the enemy, such as neutral territory and areas unlawfully incorporated by the enemy into its own territory, when that territory has not been made the subject of a civil affairs agreement.

d. Domestic territory recovered from rebels treated as belligerents.

Although military government is an accepted concept in the law of the United States, the limits placed upon its exercise are prescribed by the international law of belligerent occupation. Other countries exercise jurisdiction in occupied areas through types of administration analogous to military government even though they may be designated by other names.

In the United States, martial law is the temporary government of the civil population of domestic territory through the military forces, without the authority of written law, as necessity may require. The most prominent distinction between military government, as that term is used herein, and martial law is that the former is generally exercised in the territory of, or territory formerly occupied by, a hostile belligerent and is subject to restraints imposed by the international law of belligerent occupation, while the latter is invoked only in domestic territory, the local government and inhabitants of which are not treated or recognized as belligerents, and is governed solely by the domestic law of the United States.

So far as the United States forces are concerned, military government and martial law are exercised by the military commander under the direction of the President, as Commander in Chief of the Armed Forces.

13. Military Jurisdiction

Military jurisdiction is of two kinds: first, that which is conferred by that branch of a country's municipal law which regulates its military establishment; second, that which is derived from international law, including the law of war.
In the Army of the United States, military jurisdiction is exercised through the following military tribunals:

a. Courts-martial.
b. Military commissions.
c. Provost courts.
d. Other military tribunals.

While general courts-martial have concurrent jurisdiction with military commissions, provost courts, and other types of military tribunals to try any offender who by the law of war is subject to trial by military tribunals (UCMJ, art. 18), it has generally been held that military commissions and similar tribunals have no jurisdiction of such purely military offenses specified in the Uniform Code of Military Justice as are expressly made punishable by sentence of court-martial (except where the military commission is also given express statutory authority over the offense (UCMJ, arts. 104, 106)).

In practice, offenders who are not subject to the Uniform Code of Military Justice but who by the law of war are subject to trial by military tribunals, are tried by military commissions, provost courts, or other forms of military tribunals.

In areas occupied by United States forces, military jurisdiction over individuals, other than members of the Armed Forces, who are charged with violating legislation or orders of the occupant is usually exercised by military government courts. Although sometimes designated by other names, these tribunals are actually military commissions. They sit in and for the occupied area and thus exercise their jurisdiction on a territorial basis.

14. Dissemination of the 1949 Geneva Conventions

a. Wounded and Sick Convention; Wounded and Sick at Sea Convention.

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains. (GWS, art. 47, GWS Sea, art. 48.)

b. Prisoners of War Convention.

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.
Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions. *(GPW, art. 127.)*

c. Civilians Convention.

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions. *(GC, art. 144.)*

Section II. PROTECTING POWERS

15. Protecting Powers

The Geneva Conventions of 1949 contain certain common provisions regarding the safeguarding of the interests of the belligerents by nations designated as “Protecting Powers.” These provisions are set forth in the following paragraphs.

16. Functions of Protecting Powers


The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible, the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. *(GWS, art. 8; GWS Sea, art. 8; GPW, art 8; GC, art. 9.)*

b. Article 8, GWS and GWS Sea, contains the following additional provision:

Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.
Except as specifically provided otherwise by GPW and GC, the activities of representatives or delegates of the Protecting Powers under these conventions may not be restricted even in case of imperative military necessity.

17. Activities of the International Committee of the Red Cross

The provisions of the present Convention[s] constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of [persons protected by the convention] and for their relief. (GWS art. 9; GWS/Sea, art. 9; GPW, art. 9; GC, art. 10.)

18. Substitutes for Protecting Powers

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When *** [persons protected by the convention] do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.
Whenever, in the present Convention, mention is made of a Protecting Power, such mention also applies to substitute organizations in the sense of the present Article. (GWS, art. 10; GWS Sea, art. 10; GPW, art. 10; GC, art. 11.)

19. Conciliation Procedure

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for *** [persons protected by the convention] possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting. (GWS, art. 11; GWS Sea, art. 11; GPW, art. 11; GC, art. 12.)
CHAPTER 2
HOSTILITIES

Section I. COMMENCEMENT OF HOSTILITIES

20. Declaration of War Required
   
   
The Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war. (H. III, art. 1.)

   b. Surprise Still Possible. Nothing in the foregoing rule requires that any particular length of time shall elapse between a declaration of war and the commencement of hostilities.

21. Notification to Neutrals
   
The existence of a state of war must be notified to the neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral Powers, nevertheless, cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war. (H. III, art. 2.)

22. When Articles of Hague Convention No. III Effective Between Parties
   
Article I of the present Convention shall take effect in case of war between two or more of the Contracting Powers.

Article II is binding as between a belligerent Power which is a party to the Convention and neutral Powers which are also parties to the Convention. (H. III, art. 3.)

23. Present Effect of Foregoing Rules
   
The Charter of the United Nations makes illegal the threat or use of force contrary to the purpose of the United Nations. It requires members of the organization to bring about by peaceful means adjustment or settlement of international disputes or situations which might lead to a breach of the peace. However, a nonmember nation or a member nation which violates these provisions of the Charter commits a further breach of international law by commencing hostilities without a declaration of war or a conditional ultimatum as required by the foregoing articles of Hague Convention No. III. Conversely,
a State which resorts to war in violation of the Charter will not render its acts of aggression or breach of the peace any the less unlawful by formally declaring war.

24. Constitutional Provision

Article 1, section 8, clause 11, of the United States Constitution provides that “The Congress shall have power * * * to declare War.” The law of war may, however, be applicable to an international conflict, notwithstanding the absence of a declaration by the Congress. (See pars. 8 and 9, concerning the situations to which the law of war has application.)

25. Enemy Status of Civilians

Under the law of the United States, one of the consequences of the existence of a condition of war between two States is that every national of the one State becomes an enemy of every national of the other. However, it is a generally recognized rule of international law that civilians must not be made the object of attack directed exclusively against them.

26. Effect on Enemy Aliens

Enemy aliens located or resident in United States territory are not necessarily made prisoners or interned en masse on the breaking out of hostilities. Such persons may be allowed to leave the United States if their departure is consistent with national interest (GC, art. 36; par. 274 herein). If the security of the United States makes it absolutely necessary, enemy aliens may be placed in assigned residence or internment (GC, art. 42; par. 281 herein). Measures of control are normally taken with respect to at least persons known to be active or reserve members of a hostile army, persons who would be liable to service in the enemy forces, and persons who it is expected would furnish information or other aid to a hostile State. (See ch. V, sec. IV, concerning the treatment of aliens in the territory of a party to the conflict.)

27. Expulsion

In modern practice at the outbreak of hostilities the expulsion of the citizens or subjects of the enemy is generally decreed from seaports, the area surrounding airbases, airports, and fortified places, areas of possible attack, and the actual or contemplated theaters of operation. When expulsion is decreed, the persons expelled should be given such reasonable notice, consistent with public safety, as will enable them to arrange for the collection, disposal, and removal of their goods and property and for the settlement of their personal affairs. Such persons do not, however, benefit from the provisions of Articles 41 through 45, GC (pars. 280–284).
Section II. FORBIDDEN CONDUCT WITH RESPECT TO PERSONS

28. Refusal of Quarter
   It is especially forbidden * * * to declare that no quarter will be given. (HR, art. 23, par. (d).)

29. Injury Forbidden After Surrender
   It is especially forbidden * * * to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion. (HR, art. 23, par. (e).)

30. Persons Descending by Parachute
   The law of war does not prohibit firing upon paratroops or other persons who are or appear to be bound upon hostile missions while such persons are descending by parachute. Persons other than those mentioned in the preceding sentence who are descending by parachute from disabled aircraft may not be fired upon.

31. Assassination and Outlawry
   HR provides: It is especially forbidden * * * to kill or wound treacherously individuals belonging to the hostile nation or army. (HR, art. 23, par. (b).)
   This article is construed as prohibiting assassination, proscription, or outlawry of an enemy, or putting a price upon an enemy’s head, as well as offering a reward for an enemy “dead or alive”. It does not, however, preclude attacks on individual soldiers or officers of the enemy whether in the zone of hostilities, occupied territory, or elsewhere.

32. Nationals Not To Be Compelled to Take Part in Operations Against Their Own Country
   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. (HR, art. 23, 2d par.)

Section III. FORBIDDEN MEANS OF WAGING WARFARE

33. Means of Injuring the Enemy Limited
   The right of belligerents to adopt means of injuring the enemy is not unlimited. (HR, art. 22.)
   b. The means employed are definitely restricted by international declarations and conventions and by the laws and usages of war.
34. Employment of Arms Causing Unnecessary Injury


It is especially forbidden * * * to employ arms, projectiles, or material calculated to cause unnecessary suffering. (HR, art. 23, par. (e).)

b. Interpretation. What weapons cause “unnecessary injury” can only be determined in light of the practice of States in refraining from the use of a given weapon because it is believed to have that effect. The prohibition certainly does not extend to the use of explosives contained in artillery projectiles, mines, rockets, or hand grenades. Usage has, however, established the illegality of the use of lances with barbed heads, irregular-shaped bullets, and projectiles filled with glass, the use of any substance on bullets that would tend unnecessarily to inflame a wound inflicted by them, and the scoring of the surface or the filing off of the ends of the hard cases of bullets.

35. Atomic Weapons

The use of explosive “atomic weapons,” whether by air, sea, or land forces, cannot as such be regarded as violative of international law in the absence of any customary rule of international law or international convention restricting their employment.

36. Weapons Employing Fire

The use of weapons which employ fire, such as tracer ammunition, flamethrowers, napalm and other incendiary agents, against targets requiring their use is not violative of international law. They should not, however, be employed in such a way as to cause unnecessary suffering to individuals.

37. Poison


It is especially forbidden * * * to employ poison or poisoned weapons. (HR, art. 23, par. (a).)

b. Discussion of Rule. The foregoing rule does not prohibit measures being taken to dry up springs, to divert rivers and aqueducts from their courses, or to destroy, through chemical or bacterial agents harmless to man, crops intended solely for consumption by the armed forces (if that fact can be determined).

38. Gases, Chemicals, and Bacteriological Warfare

The United States is not a party to any treaty, now in force, that prohibits or restricts the use in warfare of toxic or nontoxic gases, of smoke or incendiary materials, or of bacteriological warfare. A treaty signed at Washington, 6 February 1922, on behalf of the United States, the British Empire, France, Italy, and Japan (3 Malloy, Treaties 3116) contains a provision (art. V) prohibiting “The use in
war of asphyxiating, poisonous or other gases, and all analogous liquids, materials, or devices," but that treaty was expressly conditioned to become effective only upon ratification by all of the signatory powers, and, not having been ratified by all of the signatories, has never become effective. The Geneva Protocol "for the prohibition of the use in war of asphyxiating, poisonous, or other gases, and of bacteriological methods of warfare," signed on 17 June 1925, on behalf of the United States and many other powers (94 League of Nations Treaty Series 65), has been ratified or adhered to by and is now effective between a considerable number of States. However, the United States Senate has refrained from giving its advice and consent to the ratification of the Protocol by the United States, and it is accordingly not binding on this country.

Section IV. BOMBARDMENTS, ASSAULTS, AND SIEGES

39. Bombardment of Undefended Places Forbidden

The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited. (HR, art. 25.)

40. Defended Place Defined

Investment, bombardment, assault, and siege have always been recognized as legitimate means of land warfare. Defended places in the sense of Article 25, HR, include:

a. A fort or fortified place.

b. A city or town surrounded by detached defense positions, which is considered jointly with such defense positions as an indivisible whole.

c. A place which is occupied by a combatant military force or through which such a force is passing. The occupation of such a place by medical units alone is not sufficient to make it a defended place.

Factories producing munitions and military supplies, military camps, warehouses storing munitions and military supplies, ports and railroads being used for the transportation of military supplies, and other places devoted to the support of military operations or the accommodation of troops may also be attacked and bombarded even though they are not defended.

41. Unnecessary Killing and Devastation

Particularly in the circumstances referred to in the preceding paragraph, loss of life and damage to property must not be out of proportion to the military advantage to be gained. Once a fort or defended locality has surrendered, only such further damage is permitted as is demanded by the exigencies of war, such as the removal
Section V. STRATAGEMS

48. Stratagems Permissible

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible. (HR, art. 24.)

49. Good Faith

Absolute good faith with the enemy must be observed as a rule of conduct; but this does not prevent measures such as using spies and secret agents, encouraging defection or insurrection among the enemy civilian population, corrupting enemy civilians or soldiers by bribes, or inducing the enemy's soldiers to desert, surrender, or rebel. In general, a belligerent may resort to those measures for mystifying or misleading the enemy against which the enemy ought to take measures to protect himself.

50. Treachery or Perfidy

Ruses of war are legitimate so long as they do not involve treachery or perfidy on the part of the belligerent resorting to them. They are, however, forbidden if they contravene any generally accepted rule.

The line of demarcation between legitimate ruses and forbidden acts of perfidy is sometimes indistinct, but the following examples indicate the correct principles. It would be an improper practice to secure an advantage of the enemy by deliberate lying or misleading conduct which involves a breach of faith, or when there is a moral obligation to speak the truth. For example, it is improper to feign surrender so as to secure an advantage over the opposing belligerent thereby. So similarly, to broadcast to the enemy that an armistice had been agreed upon when such is not the case would be treacherous. On the other hand, it is a perfectly proper ruse to summon a force to surrender on the ground that it is surrounded and thereby induce such surrender with a small force.

Treachorous or perfidious conduct in war is forbidden because it destroys the basis for a restoration of peace short of the complete annihilation of one belligerent by the other.

51. Legitimate Ruses

Among legitimate ruses may be counted surprises, ambushes, feigning attacks, retreats, or flights, simulating quiet and inactivity, use of small forces to simulate large units, transmitting false or misleading radio or telephone messages, deception of the enemy by bogus orders purporting to have been issued by the enemy commander, making use of the enemy's signals and passwords, pretending to communicate with troops or reinforcements which have no existence, de-
ceptive supply movements, deliberate planting of false information, use of spies and secret agents, moving landmarks, putting up dummy guns and vehicles or laying dummy mines, erection of dummy installations and airfields, removing unit identifications from uniforms, use of signal deceptive measures, and psychological warfare activities.

52. Improper Use of Identifying Devices

It is especially forbidden ** 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. (HR, art. 23, par. (f).)

53. Flags of Truce

Flags of truce must not be used surreptitiously to obtain military information or merely to obtain time to effect a retreat or secure reinforcements or to feign a surrender in order to surprise an enemy. An officer receiving them is not on this account absolved from the duty of exercising proper precautions with regard to them.

54. National Flags, Insignia, and Uniforms as a Ruse

In practice, it has been authorized to make use of national flags, insignia, and uniforms as a ruse. The foregoing rule (HR, art. 23, par. (f)) does not prohibit such employment, but does prohibit their improper use. It is certainly forbidden to employ them during combat, but their use at other times is not forbidden.

55. Improper Use of Distinctive Emblem of Geneva Convention

The use of the emblem of the Red Cross and other equivalent insignia must be limited to the indication or protection of medical units and establishments, the personnel and material protected by GWS and other similar conventions. The following are examples of the improper use of the emblem: Using a hospital or other building accorded such protection as an observation post or military office or depot; firing from a building or tent displaying the emblem of the Red Cross; using a hospital train or airplane to facilitate the escape of combatants; displaying the emblem on vehicles containing ammunition or other nonmedical stores; and in general using it for cloaking acts of hostility.

Section VI. TREATMENT OF PROPERTY DURING COMBAT

56. Devastation

The measure of permissible devastation is found in the strict necessities of war. Devastation as an end in itself or as a separate measure of war is not sanctioned by the law of war. There must be some reasonably close connection between the destruction of property and
the overcoming of the enemy's army. Thus the rule requiring respect for private property is not violated through damage resulting from operations, movements, or combat activity of the army; that is, real estate may be used for marches, camp sites, construction of field fortifications, etc. Buildings may be destroyed for sanitary purposes or used for shelter for troops, the wounded and sick and vehicles and for reconnaissance, cover, and defense. Fences, woods, crops, buildings, etc., may be demolished, cut down, and removed to clear a field of fire, to clear the ground for landing fields, or to furnish building materials or fuel if imperatively needed for the army. (See GC, art. 53; par. 339b; herein, concerning the permissible extent of destruction in occupied areas.)

57. Protection of Artistic and Scientific Institutions and Historic Monuments

The United States and certain of the American Republics are parties to the so-called Roerich Pact, which accords a neutralized and protected status to historic monuments, museums, scientific, artistic, educational, and cultural institutions in the event of war between such States. (For its text, see 49 Stat. 3267; Treaty Series No. 899.)

58. Destruction and Seizure of Property

It is especially forbidden *** to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war (HR, art. 23, par. (g)).

59. Booty of War

a. Public Property. All enemy public movable property captured or found on a battlefield becomes the property of the capturing State.

b. Private Property. Enemy private movable property, other than arms, military papers, horses, and the like captured or found on a battlefield, may be appropriated only to the extent that such taking is permissible in occupied areas (see pars. 405–411).

c. Prisoners of War. The property which prisoners of war are to be allowed to retain is specified in Article 18, GPW (par. 94).
CHAPTER 3

PRISONERS OF WAR

Section I. PERSONS ENTITLED TO BE TREATED AS PRISONERS OF WAR; RETAINED MEDICAL PERSONNEL

60. General Division of Enemy Population

The enemy population is divided in war into two general classes:

a. Persons entitled to treatment as prisoners of war upon capture, as defined in Article 4, GPW (par. 61).

b. The civilian population (exclusive of those civilian persons listed in GPW, art. 4), who benefit to varying degrees from the provisions of GC (see chs. 5 and 6 herein).

Persons in each of the foregoing categories have distinct rights, duties, and disabilities. Persons who are not members of the armed forces, as defined in Article 4, GPW, who bear arms or engage in other conduct hostile to the enemy thereby deprive themselves of many of the privileges attaching to the members of the civilian population (see sec. II of this chapter).

61. Prisoners of War Defined

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfill the following conditions:

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.
(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

(6) Inhabitants of a nonoccupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention:

(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58–67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning
the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention. (GPW, art. 4.)

62. Combatants and Noncombatants

The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war. (HR, art. 3.)

63. Commandos and Airborne Troops

Commando forces and airborne troops, although operating by highly trained methods of surprise and violent combat, are entitled, as long as they are members of the organized armed forces of the enemy and wear uniform, to be treated as prisoners of war upon capture, even if they operate singly.

64. Qualifications of Members of Militias and Volunteer Corps

The requirements specified in Article 4, paragraphs A (2) (a) to (d), GPW (par. 61) are satisfied in the following fashion:

a. Command by a Responsible Person. This condition is fulfilled if the commander of the corps is a commissioned officer of the armed forces or is a person of position and authority or if the members of the militia or volunteer corps are provided with documents, badges, or other means of identification to show that they are officers, noncommissioned officers, or soldiers so that there may be no doubt that they are not persons acting on their own responsibility. State recognition, however, is not essential, and an organization may be formed spontaneously and elect its own officers.

b. Fixed Distinctive Sign. The second condition, relative to the possession of a fixed distinctive sign recognizable at a distance is satisfied by the wearing of military uniform, but less than the complete uniform will suffice. A helmet or headdress which would make the silhouette of the individual readily distinguishable from that of an ordinary civilian would satisfy this requirement. It is also desirable that the individual member of the militia or volunteer corps wear a badge or brassard permanently affixed to his clothing. It is not necessary to inform the enemy of the distinctive sign, although it may be desirable to do so in order to avoid misunderstanding.
c. Carrying Arms Openly. This requirement is not satisfied by the carrying of weapons concealed about the person or if the individuals hide their weapons on the approach of the enemy.

d. Compliance With Law of War. This condition is fulfilled if most of the members of the body observe the laws and customs of war, notwithstanding the fact that the individual member concerned may have committed a war crime. Members of militias and volunteer corps should be especially warned against employment of treachery, denial of quarters, maltreatment of prisoners of war, wounded, and dead, improper conduct toward flags of truce, pillage, and unnecessary violence and destruction.

65. The Levée en Masse

If the enemy approaches an area for the purpose of seizing it, the inhabitants, if they defend it, are entitled to the rights of regular combatants as a levée en masse (see GPW, art. 4, par. A (6); par. 61 herein), although they wear no distinctive sign. In such a case all the inhabitants of the area may be considered legitimate enemies until the area is taken. Should some inhabitants of a locality thus take part in its defense, it might be justifiable to treat all the males of military age as prisoners of war. Even if inhabitants who formed the levée en masse lay down their arms and return to their normal activities, they may be made prisoners of war.

66. Wounded and Sick

Subject to the provisions of Article 12, the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them. (GWS, art. 14.)

67. Medical Personnel and Chaplains

Medical personnel exclusively engaged in the search for, or collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances. (GWS, art. 24.)

Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of and religious ministration to prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those
belonging to the armed forces upon which they depend, within
the scope of the military laws and regulations of the Detaining
Power and under the control of its competent services, in accord­
ance with their professional etiquette. They shall also benefit
by the following facilities in the exercise of their medical or
spiritual functions:

(a) They shall be authorized to visit periodically prisoners
of war situated in working detachments or in hospitals
outside the camp. For this purpose, the Detaining Power
shall place at their disposal the necessary means of
transport.

(b) The senior medical officer in each camp shall be respon­
sible to the camp military authorities for everything con­
nected with the activities of retained medical personnel.
For this purpose, Parties to the conflict shall agree at the
outbreak of hostilities on the subject of the corresponding
ranks of the medical personnel, including that of societies
mentioned in Article 26 of the Geneva Convention for the
Amelioration of the Condition of the Wounded and Sick
in Armed Forces in the Field of August 12, 1949. This
senior medical officer, as well as chaplains, shall have
the right to deal with the competent authorities of the
camp on all questions relating to their duties. Such
authorities shall afford them all necessary facilities for
correspondence relating to these questions.

(c) Although they shall be subject to the internal discipline
of the camp in which they are retained, such personnel
may not be compelled to carry out any work other than
that concerned with their medical or religious duties.

During hostilities, the Parties to the conflict shall agree con­
cerning the possible relief of retained personnel and shall settle
the procedure to be followed.

None of the preceding provisions shall relieve the Detaining
Power of its obligations with regard to prisoners of war from the
medical or spiritual point of view. (GPW, art. 33.)

(See also GWS, arts. 27 and 32; pars. 229 and 233 herein.)

68. Persons Temporarily Performing Medical Functions

Members of the armed forces specially trained for employment,
should the need arise, as hospital orderlies, nurses, or auxiliary
stretcher-bearers, in the search for or the collection, transport or
treatment of the wounded and sick * * * who have fallen into
the hands of the enemy, shall be prisoners of war, but shall be
employed on their medical duties in so far as the need arises.
(GWS, arts. 25 and 29.)
69. Personnel of Aid Societies

The staff of National Red Cross Societies and that of other Voluntary Aid Societies, duly recognized and authorized by their Governments, who may be employed on the same duties as the personnel named in Article 24, are placed on the same footing as the personnel named in the said Article, provided that the staff of such societies are subject to military laws and regulations.

Each High Contracting Party shall notify to the other, either in time of peace, or at the commencement of or during hostilities, but in any case before actually employing them, the names of the societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armed forces. (GWS, art. 26.)

70. Enumeration Not Exhaustive

The enumeration of persons entitled to be treated as prisoners of war is not exhaustive and does not preclude affording prisoner-of-war status to persons who would otherwise be subject to less favorable treatment.

71. Interim Protection


The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal. (GPW, art. 5.)

b. Interpretation. The foregoing provision applies to any person not appearing to be entitled to prisoner-of-war status who has committed a belligerent act or has engaged in hostile activities in aid of the armed forces and who asserts that he is entitled to treatment as a prisoner of war or concerning whom any other doubt of a like nature exists.

c. Competent Tribunal. A "competent tribunal" of the United States for the purpose of determining whether a person of the nature described in a above is or is not entitled to prisoner-of-war status is a board of not less than three officers acting according to such procedure as may be prescribed for tribunals of this nature.

d. Further Proceedings. Persons who have been determined by a competent tribunal not to be entitled to prisoner-of-war status may
not be executed, imprisoned, or otherwise penalized without further 
judicial proceedings to determine what acts they have committed and 
what penalty should be imposed therefore.

Section II. PERSONS NOT ENTITLED TO BE TREATED AS 
PRISONERS OF WAR

72. Certain Persons in Occupied Areas
Persons in occupied areas not falling within the categories set forth 
in Article 4, GPW (par. 61), who commit acts hostile to the occup­
ant or prejudicial to his security are subject to a special regime, 
concerning which see chapter 6, section VIII. The provisions of the 
present section must, in the case of offenses committed in occupied 
territory, be read subject to the qualifications set forth in chapter 6, 
section VIII (for example, the limitation on punishments prescribed 
by GC, art. 68; par. 438 herein).

73. Persons Committing Hostile Acts Not Entitled To Be Treated as 
Prisoners of War
If a person is determined by a competent tribunal, acting in con­
formity with Article 5, GPW (par. 71), not to fall within any of the 
categories listed in Article 4, GPW (par. 61), he is not entitled to be 
treated as a prisoner of war. He is, however, a “protected person” 
within the meaning of Article 4, GC (par. 247). (See pars. 247 and 
248, concerning the status of such “protected persons” who have en­
gaged in conduct hostile to the opposing belligerent.)

74. Necessity of Uniform
Members of the armed forces of a party to the conflict and mem­
bers of militias or volunteer corps forming part of such armed forces 
lose their right to be treated as prisoners of war whenever they 
deliberately conceal their status in order to pass behind the military 
lines of the enemy for the purpose of gathering military information 
or for the purpose of waging war by destruction of life or property. 
Putting on civilian clothes or the uniform of the enemy are examples 
of concealment of the status of a member of the armed forces.

75. Spies
A person can only be considered a spy when, acting clandes­
tinely 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. (HR, art. 29.)

b. American Statutory Definition. The first paragraph of the foregoing Hague Regulation has been in effect somewhat modified, as far as American practice is concerned, by the subsequently enacted Article 106 of the Uniform Code of Military Justice (64 Stat. 138; 50 U. S. C. 700), as follows:

Art. 106. Spies.—Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces of the United States, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

c. Article 106 Governs. Insofar as Article 29, HR, and Article 106, Uniform Code of Military Justice, are not in conflict with each other, they will be construed and applied together. Otherwise Article 106 governs American practice.

76. Who Included in Definition

The definition embodied in the Hague Regulations (par. 75a) and that contained in Article 106 of the Uniform Code of Military Justice (par. 75b) include persons of all classes, whether military or civilian, without regard to citizenship or sex. Both likewise apply only where the acts are committed in time of war. The Hague definition applies only where the information is obtained or sought "in the zone of operations," while the statutory definition is not so limited. The latter includes only persons "found lurking as a spy or acting as a spy" in those places specifically designated "or elsewhere." It has not been decided whether the phrase "or elsewhere" justifies trial by a military tribunal of any person who is not found in one of the places designated or in the field of military operations or territory under martial law and is not a member of the armed forces or otherwise subject to the Uniform Code of Military Justice. Persons charged with espionage committed in the United States outside military jurisdiction are nevertheless liable to trial and punishment by the civil courts under the espionage laws (18 U. S. C. (chap. 37)).
77. Employment of Spies Lawful

The foregoing Article 29, *HR* (par. 75), and Article 24, *HR* (par. 48), tacitly recognize the well-established right of belligerents to employ spies and other secret agents for obtaining information of the enemy. Resort to that practice involves no offense against international law. Spies are punished, not as violators of the laws of war, but to render that method of obtaining information as dangerous, difficult, and ineffective as possible.

78. Punishment

a. Necessity of Trial.

A spy taken in the act shall not be punished without previous trial. (*HR*, art. 30.)

b. Attempts. The spy is punishable with death whether or not he succeeds in obtaining information or in conveying it to the enemy.

c. Immunity upon Rejoining Own Army.

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. (*HR*, art. 31.)

79. Aiding the Enemy

a. American Statutory Definition.

Any person who—

(1) aids or attempts to aid, the enemy with arms, ammunition, supplies, money, or other thing; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall suffer death or such other punishment as a court-martial or military commission may direct. (*UCMJ*, Art. 104; 64 Stat. 138; 50 U. S. C. 698.)

b. Interpretation. In time of war, the rule of the above article is general in its application to all persons whether or not otherwise subject to military law and without regard to citizenship or military or civil status, who give aid to an enemy government or persons adhering to it. It may be that this statute, should it be subjected to judicial interpretation, would be held to authorize the trial of civilians by military tribunals only when the offense had been committed in territory under martial law or military government, or within the zone of military operations, or within areas invaded by the United States, or within or in the vicinity of a military installation, or in a place otherwise subject to military jurisdiction. Cases occurring in the United States outside military jurisdiction are triable by the civil
courts under the espionage laws mentioned above (par. 76) and laws relating to treason (18 U.S.C. (chap. 115)).

80. Individuals Not of Armed Forces Who Engage in Hostilities

Persons, such as guerrillas and partisans, who take up arms and commit hostile acts without having complied with the conditions prescribed by the laws of war for recognition as belligerents (see GPW, art. 4; par. 61 herein), are, when captured by the injured party, not entitled to be treated as prisoners of war and may be tried and sentenced to execution or imprisonment.

81. Individuals Not of Armed Forces Who Commit Hostile Acts

Persons who, without having complied with the conditions prescribed by the laws of war for recognition as belligerents (see GPW, art. 4; par. 61 herein), commit hostile acts about or behind the lines of the enemy are not to be treated as prisoners of war and may be tried and sentenced to execution or imprisonment. Such acts include, but are not limited to, sabotage, destruction of communications facilities, intentional misleading of troops by guides, liberation of prisoners of war, and other acts not falling within Articles 104 and 106 of the Uniform Code of Military Justice and Article 29 of the Hague Regulations.

82. Penalties for the Forgoing

Persons in the foregoing categories who have attempted, committed, or conspired to commit hostile or belligerent acts are subject to the extreme penalty of death because of the danger inherent in their conduct. Lesser penalties may, however, be imposed.

83. Military Attachés and Diplomatic Representatives of Neutral States

Military attachés and diplomatic representatives of neutral States who establish their identity as such and are accompanying an army in the field or are found within a captured fortress, whether within the territory of the enemy or in territory occupied by it, are not held as prisoners, provided that they take no part in hostilities. They may, however, be ordered out of the theater of war; and, if necessary, handed over by the captor to the ministers of their respective countries. Only if they refuse to quit the theater of war may they be interned.

Section III. GENERAL PROTECTION OF PRISONERS OF WAR

84. Duration of Protection


The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy
and until their final release and repatriation* *(GPW, art. 6; see par. 71 herein.)

b. Power of the Enemy Defined. A person is considered to have fallen into the power of the enemy when he has been captured by, or surrendered to members of the military forces, the civilian police, or local civilian defense organizations or enemy civilians who have taken him into custody.

85. Killing of Prisoners
A commander may not put his prisoners to death because their presence retards his movements or diminishes his power of resistance by necessitating a large guard, or by reason of their consuming supplies, or because it appears certain that they will regain their liberty through the impending success of their forces. It is likewise unlawful for a commander to kill his prisoners on grounds of self-preservation, even in the case of airborne or commando operations, although the circumstances of the operation may make necessary rigorous supervision of and restraint upon the movement of prisoners of war.

86. Special Agreements
In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict. (GPW, art. 6.)

87. Renunciation of Rights Prohibited
Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be. (GPW, art. 7.)

b. Interpretation. Subject to the exception noted in paragraph 199, prisoners of war are precluded from renouncing not only their rights but also their status as prisoners of war, even if they do so voluntarily. The prohibition extends equally to prisoners renouncing their status in order to become civilians or to join the armed forces of the Detaining Power.
88. Responsibility for the Treatment of Prisoners

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with. (GPW, art. 13.)

89. Humane Treatment of Prisoners

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited. (GPW, art. 13.)

90. Respect for the Person of Prisoners

Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires. (GPW, art. 14.)
91. Maintenance of Prisoners

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health. *(GPW, art. 15.)*

92. Equality of Treatment


Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria. *(GPW, art. 16.)*

b. The foregoing provision does not preclude the segregation of prisoners of war to maintain order in camps, to impose punishment, or for medical reasons. *(See GPW, art. 79, 5th par.; par. 155 herein.)*

Section IV. BEGINNING OF CAPTIVITY

93. Questioning of Prisoners

Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.

If he wilfully infringes this rule, he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.
Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand. (GPW, art. 17.)

94. Property of Prisoners


All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise sums taken away in any currency other than that of the Detaining Power and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity. (GPW, art. 18.)

b. Transactions With Prisoners. It is not proper for members of the forces of the Detaining Power to engage in bartering and other transactions with prisoners of war concerning their personal effects.
c. Unexplained Possession of Large Sums of Money by Prisoners of War. The unexplained possession by a prisoner of war of a large sum of money justifiably leads to the inference that such funds are not his own property and are in fact either property of the enemy government or property which has been looted or otherwise stolen.

95. Evacuation of Prisoners

Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone. (GPW, art. 19.)

96. Conditions of Evacuation

The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible. (GPW, art. 20.)

Section V. INTERNMENT OF PRISONERS GENERALLY

97. Restriction of Liberty of Movement

The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary. (GPW, art. 21, 1st par.)

98. Places and Conditions of Internment

Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness.