

3. 1899 Hague Declaration 2 Concerning Asphyxiating Gases

PREFATORY NOTE

The 1899 Hague Conventions and Declarations: General

What was to become known as the First Hague Peace Conference was convened through the personal initiative of Tsar Nicholas II of Russia, with the primary objective of limiting armaments. Among the factors which led to the calling of the conference was a concern about the impact of various technical developments on warfare. The representatives of twenty-six states met in The Hague from 18 May to 29 July 1899, and although they failed to reach any general agreement on arms limitation, they were successful in adopting three conventions (relating to the peaceful settlement of disputes, the laws and customs of war on land, and maritime warfare) and three declarations (prohibiting the launching of projectiles and explosives from balloons, the use of projectiles diffusing asphyxiating gases, and the use of expanding bullets). The three 1899 Conventions are not included in this volume. The first is not part of the laws of war; the second is discussed in the prefatory note to 1907 Hague Convention IV; and the third is discussed in the prefatory note to 1949 Geneva Convention II. Also, 1899 Hague Declaration 1 on balloons, like the 1907 Hague Declaration on balloons, is not included in this volume, but both documents are discussed in the prefatory note to the 1923 Hague Rules of Aerial Warfare.

1899 Hague Declaration 2

This agreement, prohibiting the use of projectiles whose sole object is to diffuse asphyxiating gases, was derived from the general principles of customary international law prohibiting the use of poison and materials causing unnecessary suffering. These general customary principles were embodied in Articles 23(d) and 23(e) of the Regulations annexed to 1899 Hague Convention II and 1907 Hague Convention IV.

To the extent that the specific prohibition embodied in 1899 Hague Declaration 2 may be considered a particular rule of customary international law, it would be applicable to all states and not merely those which have formally ratified or acceded to it, and the Declaration's 'general participation clause' would cease to be relevant.

During the First World War, the use of gas began with irritant gas, but escalated rapidly. After the end of the war, the prohibition of gas warfare was reaffirmed in the 1919 Treaty of Versailles, similar provisions in other World War I peace treaties, the unratified 1922 Treaty of Washington, and the 1925 Geneva Protocol: see the prefatory note to the latter.

Because 1899 Hague Declaration 2 prohibits the use of *projectiles* whose sole object is the diffusion of asphyxiating or deleterious gases, some suggest that the Declaration may have been overtaken by the more comprehensive prohibition in the 1925 Geneva Protocol.

ALFA BIBLIOTEK
DOK. NR.: 1 526 5

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Date of signature: 29 July 1899
Entry into force: 4 September 1900
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. 225-6. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in: 26 *Martens NRG*, 2ème sér. (1899) 998-1002 (Fr. Ger.);
 91 *BFSP* (1898-1899) 1014-16 (Fr.);
 UKTS 32 (1907), Cd. 3751 (Eng. Fr.);
 CXXV *UKPP* (1908) 898-900 (Eng. Fr.);
 1 *AJIL* (1907) Supplement 157-9 (Eng. Fr.),
 187 *CTS* (1898-1899) 453-5 (Fr.)

Declaration (IV, 2) Concerning Asphyxiating Gases

The undersigned, plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868,

Declare as follows:

The contracting Powers agree to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases.

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

It shall cease to be binding from the time when, in a war between the contracting Powers, one of the belligerents shall be joined by a non-contracting Power.

The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

A procès-verbal shall be drawn up on the receipt of each ratification, a copy of which, duly certified, shall be sent through the diplomatic channel to all the contracting Powers.

The non-signatory Powers can adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing

the present Declaration, such denunciation shall not take effect until a year after the notification made in writing to the Government of the Netherlands, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the plenipotentiaries have signed the present Declaration, and affixed their seals thereto.

Done at The Hague, the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and copies of which, duly certified, shall be sent by the diplomatic channel to the contracting Powers.

CONCLUDING NOTES

The concluding notes for 1899 Hague Declaration 2 are combined with those for 1899 Hague Declaration 3 and are to be found after the end of the latter document, below, p. 41.

4. 1899 Hague Declaration 3 Concerning Expanding Bullets

PREFATORY NOTE

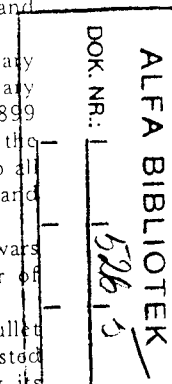
1899 Hague Declaration 3 was adopted by the First Hague Peace Conference of 1899 in response to the introduction of a bullet (first manufactured at the British Indian arsenal of Dum-Dum, near Calcutta) which expanded and flattened in the human body. Great Britain objected to the proposed prohibition on the grounds that the dum-dum bullet did not expand in such a manner as to create wounds of exceptional cruelty and that, in fact, the wounds were less severe than those produced by certain rifles which had been in use. The USA objected to the proposed declaration on three grounds: first, a prohibition based on the specification of details of construction might not be useful because of the possibility that a bullet might be made to expand in such a regular manner as to simply assume the form of a larger calibre; second, such an expanding bullet might be the most humane way of increasing the shocking power of the bullet; and third, the bullet was actually being used by the British Army, and any condemnation should follow from real evidence against its effects, rather than from implication drawn from its design. However, the objections of both Great Britain and the USA were overruled, and the Declaration was adopted.

The Declaration has been regarded as codifying one aspect of the customary rule prohibiting weapons causing unnecessary suffering. This general customary principle was embodied in Article 23(e) of the Regulations annexed to 1899 Hague Convention II and 1907 Hague Convention IV. To the extent that the Declaration reflects customary international law, it would be applicable to all states and not merely those which have formally ratified or acceded to it, and its 'general participation clause' would cease to be relevant.

Controversies about the use of expanding bullets have arisen in many wars since the Declaration was adopted. Early examples included the Boer War of 1899-1902 and the Russo-Japanese War of 1904-5.

While 1899 Hague Declaration 3 was drawn up with the dum-dum bullet in mind, its impact may extend to weapons developed later. Some have suggested that high-velocity rifle ammunition, tumbling end over end on striking its target and thereby producing a large, jagged wound, has a similar effect to the dum-dum bullet. Although there is no specific prohibition of high-velocity ammunition, the argument is that the weapon is prohibited by analogy to the prohibition of the dum-dum bullet. Others contest the validity of any such analogy. This issue, which was discussed before and during the 1979-80 UN Weapons Conference in Geneva without resulting in agreement, remains controversial.

Date of signature: 29 July 1899
Entry into force: 4 September 1900
Depositary: Netherlands



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. 227-8. (English translation by US Department of State, with minor corrections by J. B. Scott.)

Also published in:
 26 *Martens NRG*, 2ème sér. (1899) 1002-6 (Fr. Ger.);
 91 *BFSP* (1898-1899) 1017-19 (Fr.);
UKTS 32 (1907), Cd. 3751 (Eng. Fr.);
CXXV UKPP (1908) 893-5 (Eng. Fr.);
 1 *AJIL* (1907) Supplement 155-7 (Eng. Fr.);
 187 *CTS* (1898-1899) 459-61 (Fr.)

The undersigned, plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of the 29th November (11th December), 1868.

The contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

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

The ratification shall be deposited at The Hague.

The non-signatory Powers may adhere to the present Declaration. For this purpose they must make their adhesion known to the contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other contracting Powers.

In the event of one of the high contracting Parties denouncing the present Declaration, such denunciation shall not take effect

until a year after the notification made in writing to the Netherland Government, and forthwith communicated by it to all the other contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the plenipotentiaries have signed the present Declaration, and have affixed their seals thereto.

Done at The Hague, the 29th July, 1899, in a single copy, which shall be kept in the archives of the Netherland Government, and of which copies, duly certified, shall be sent through the diplomatic channel to the contracting Powers.

CONCLUDING NOTES
RELATING BOTH TO 1899 HAGUE DECLARATION 2,
AND TO 1899 HAGUE DECLARATION 3

Except where otherwise stated, all entries in this list apply *both* to 1899 Hague Declaration 2 relating to asphyxiating gases, and to 1899 Hague Declaration 3 relating to expanding bullets.

relating to expanding duties.				
<i>Signatures, Ratifications, Accessions, and Successions</i> ¹				
State	Date of Signature		Date of Ratification (r), Accession (a), or Succession (s)	
Austria-Hungary	29 July	1899	4 September	1900 r
Belgium	29 July	1899	4 September	1900 r
Bulgaria	29 July	1899	4 September	1900 r
Byelorussian SSR ^{2, 3}			4 June	1962 s
China	29 July	1899	21 November	1904 r
Denmark	29 July	1899	4 September	1900 r
Ethiopia			9 August	1935 a
Fiji ²			2 April	1973 s
France	29 July	1899	4 September	1900 r
Germany	29 July	1899	4 September	1900 r
German Democratic Republic ² (Decl. 3)			9 February	1959 s
Great Britain and Ireland			30 August	1907 a

¹ Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981.

² By letters dated 1 April 1980 and 16 March 1981 the Netherlands Ministry of Foreign Affairs confirmed that these cases constituted successions.

¹USSR recognized the ratification by the Russian Empire of 1899 and 1907 Hague Conventions and Declarations in so far as these are not in contradiction with the UN Charter, and if they have not been changed or replaced by later international conventions to which USSR is a party, such as the 1925 Geneva Protocol and the 1949 Geneva Conventions. Byelorussia made a similar statement on notifying succession.

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 I 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.

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

PREFATORY NOTE

The 1907 Hague Conventions and Declaration: General

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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.

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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.

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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.

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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.

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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.

¹In 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.

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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.

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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.

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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;

²This 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.

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(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, buildings 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 act 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.

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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.

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.

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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.

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

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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.

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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

⁴Information 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.

⁵By 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.

⁶By 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.

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		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.

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.

Denunciation

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 I 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.

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Most articles of the Regulations annexed to the Convention 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.

¹In 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, 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, buildings 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.

³In the authentic French text: 'l'ordre et la vie publiques'.

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 NOTE

*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

⁴Information 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.

⁵By 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.

⁶By 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.

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		<p><i>Article 5</i></p> <p>A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.</p> <p>It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory.</p> <p><i>Article 6</i></p> <p>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.</p> <p><i>Article 7</i></p> <p>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.</p> <p><i>Article 8</i></p> <p>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.</p> <p><i>Article 9</i></p> <p>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.</p> <p>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.</p> <p><i>Article 10</i></p> <p>The fact of a neutral Power resisting, even by force, attempts to violate its neutrality can not be regarded as a hostile act.</p> <p style="text-align: center;"><i>CHAPTER II — Belligerents Interned and Wounded Tended in Neutral Territory</i></p> <p><i>Article 11</i></p> <p>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.</p> <p>It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.</p> <p>It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.</p> <p><i>Article 12</i></p> <p>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.</p> <p>At the conclusion of peace the expenses caused by the internment shall be made good.</p> <p><i>Article 13</i></p> <p>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.</p> <p>The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.</p>			

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		<p><i>Article 14</i></p> <p>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.</p> <p>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.</p> <p><i>Article 15</i></p> <p>The Geneva Convention applies to sick and wounded interned in neutral territory.</p>			
		<p style="text-align: center;">CHAPTER III – <i>Neutral Persons</i></p> <p><i>Article 16</i></p> <p>The nationals of a State which is not taking part in the war are considered as neutrals.</p> <p><i>Article 17</i></p> <p>A neutral can not avail himself of his neutrality –</p> <ul style="list-style-type: none"> (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. <p>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.</p> <p><i>Article 18</i></p> <p>The following acts shall not be considered as committed in favor of one belligerent in the sense of Article 17, letter (b):</p> <ul style="list-style-type: none"> (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. 			
		<p style="text-align: center;">CHAPTER IV – <i>Railway Material</i></p> <p><i>Article 19</i></p> <p>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.</p> <p>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.</p> <p>Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage.</p>			

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5			<p style="text-align: center;">CHAPTER V — <i>Final Provisions</i></p> <p><i>Article 20</i></p> <p>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.</p> <p><i>Article 21</i></p> <p>The present Convention shall be ratified as soon as possible. The ratifications shall be deposited at The Hague.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p><i>Article 22</i></p> <p>Non-signatory Powers may adhere to the present Convention.</p> <p>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.</p> <p>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.</p> <p><i>Article 23</i></p> <p>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.</p> <p><i>Article 24</i></p> <p>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.</p> <p>The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.</p>		

POS.	SAK:	NR.:	SIDE	AV	G
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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.

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.

CONCLUDING NOTES

Signatures, Ratifications, Accessions, and Successions¹

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 ²			4 June 1962	s
Chile	18 October	1907	—	
China			15 January 1910	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	—	
Ecuador	18 October	1907	—	
El Salvador	18 October	1907	27 November 1909	r
Ethiopia			5 August 1935	a
Finland ³			30 December 1918	a
France	18 October	1907	7 October 1910	r
Germany	18 October	1907	27 November 1909	r
German Democratic Republic ²			9 February 1959	s
*Great Britain	18 October	1907	—	
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

¹Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981.

²By 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.

³The Depositary states that Finland's accession became effective on 9 June 1922. See above, p. 58, n. 6.

Great Britain, at signature, made reservation of Articles 16, 17, and 18. 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

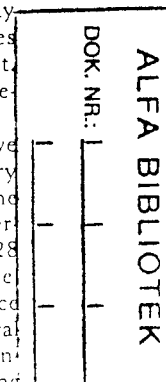
PREFATORY NOTE

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, and 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 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. 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.

Done at The Hague, the 18th October, 1907, in 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.

CONCLUDING NOTES

Signatures, Ratifications, Accessions, and Successions¹

State (* denotes Reservation: see below)	Date of Signature		Date of Ratification (<i>r</i>), Accession (<i>a</i>), or Succession (<i>s</i>)			
*Argentina	18 October	1907	—			
Austria-Hungary	18 October	1907	27 November	1909	<i>r</i>	
Belgium	18 October	1907	8 August	1910	<i>r</i>	
Bolivia	18 October	1907	27 November	1909	<i>r</i>	
Brazil	18 October	1907	5 January	1914	<i>r</i>	
Bulgaria	18 October	1907	—			
Byelorussian SSR ²			4 June	1962	<i>s</i>	
Chile	18 October	1907	—			
China			15 January	1910	<i>a</i>	
Colombia	18 October	1907	—			
Cuba	18 October	1907	22 February	1912	<i>r</i>	
Denmark	18 October	1907	27 November	1909	<i>r</i>	
Dominican Republic	18 October	1907	—			
Ecuador	18 October	1907	—			
El Salvador	18 October	1907	27 November	1909	<i>r</i>	
Ethiopia			5 August	1935	<i>a</i>	
Finland ³			30 December	1918	<i>a</i>	
France	18 October	1907	7 October	1910	<i>r</i>	
Germany	18 October	1907	27 November	1909	<i>r</i>	
German Democratic Republic ²			9 February	1959	<i>s</i>	
*Great Britain	18 October	1907	—			
Greece	18 October	1907	—			
Guatemala	18 October	1907	15 March	1911	<i>r</i>	
Haiti	18 October	1907	2 February	1910	<i>r</i>	
Italy	18 October	1907	—			
Japan	18 October	1907	13 December	1911	<i>r</i>	
Liberia			4 February	1914	<i>a</i>	

¹Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981.

² 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.

³The Depositary states that Finland's accession became effective on 9 June 1922. See above, p. 58, n. 6.

State (* denotes Reservation: see below)	Date of Signature		Date of Ratification (<i>r</i>), Accession (<i>a</i>), or Succession (<i>s</i>)	
Luxembourg	18 October	1907	5 September	1912 <i>r</i>
Mexico	18 October	1907	27 November	1909 <i>r</i>
Montenegro	18 October	1907	—	
Netherlands	18 October	1907	27 November	1909 <i>r</i>
Nicaragua			16 December	1909 <i>a</i>
Norway	18 October	1907	19 September	1910 <i>r</i>
Panama	18 October	1907	11 September	1911 <i>r</i>
Paraguay	18 October	1907	—	
Persia	18 October	1907	—	
Peru	18 October	1907	—	
Poland			9 May	1925 <i>a</i>
Portugal	18 October	1907	13 April	1911 <i>r</i>
Romania	18 October	1907	1 March	1912 <i>r</i>
Russia	18 October	1907	27 November	1909 <i>r</i>
Serbia	18 October	1907	—	
Siam	18 October	1907	12 March	1910 <i>r</i>
Spain	18 October	1907	18 March	1913 <i>r</i>
Sweden	18 October	1907	27 November	1909 <i>r</i>
Switzerland	18 October	1907	12 May	1910 <i>r</i>
Turkey	18 October	1907	—	
Uruguay	18 October	1907	—	
USA	18 October	1907	27 November	1909 <i>r</i>
USSR ²			7 March	1955 <i>s</i>
Venezuela	18 October	1907	—	

Total Number of Parties Listed: 34

Note on Entry into Force for States Parties

In accordance with Article 23, 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

Argentina, at signature, made reservation of Article 19. It did not ratify the Convention.

Great Britain, at signature, made reservation of Articles 16, 17, and 18. It did not ratify the Convention.

7. 1907 Hague Convention VI Relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities

PREFATORY NOTE

International law once recognized that, during peacetime, states could perform an act of reprisal (technically called 'embargo') whereby an injured state could prevent the ships of a state committing an unlawful act from leaving its ports in order to compel the offending state to make reparations for the act committed. When war seemed imminent, the opposing states could impose such an embargo on enemy merchant ships in port to facilitate capture and confiscation of such ships once war had broken out. However, the use of such reprisals during peacetime would now run up against the UN Charter's requirement to settle disputes by peaceful means and its prohibition of the threat or use of force.

International law recognized that, at the outbreak of war, enemy merchant ships in port were subject to embargo for the purpose of their capture and confiscation, and that such ships at sea were subject to capture and confiscation, even if the ship's officers were ignorant of the outbreak of war. Beginning with the outbreak of the Crimean War in 1854, some states followed the practice of imposing no embargo on belligerent merchant ships in enemy ports at the outbreak of war, allowing such ships a reasonable period of grace to depart before becoming liable to capture and confiscation. Some states also followed the practice of granting immunity from seizure to belligerent merchant ships which had left their last port of departure before the outbreak of war, and whose officers were unaware of the existence of a state of war. Despite these occasional usages, state practice was not uniform.

1907 Hague Convention VI, adopted at the Second Hague Peace Conference, was the first codification of binding rules on the status of enemy merchant ships at the outbreak of hostilities.

Many states failed to ratify the Convention. It contains a 'general participation clause' (Article 6) which affects its technical application in hostilities where not all belligerents are parties to the Convention. During the First World War, observance of the Convention was far from uniform. Great Britain regarded reciprocity and a high degree of uniformity of practice as essential, and therefore denounced the Convention in 1925. France followed suit in 1939. At the outbreak of the Second World War, Great Britain and France did not grant a period of grace to enemy merchant ships in port, and enemy merchant ships (in port or on the high seas) were liable to seizure and confiscation. Other states adopted the same practice. In view of this state practice, it is unlikely that the favourable treatment of belligerent merchant ships in enemy ports at the outbreak of hostilities can be regarded as part of customary international law.

The declining relevance of the Convention may be attributed to two principal

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factors. First, the Convention does not apply to merchant ships capable of conversion into warships, and therefore the practice of constructing merchant ships which by their design can be quickly converted into warships has reduced the Convention's application accordingly. Second, the military importance of merchant ships which are not converted into warships (to accompany and service warships or to perform other war-related functions) has reduced the likelihood that such ships would not be seized and confiscated by belligerents at the outbreak of hostilities.

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. 141-5. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in: 3 *Martens NRG*, 3ème sér. (1862-1910) 533-56 (Fr. Ger.);
100 *BFSP* (1906-1907) 365-77 (Fr.);
UKTS 10 (1910), Cd. 5031 (Eng. Fr.);
CXII UKPP (1910) 101 (Eng. Fr.);
2 *AJIL* (1908) Supplement 127-33 (Eng. Fr.);
205 *CTS* (1907) 305-18 (Fr.)

Convention (VI) Relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities

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

Anxious to ensure the security of international commerce against the surprises of war, and wishing, in accordance with modern practice, to protect as far as possible operations undertaken in good faith and in process of being carried out before the outbreak of hostilities, have resolved to conclude a Convention to this effect, and have appointed the following persons 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 provisions:

Article 1

When a merchant ship belonging to one of the belligerent Powers is at the commencement of hostilities in an enemy port, it is desirable that it should be allowed to depart freely, either immediately, or after a reasonable number of days of grace, and to proceed, after being

furnished with pass, direct to its port of destination or any other port indicated.

The same rule should apply in the case of a ship which has left its last port of departure before the commencement of the war and entered a port belonging to the enemy while still ignorant that hostilities had broken out.

Article 2

A merchant ship unable, owing to circumstances of *force majeure*, to leave the enemy port within the period contemplated in the above article, or which was not allowed to leave, can not be confiscated.

The belligerent may only detain it, without payment of compensation, but subject to the obligation of restoring it after the war, or requisition it on payment of compensation.

Article 3

Enemy merchant ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities can not be confiscated. They are only liable to detention on the understanding that they shall be restored after the war without compensation, or to be requisitioned, or even destroyed, on payment of compensation, but in such cases provision must be made for the safety of the persons on board as well as the security of the ship's papers.

After touching at a port in their own country or at a neutral port, these ships are subject to the laws and customs of maritime war.

Article 4

Enemy cargo on board the vessels referred to in Articles 1 and 2 is likewise liable to be detained and restored after the termination of the war without payment of compensation, or to be requisitioned on payment of compensation, with or without the ship.

The same rule applies in the case of cargo on board the vessels referred to in Article 3.

Article 5

The present Convention does not affect merchant ships whose build shows that they are intended for conversion into war-ships.

Article 6

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 7

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 at once 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 8

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.

The said 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, stating the date on which it received the notification.

Article 9

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 that 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 10

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 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 11

A register kept by the Ministry of Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 7, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 8, paragraph 2) or of denunciation (Article 10, paragraph 1) have been received.

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

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

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.

CONCLUDING NOTES

<i>Signatures, Ratifications, Accessions, and Successions</i> ¹				
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	—	
Brazil	18 October	1907	5 January	1914 r
Bulgaria	18 October	1907	—	
Byelorussian SSR ²			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	—	
Ecuador	18 October	1907	—	
El Salvador	18 October	1907	27 November	1909 r
Ethiopia			5 August	1935 a

¹ Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981.

² 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.

State (* denotes Reservation: see below)	Date of Signature		Date of Ratification (r), Accession (a), or Succession (s)	
Finland ³			30 December	1918 a
France ⁴	18 October	1907	7 October	1910 r
*Germany	18 October	1907	27 November	1909 r
German Democratic Republic ²			9 February	1959 s
Great Britain ⁴	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
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			31 May	1935 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
Spain	18 October	1907	18 March	1913 r
Sweden	18 October	1907	27 November	1909 r
Switzerland	18 October	1907	12 May	1910 r
Turkey	18 October	1907	—	
Uruguay	18 October	1907	—	
USSR ²			7 March	1955 s
Venezuela	18 October	1907	—	

Total Number of Parties Listed: 33

Note on Entry into Force for States Parties

In accordance with Article 9, the Convention entered into force on 26 January 1910 for the states which had ratified it sixty days earlier, on 27 November

³The Depositary states that Finland's accession became effective on 9 June 1922. See above, p. 58, n. 6.

⁴France and Great Britain denounced the Convention: see below.

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

Great Britain denounced the Convention on 14 November 1925.

France denounced it on 13 July 1939.

In accordance with Article 10, these denunciations became effective one year after each of the dates indicated here.

Reservations

Germany and Russia, at signature, made reservation of Article 3, and of Article 4, paragraph 2. At ratification, they maintained their reservations.⁵

⁵The German and Russian delegations considered that these provisions established an inequality between states in imposing financial burdens on those powers which, lacking naval stations in different parts of the world, were not in a position to take vessels which they had seized into a port, but found themselves compelled to destroy them. J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907*, p. 145, n. 2.

8. 1907 Hague Convention VII Relating to the Conversion of Merchant Ships into Warships

PREFATORY NOTE

There has traditionally been a clear distinction between the treatment, in time of war, of enemy warships and enemy merchant ships. Warships could be attacked and destroyed, or captured with title to the ship immediately passing to the capturing state. Merchant ships, on the other hand, were generally immune from attack and destruction, and although they could be captured, title to a ship could only pass after adjudication in the prize courts of the capturing state. However, if a merchant vessel refused to stop, actively resisted search and seizure, directly assisted its own state's warships or attacked enemy warships, any immunity from attack and destruction was forfeited.

The question of whether merchant ships could legitimately be converted into warships arose in 1870 at the outbreak of the Franco-Prussian War. At that time, the North German Confederation possessed relatively few warships and the King of Prussia (as President of the Confederation) formulated a plan to convert merchant ships into warships. France considered the proposed plan a violation of the prohibition of privateering contained in the 1856 Declaration of Paris, and requested Great Britain to intervene. Great Britain declared that the plan was not synonymous with a revival of privateering and therefore refused to object. Nevertheless, the Prussian plan was never put into effect. However, on subsequent occasions other states adopted the practice of securing merchant ships for conversion into warships at the outbreak of a war.

During the Russo-Japanese War of 1904-5, the conversion at sea of certain Russian merchant ships into warships, enabling them to capture neutral ships, led to a consideration of the matter at the Second Hague Peace Conference of 1907. The result was Hague Convention VII, which attempted to set forth a regime under which merchant ships could be converted so as to legitimately acquire the status of warships. The Convention contains a 'general participation clause' (Article 7) which affects its technical application in hostilities where not all belligerents are parties to the Convention.

The regime established by the Convention is regarded as unsatisfactory because it did not resolve the issues of whether conversion may be performed on the high seas and whether a converted merchant ship may convert back to a merchant ship before the termination of the war.

During the First and Second World Wars, belligerents employed the practice of converting merchant ships into warships, but controversy remained over the place of conversion, the legitimacy of re-conversion, and the status of merchant ships which have not been openly converted. Moreover, the actions of belligerents during both wars challenged the traditional immunity of merchant ships from attack and destruction. To the extent that the non-combatant status

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of merchant ships is undermined, the practical relevance of a distinction between combatant and non-combatant ships is obviously reduced.

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. 146-50. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in: 3 *Martens NRG*, 3ème sér. (1862-1910) 557-79 (Fr. Ger.);
100 *BFSP* (1906-1907) 377-89 (Fr.);
UKTS 11 (1910), Cd. 5115 (Eng. Fr.);
CXII UKPP (1910) 125 (Eng. Fr.);
2 *AJIL* (1908) Supplement 133-8 (Eng. Fr.);
205 *CTS* (1907) 319-31 (Fr.)

Convention (VII) Relating to the Conversion of Merchant Ships into War-ships

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

Whereas it is desirable, in view of the incorporation in time of war of merchant ships in the fighting fleet, to define the conditions subject to which this operation may be effected;

Whereas, however, the contracting Powers have been unable to come to an agreement on the question whether the conversion of a merchant ship into a war-ship may take place upon the high seas, it is understood that the question of the place where such conversion is effected remains outside the scope of this agreement and is in no way affected by the following rules;

Being desirous of concluding a 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 provisions:

Article 1

A merchant ship converted into a war-ship can not have the rights and duties accruing to such vessels unless it is placed under the direct authority, immediate control, and responsibility of the Power whose flag it flies.

Article 2

Merchant ships converted into war-ships must bear the external marks which distinguish the war-ships of their nationality.

Article 3

The commander must be in the service of the State and duly commissioned by the competent authorities. His name must figure on the list of the officers of the fighting fleet.

Article 4

The crew must be subject to military discipline.

Article 5

Every merchant ship converted into a war-ship must observe in its operations the laws and customs of war.

Article 6

A belligerent who converts a merchant ship into a war-ship must, as soon as possible, announce such conversion in the list of war-ships.

Article 7

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 8

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 who 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 at once 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 9

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.

That 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, stating the date on which it received the notification.

Article 10

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 11

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 12

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 8, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 9, paragraph 2) or of denunciation (Article 11, 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.

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.

CONCLUDING NOTES

<i>Signatures, Ratifications, Accessions and Successions</i> ¹					
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	—		
Brazil	18 October	1907	5 January	1914	r
Bulgaria	18 October	1907	—		
Byelorussian SSR ²			4 June	1962	s
Chile	18 October	1907	—		
China			10 May	1917	a
Colombia	18 October	1907	—		
Cuba	18 October	1907	—		
Denmark	18 October	1907	27 November	1909	r
Ecuador	18 October	1907	—		
El Salvador	18 October	1907	27 November	1909	r
Ethiopia			5 August	1935	a
Fiji ²			2 April	1973	s
Finland ³			30 December	1918	a
France	18 October	1907	7 October	1910	r
Germany	18 October	1907	27 November	1909	r
German Democratic Republic ²			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
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

¹ Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981.

² 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.

³ The Depositary states that Finland's accession became effective on 9 June 1922. See above, p. 58, n. 6.

State (* denotes Reservation: see below)	Date of Signature		Date of Ratification (r), Accession (a), or Succession (s)	
Paraguay	18 October	1907	—	
Persia	18 October	1907	—	
Peru	18 October	1907	—	
Poland			31 May	1935 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 ²			10 March	1978 s
Spain	18 October	1907	18 March	1913 r
Sweden	18 October	1907	27 November	1909 r
Switzerland	18 October	1907	12 May	1910 r
*Turkey	18 October	1907	—	
USSR ²			7 March	1955 s
Venezuela	18 October	1907	—	

Total Number of Parties Listed: 34

Note on Entry into Force for States Parties

In accordance with Article 10, 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

Reservation⁴

Turkey, at signature, referred in its reservation to its declaration at the Conference on 9 October 1907: 'The Imperial Ottoman Government does not engage to recognize as vessels of war, ships which, being in its waters or on the high seas under a merchant flag, are converted on the opening of hostilities.' It did not ratify the Convention.

⁴ English version from J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907*, p. 150.

9. 1907 Hague Convention VIII Relative to the Laying of Automatic Submarine Contact Mines

PREFATORY NOTE

The employment of mines in naval warfare dates from at least the siege of Antwerp in 1584-5, but they were not used widely before the nineteenth century. During the Russo-Japanese War of 1904-5, mines which exploded through contact were laid near Port Arthur and resulted in extensive damage to neutral shipping, even after the war. These indiscriminate effects demonstrated the need for regulation of this kind of mine warfare.

At the Second Hague Peace Conference of 1907, the question of regulating the use of mines was raised with the hope of providing security for neutral shipping. Germany and other states objected to the British proposal that un-anchored automatic contact mines should simply be prohibited. Objection was also raised to the British proposal that the use of mines for establishing or maintaining a commercial blockade should be prohibited. The compromise which was reached was embodied in Hague Convention VIII. The Convention contains a 'general participation clause' (Article 7) which affects its technical application in hostilities where not all belligerents are parties to the Convention.

The regime thus established has come to be regarded as unsatisfactory. Although substantial limitations are imposed upon the use of automatic contact mines, the Convention (particularly through Articles 2 and 3) leaves a large measure of discretion to belligerents. Some have suggested that the effect has been to proscribe only minelaying of an openly indiscriminate nature. In this light, it should be noted that Great Britain signed and ratified the Convention subject to the reservation that the failure of the Convention to prohibit a particular act cannot be regarded as preventing Great Britain from contesting the legitimacy of any such act. Other states also entered reservations.

During the First and Second World Wars, there were numerous violations of the provisions of the Convention, which led belligerents to take certain actions, many of them justified as reprisals (such as the establishment of war zones and permanent minefields and the use of the so-called long-distance blockade). Moreover, the Second World War saw the introduction of newer types of mines (acoustic and magnetic) which did not require impact with the hull of a ship to explode.

Some suggest that the development of new types of mines not specifically addressed by the Convention weakens its relevance. Even if the Convention's principles could be applied by analogy to new types of mines, the practice of states in the two World Wars raises questions as to the extent to which the Convention remains relevant as an instrument of control in naval warfare. Moreover, some suggest that the Convention has actually provided belligerents with arguments which would otherwise have no justification.

Even if the value of the Convention is diminished, the more general principles

State (* denotes Reservation: see below)	Date of Signature		Date of Ratification (r), Accession (a), or Succession (s)	
Paraguay	18 October	1907	—	
Persia	18 October	1907	—	
Peru	18 October	1907	—	
Poland			31 May	1935 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 ²			10 March	1978 s
Spain	18 October	1907	18 March	1913 r
Sweden	18 October	1907	27 November	1909 r
Switzerland	18 October	1907	12 May	1910 r
*Turkey	18 October	1907	—	
USSR ²			7 March	1955 s
Venezuela	18 October	1907	—	

Total Number of Parties Listed: 34

Note on Entry into Force for States Parties

In accordance with Article 10, 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

Reservation⁴

Turkey, at signature, referred in its reservation to its declaration at the Conference on 9 October 1907: 'The Imperial Ottoman Government does not engage to recognize as vessels of war, ships which, being in its waters or on the high seas under a merchant flag, are converted on the opening of hostilities.' It did not ratify the Convention.

⁴English version from J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907*, p. 150.

9. 1907 Hague Convention VIII Relative to the Laying of Automatic Submarine Contact Mines

PREFATORY NOTE

The employment of mines in naval warfare dates from at least the siege of Antwerp in 1584-5, but they were not used widely before the nineteenth century. During the Russo-Japanese War of 1904-5, mines which exploded through contact were laid near Port Arthur and resulted in extensive damage to neutral shipping, even after the war. These indiscriminate effects demonstrated the need for regulation of this kind of mine warfare.

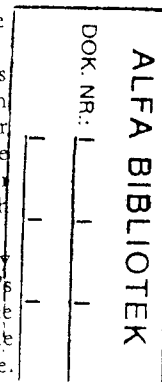
At the Second Hague Peace Conference of 1907, the question of regulating the use of mines was raised with the hope of providing security for neutral shipping. Germany and other states objected to the British proposal that un-anchored automatic contact mines should simply be prohibited. Objection was also raised to the British proposal that the use of mines for establishing or maintaining a commercial blockade should be prohibited. The compromise which was reached was embodied in Hague Convention VIII. The Convention contains a 'general participation clause' (Article 7) which affects its technical application in hostilities where not all belligerents are parties to the Convention.

The regime thus established has come to be regarded as unsatisfactory. Although substantial limitations are imposed upon the use of automatic contact mines, the Convention (particularly through Articles 2 and 3) leaves a large measure of discretion to belligerents. Some have suggested that the effect has been to proscribe only minelaying of an openly indiscriminate nature. In this light, it should be noted that Great Britain signed and ratified the Convention subject to the reservation that the failure of the Convention to prohibit a particular act cannot be regarded as preventing Great Britain from contesting the legitimacy of any such act. Other states also entered reservations.

During the First and Second World Wars, there were numerous violations of the provisions of the Convention, which led belligerents to take certain actions, many of them justified as reprisals (such as the establishment of war zones and permanent minefields and the use of the so-called long-distance blockade). Moreover, the Second World War saw the introduction of newer types of mines (acoustic and magnetic) which did not require impact with the hull of a ship to explode.

Some suggest that the development of new types of mines not specifically addressed by the Convention weakens its relevance. Even if the Convention's principles could be applied by analogy to new types of mines, the practice of states in the two World Wars raises questions as to the extent to which the Convention remains relevant as an instrument of control in naval warfare. Moreover, some suggest that the Convention has actually provided belligerents with arguments which would otherwise have no justification.

Even if the value of the Convention is diminished, the more general principles



of the laws of war relating to interference with neutral shipping remain as applicable to the use of mines as to other means of naval warfare.

With respect to the use of mines in land warfare, see Protocol I to the 1981 UN Weapons Convention.

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. 151-6. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in: 3 *Martens NRG*, 3^{ème} sér. (1862-1910) 580-603 (Fr. Ger.);
 100 *BFSP* (1906-1907) 389-401 (Fr.);
 UKTS 12 (1910), Cd. 5116 (Eng. Fr.);
 CXII *UKPP* (1910) 149 (Eng. Fr.);
 2 *AJIL* (1908) Supplement 138-45 (Eng. Fr.);
 205 *CTS* (1907) 331-44 (Fr.)

Convention (VIII) Relative to the Laying of Automatic Submarine Contact Mines

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

Inspired by the principle of the freedom of sea routes, the common highway of all nations;

Seeing that, although the existing position of affairs makes it impossible to forbid the employment of automatic submarine contact mines, it is nevertheless desirable to restrict and regulate their employment in order to mitigate the severity of war and to ensure, as far as possible, to peaceful navigation the security to which it is entitled, despite the existence of war;

Until such time as it is found possible to formulate rules on the subject which shall ensure to the interests involved all the guarantees desirable;

Have resolved to conclude a Convention for this purpose, and 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 provisions:

Article 1

It is forbidden —

1. To lay unanchored automatic contact mines, except when they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them;

2. To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

3. To use torpedoes which do not become harmless when they have missed their mark.

Article 2

It is forbidden to lay automatic contact mines off the coast and ports of the enemy, with the sole object of intercepting commercial shipping.

Article 3

When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless within a limited time, and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice addressed to ship owners, which must also be communicated to the Governments through the diplomatic channel.

Article 4

Neutral Powers which lay automatic contact mines off their coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral Power must inform ship owners, by a notice issued in advance, where automatic contact mines have been laid. This notice must be communicated at once to the Governments through the diplomatic channel.

Article 5

At the close of the war, the contracting Powers undertake to do their utmost to remove the mines which they have laid, each Power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the Power which laid them, and each Power must proceed with the least possible delay to remove the mines in its own waters.

Article 6

The contracting Powers which do not at present own perfected mines of the pattern contemplated in the present Convention, and which, consequently, could not at present carry out the rules laid down in Articles 1 and 3, undertake to convert the *matériel* of their mines as soon as possible, so as to bring it into conformity with the foregoing requirements.

Article 7

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 8

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 at once 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 inform them at the same time of the date on which it has received the notification.

Article 9

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, transmitting 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, stating the date on which it received the notification.

Article 10

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 adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

Article 11

The present Convention shall remain in force for seven years, dating from the sixtieth day after the date of the first deposit of ratifications.

Unless denounced, it shall continue in force after the expiration of this period.

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 Powers, informing them of the date on which it was received.

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

Article 12

The contracting Powers undertake to reopen the question of the employment of automatic contact mines six months before the expiration of the period contemplated in the first paragraph of the preceding article, in the event of the question not having been already reopened and settled by the Third Peace Conference.

If the contracting Powers conclude a fresh Convention relative to the employment of mines, the present Convention shall cease to be applicable from the moment it comes into force.

Article 13

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 8, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 9, paragraph 2) or of denunciation (Article 11, paragraph 3) 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.

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.

CONCLUDING NOTES

Signatures, Ratifications, Accessions, and Successions¹

State (*denotes Reservation etc.: 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	—	
Brazil	18 October	1907	5 January	1914 r
Bulgaria	18 October	1907	—	
Chile	18 October	1907	—	
China			10 May	1917 a
Colombia	18 October	1907	—	
Cuba	18 October	1907	—	
Denmark	18 October	1907	27 November	1909 r
*Dominican Republic	18 October	1907	—	
Ecuador	18 October	1907	—	
El Salvador	18 October	1907	27 November	1909 r
Ethiopia			5 August	1935 a
Fiji ²			2 April	1973 s
Finland ³			30 December	1918 a
*France	18 October	1907	7 October	1910 r
*Germany	18 October	1907	27 November	1909 r
*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
Luxembourg	18 October	1907	5 September	1912 r
Mexico	18 October	1907	27 November	1909 r
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	—	

¹Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981.

²By letter dated 1 April 1980 the Netherlands Ministry of Foreign Affairs confirmed that these cases constituted successions.

³The Depositary states that Finland's accession became effective on 9 June 1922. See above, p. 58, n. 6.

State (* denotes Reservation etc.: see below)	Date of Signature		Date of Ratification (r), Accession (a), or Succession (s)	
Romania	18 October	1907	1 March	1912 r
Serbia	18 October	1907	—	
*Siam	18 October	1907	12 March	1910 r
South Africa ²			10 March	1978 s
Switzerland	18 October	1907	12 May	1910 r
*Turkey	18 October	1907	—	
Uruguay	18 October	1907	—	
USA	18 October	1907	27 November	1909 r
Venezuela	18 October	1907	—	

Total Number of Parties Listed: 27

Note on Entry into Force for States Parties

In accordance with Article 10, 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 etc.⁴

All the following reservations were made at signature; and all were maintained at ratification, except in the two cases, which are noted, where states making reservations did not ratify.

Dominican Republic made reservation of Article 1, paragraph 1. It did not ratify the Convention.

France and Germany made reservation of Article 2.

Great Britain: '... the mere fact that this Convention does not prohibit a particular act or proceeding must not be held to debar His Britannic Majesty's Government from contesting its legitimacy.'

Siam made reservation of Article 1, paragraph 1.

Turkey referred in its reservation to its declarations at the Conference on 9 October 1907: 'The Imperial Ottoman delegation can not at the present time undertake any engagement whatever for perfected systems which are not yet universally known... Given the exceptional situation created by treaties in force of the straits of the Dardanelles and the Bosphorus, straits which are an integral part of the territory, the Imperial Government could not in any way subscribe to any undertaking tending to limit the means

⁴This list, based on information supplied by the Netherlands Ministry of Foreign Affairs, contains English versions from J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907*, p. 156.

of defence that it may deem necessary to employ for these straits in case of war or with the aim of causing its neutrality to be respected . . . The Imperial Ottoman delegation can not at the present time take part in any engagement as regards the conversion mentioned in Article 6.' Turkey did not ratify the Convention.

10. 1907 Hague Convention IX Concerning Bombardment by Naval Forces in Time of War

PREFATORY NOTE

In land warfare, the customary principle regarding bombardment (later codified in Article 25 of the Regulations annexed to both 1899 Hague Convention II and 1907 Hague Convention IV) prohibited the bombardment by land forces of undefended targets. The principle was based on the notion that an undefended target was open to immediate entry and occupation, and bombardment would only cause unnecessary destruction.

In naval warfare, it was recognized that enemy coastal targets which were defended could be bombarded by naval forces, whether such forces were acting in cooperation with a besieging army or independently. However, the question as to whether or not undefended coastal targets could be bombarded by naval forces remained controversial. Unlike in land warfare, the entry and occupation of undefended coastal targets by naval forces was relatively rare: however, the objective of eliminating an enemy's military resources remained.

At the meeting of the Institute of International Law held in Cambridge in 1895, a committee was appointed to examine the question of naval bombardment, and its report led the Institute in 1896 to adopt a body of rules which declared that the law of bombardment should be the same in both land and naval warfare. These rules were placed before states for their consideration, but were not accepted.

States failed to reach agreement on the subject at the First Hague Peace Conference of 1899, and deferred the matter to a later conference. At the Second Hague Peace Conference of 1907, the agreement reached on a regime to govern naval bombardment was embodied in Hague Convention IX. The Convention prohibits naval bombardment of undefended ports, towns, villages, dwellings or buildings, but (in implicit recognition of the different character of naval warfare) excludes from the prohibition coastal targets which represent a military objective or whose local authorities refuse to comply with legitimate requisitions for supplies necessary for the immediate use of the naval force. The Convention contains a 'general participation clause' (Article 8) which affects its technical application in hostilities where not all belligerents are parties to the Convention.

Hague Convention IX was first applied during the Turco-Italian War of 1911-12. During the First World War, the bombardment of English coastal towns by German naval forces was not in accordance with principles embodied in the Convention because the bombardment affected the civilian population and had no strictly military purpose. During the Second World War, the indiscriminate nature of some naval bombardments conducted by belligerents did not conform to the principles embodied in the Convention.

In the application of the Convention, the importance of determining whether or not a target represents a military objective is clear. It has been suggested

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In the application of the Convention, the importance of determining whether or not a target represents a military objective is clear. It has been suggested

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that, in view of subsequent developments, the list of military targets provided in the Convention may no longer be regarded as exhaustive. In this view, certain other targets (for example, communications systems) which belligerents have come to regard as capable of use for military purposes may also be subject to bombardment by naval forces.

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. 157-62. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in: 3 *Martens NRG*, 3^{ème} sér. (1862-1910) 604-29 (Fr. Ger.);
100 *BFSP* (1906-1907) 401-15 (Fr.);
UKTS 13 (1910), Cd. 5117 (Eng. Fr.);
CXII UKPP (1910) 173 (Eng. Fr.);
2 *AJIL* (1908) Supplement 146-53 (Eng. Fr.);
205 *CTS* (1907) 345-59 (Fr.)

Convention (IX) Concerning Bombardment by Naval Forces in Time of War

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

Animated by the desire to realize the wish expressed by the First Peace Conference respecting the bombardment by naval forces of undefended ports, towns, and villages;

Whereas it is expedient that bombardments by naval forces should be subject to rules of general application which would safeguard the rights of the inhabitants and assure the preservation of the more important buildings, by applying as far as possible to this operation of war the principles of the Regulation of 1899 respecting the laws and customs of land war;

Actuated, accordingly, by the desire to serve the interests of humanity and to diminish the severity and disasters of war;

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

[Here follow the names of the plenipotentiaries.]

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

CHAPTER I — The Embardment of Undefended Ports, Towns, Villages, Dwellings, or Buildings

Article 1

The bombardment by naval forces of undefended ports, towns, villages, dwellings, or buildings is forbidden.

A place cannot be bombarded solely because automatic submarine contact mines are anchored off the harbor.

Article 2

Military works, military or naval establishments, depots of arms or war *matériel*, workshops or plant which could be utilized for the needs of the hostile fleet or army, and the ships of war in the harbor, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable time of waiting, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed.

He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances.

If for military reasons immediate action is necessary, and no delay can be allowed the enemy, it is understood that the prohibition to bombard the undefended town holds good, as in the case given in paragraph 1, and that the commander shall take all due measures in order that the town may suffer as little harm as possible.

Article 3

Article 5
After due notice has been given, the bombardment of undefended ports, towns, villages, dwellings, or buildings may be commenced, if the local authorities, after a formal summons has been made to them, decline to comply with requisitions for provisions or supplies necessary for the immediate use of the naval force before the place in question.

These requisitions shall be in proportion to the resources of the place. They shall only be demanded in the name of the commander of the said naval force, and they shall, as far as possible, be paid for in cash; if not, they shall be evidenced by receipts.

Article 4

Undefended ports, towns, villages, dwellings, or buildings may not be bombarded on account of failure to pay money contributions.

CHAPTER II — *General Provisions*

Article 5

In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large, stiff rectangular panels divided diagonally into two colored triangular portions, the upper portion black, the lower portion white.

Article 6

If the military situation permits, the commander of the attacking naval force, before commencing the bombardment, must do his utmost to warn the authorities.

Article 7

A town or place, even when taken by storm, may not be pillaged.

CHAPTER III — *Final Provisions*

Article 8

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 9

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 of 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 at once 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 inform them at the same time of the date on which it received the notification.

Article 10

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere shall notify 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 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 11

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 that 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 12

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 13

A register kept by the Netherland Minister for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 9, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 10, paragraph 2) or of denunciation (Article 12, 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.

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.

CONCLUDING NOTES

Signatures, Ratifications, Accessions, and Successions¹

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 ²		4 June 1962 s
*Chile	18 October 1907	—
China		15 January 1910 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	—
Ecuador	18 October 1907	—
El Salvador	18 October 1907	27 November 1909 r
Ethiopia		5 August 1935 a
Fiji ²		2 April 1973 s
Finland ³		30 December 1918 a
*France	18 October 1907	7 October 1910 r
*Germany	18 October 1907	27 November 1909 r
German Democratic Republic ²		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
Luxembourg	18 October 1907	5 September 1912 r
Mexico	18 October 1907	27 November 1909 r

¹ Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981.

² 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.

³ The Depositary states that Finland's accession became effective on 9 June 1922. See above, p. 58, n. 6.

State (* denotes Reservation: see below)	Date of Signature	Date of Ratification (r), Accession (a), or Succession (s)
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		31 May 1935 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 ²		10 March 1978 s
Spain		24 February 1913 a
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 ²		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 11, 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

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

France, Germany, Great Britain, and Japan all, at signature, made reservation of Article 1, paragraph 2. At ratification, all of them maintained their reservations.

The customary immunity of hospital ships from capture was codified in 1899 Hague Convention III, 1907 Hague Convention X, and then in 1949 Geneva Convention II, which is the currently applicable agreement. The provisions on hospital ships of the 1949 Convention have been extended in Section II of 1977 Geneva Protocol I. (Note also that hospital ships are exempted from certain payments by the 1904 Hague Convention for the Exemption of Hospital Ships, in Time of War, from the Payment of All Dues and Taxes Imposed for the Benefit of the State, which is still in force.)

Hague Convention XI provides for the immunity of small coastal fishing or trading boats, and vessels on a scientific, religious or philanthropic mission, so long as the vessel pursues its normal functions, does not engage in hostilities, and does not serve the commercial interests of the enemy.

In many instances during both world wars, the customary immunity of small coastal fishing and trading boats was not observed in practice. In some cases, action taken against coastal vessels was attributable to the belligerent use of coastal vessels for intelligence purposes: by failing to restrict activity to innocent employment, such vessels thereby forfeited their immunity. The exemption from capture of religious, scientific and philanthropic vessels was interpreted very restrictively by belligerents, and any immunity of particular humanitarian vessels came to rely upon the express agreement of belligerents.

Crews of captured enemy merchant ships

During the nineteenth century, customary international law recognized that the captured officers and crews of enemy merchant ships could be made prisoners of war. Hague Convention XI contains provisions restricting this earlier customary practice by defining circumstances in which the captain and/or officers and/or crew cannot be made prisoners of war. During both world wars, the practice of interning officers and crews with enemy nationality, which frequently resulted in their being made prisoners of war, has diminished the significance of the Convention in that respect. However, in general belligerents have refrained from detaining officers and crews with neutral nationality so long as they have not participated in hostilities against the captor.

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. 182-7. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in: 3 *Martens NRG*, 3ème sér. (1862-1910) 663-87 (Fr. Ger.);
100 *BFSP* (1906-1907) 422-34 (Fr.);
UKTS 14 (1910), Cd. 5118 (Eng. Fr.);
CXII UKPP (1910) 199 (Eng. Fr.);
2 AJIL (1908) Supplement 167-74 (Eng. Fr.);
205 *CTS* (1907) 367-80 (Fr.)

Convention (XI) Relative to Certain Restrictions with Regard to the Exercise of the Right of Capture in Naval War

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

Recognizing the necessity of more effectively ensuring than hitherto the equitable application of law to the international relations of maritime Powers in time of war;

Considering that, for this purpose, it is expedient, in giving up or, if necessary, in harmonizing for the common interest certain conflicting practices of long standing, to commence codifying in regulations of general application the guarantees due to peaceful commerce and legitimate business, as well as the conduct of hostilities by sea; that it is expedient to lay down in written mutual engagements the principles which have hitherto remained in the uncertain domain of controversy or have been left to the discretion of Governments;

That, from henceforth, a certain number of rules may be made, without affecting the common law now in force with regard to the matters which that law has left unsettled;

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 provisions:

CHAPTER I — *Postal Correspondence*

Article 1

The postal correspondence of neutrals or belligerents, whatever its official or private character may be, found on the high seas on board a neutral or enemy ship, is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

The provisions of the preceding paragraph do not apply, in case of violation of blockade, to correspondence destined for or proceeding from a blockaded port.

Article 2

The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war as to neutral merchant ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

CHAPTER II — *The Exemption from Capture of Merchant Vessels*

Article 3

Vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo.

They cease to be exempt as soon as they take any part whatever in hostilities.

The contracting Powers agree not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance.

Article 4

Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.

CHAPTER III — *Regulations Regarding the Crews of Enemy Merchant Ships Captured by a Belligerent*

Article 5

When an enemy merchant ship is captured by a belligerent, such of its crew as are nationals of a neutral State are not made prisoners of war.

The same rule applies in the case of the captain and officers likewise nationals of a neutral State, if they promise formally in writing not to serve on an enemy ship while the war lasts.

Article 6

The captain, officers, and members of the crew, when nationals of the enemy State, are not made prisoners of war, on condition that they make a formal promise in writing, not to undertake, while hostilities last, any service connected with the operations of the war.

Article 7

The names of the persons retaining their liberty under the conditions laid down in Article 5, paragraph 2, and in Article 6, are notified by the belligerent captor to the other belligerent. The latter is forbidden knowingly to employ the said persons.

Article 8

The provisions of the three preceding articles do not apply to ships taking part in the hostilities.

CHAPTER I — *Final Provisions*

Article 9

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 10

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 taking part therein and by the Netherland Minister for Foreign Affairs.

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 at once 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 inform them at the same time of the date on which it received the notification.

Article 11

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 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 12

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 procès-verbal of that deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification has been received by the Netherland Government.

Article 13

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 14

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 10, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 11, paragraph 2) or of denunciation (Article 13, 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.

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 invited to the Second Peace Conference.

CONCLUDING NOTES

Signatures, Ratifications, Accessions, and Successions¹

State	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	—	
Brazil	18 October	1907	5 January 1914	r
Bulgaria	18 October	1907	—	
Chile	18 October	1907	—	
China			10 May 1917	a
Colombia	18 October	1907	—	
Cuba	18 October	1907	—	

¹ Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981.

State	Date of Signature		Date of Ratification (r), Accession (a), or Succession (s)	
Denmark	18 October	1907	27 November 1909	r
Dominican Republic	18 October	1907	—	
Ecuador	18 October	1907	—	
El Salvador	18 October	1907	27 November 1909	r
Ethiopia			5 August 1935	a
Fiji ²			2 April 1973	s
Finland ³			30 December 1918	a
France	18 October	1907	7 October 1910	r
Germany	18 October	1907	27 November 1909	r
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
Luxembourg	18 October	1907	5 September 1912	r
Mexico	18 October	1907	27 November 1909	r
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			31 May 1935	a
Portugal	18 October	1907	13 April 1911	r
Romania	18 October	1907	1 March 1912	r
Serbia	18 October	1907	—	
Siam	18 October	1907	12 March 1910	r
South Africa ²			10 March 1978	s
Spain	18 October	1907	18 March 1913	r
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
Venezuela	18 October	1907	—	

Total Number of Parties Listed: 31

² By letter dated 1 April 1980 the Netherlands Ministry of Foreign Affairs confirmed that these cases constituted successions.

³ The Depositary states that Finland's accession became effective on 9 June 1922. See above, p. 58, n. 6.

11. 1907 Hague Convention XI Relative to Certain Restrictions with Regard to the Exercise of the Right of Capture in Naval War

PREFATORY NOTE

This Convention deals with three aspects of capture in naval war: postal correspondence; the exemption from capture of certain vessels; and the treatment of crews of enemy merchant ships. The Convention contains a 'general participation clause' which affects its technical application in hostilities where not all belligerents are parties. To the extent that aspects of the Convention may be considered customary international law, those aspects would be applicable to all states and the Convention's 'general participation clause' (Article 9) would cease to be relevant.

Postal Correspondence

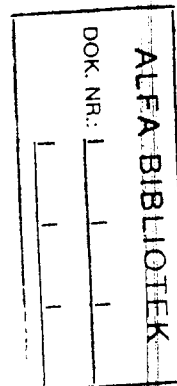
During the nineteenth century there was no general rule granting postal correspondence immunity from seizure. Any immunities resulted from bilateral treaties and were thereby restricted in application.

At the Second Hague Peace Conference of 1907, the status of postal correspondence in time of war was examined and made subject to regulation. Hague Convention XI provides for the immunity from capture of the postal correspondence (as distinct from parcel post) of neutrals or belligerents which may be found aboard a neutral or enemy ship on the high seas, providing that the mail is not on its way to or from a blockaded port. If the ship is detained, such postal correspondence must be forwarded with the least possible delay.

Although the articles in the Convention relating to postal correspondence are still technically binding, the practice of belligerents during the two world wars has reduced the significance of these provisions. In many cases, enemy merchant vessels were sunk without warning rather than seized, and as a result any correspondence they were carrying was destroyed. In other cases, the use of the mails to forward propaganda, war-related information, and contraband led to postal correspondence being subject to seizure, examination, and either censorship or confiscation. If states regard such practices as compatible with the Convention then the notion of 'inviolability', which is stressed in Articles 1 and 2, has clearly been qualified.

Exemption from capture of certain vessels

The capture of enemy vessels has traditionally been one of the most important means of conducting naval warfare. Customary international law recognized the right of capture, but imposed important restrictions: for example, an enemy warship or merchant ship within neutral jurisdiction was not liable to capture. There were also immunities of a more general nature, such as the exemption of certain types of vessel from capture. Small coastal fishing or trading boats as well as ships engaged in scientific discovery and research were regarded as immune from capture so long as they did not engage in hostilities.



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12. 1907 Hague Convention XIII Concerning the Rights and Duties of Neutral Powers in Naval War

PREFATORY NOTE

The general remarks on neutrality in the prefatory note to 1907 Hague Convention V on neutrality in land war are also germane to this Convention. Like 1907 Hague Convention V, this Convention was regarded at the time of its adoption as being largely declaratory of customary international law; and to the extent that this Convention may be considered customary international law, it would be binding on all states and its 'general participation clause' (Article 28) would cease to be relevant.

This Convention *inter alia* prohibits hostile acts by belligerents in neutral ports and waters, and in turn requires a neutral state to use the means at its disposal to prevent such acts.

However, in practice belligerents have occasionally departed from certain provisions of the Convention. For example, there have been several instances in which a belligerent has acted within neutral waters, claiming that this was done because the neutral state was unable or unwilling to assert its neutral rights as against the other belligerent. In addition, different interpretations regarding other neutral rights and duties have led to varying state practice. Despite these problems, however, the Convention has been widely referred to by both neutrals and belligerents in twentieth-century conflicts, including both world wars.

Certain other international agreements have a bearing on neutrality in naval war, including: 1856 Paris Declaration on maritime law, 1907 Hague Convention VII on the conversion of merchant ships, 1907 Hague Convention VIII on automatic submarine mines, 1907 Hague Convention XI on the right of capture, the unratified 1907 Hague Convention XII on an International Prize Court, the unratified 1909 Declaration of London on the laws of naval war, and 1949 Geneva Convention II on wounded, sick, and shipwrecked.

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. 209-19. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in: 3 *Martens NRG*, 3^{ème} sér. (1862-1910) 713-44 (Fr. Ger.);

Note on Entry into Force for States Parties

In accordance with Article 12, 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

None

100 *BFSP* (1906-1907) 448-54 (Fr.);
 2 *AJIL* (1908) Supplement 202-16 (Eng. Fr.);
 205 *CTS* (1907) 395-402 (Fr.)

Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War

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

With a view to harmonizing the divergent views which, in the event of naval war, are still held on the relations between neutral Powers and belligerent Powers, and to anticipating the difficulties to which such divergence of views might give rise;

Seeing that, even if it is not possible at present to concert measures applicable to all circumstances which may in practice occur, it is nevertheless undeniably advantageous to frame, as far as possible, rules of general application to meet the case where war has unfortunately broken out;

Seeing that, in cases not covered by the present Convention, it is expedient to take into consideration the general principles of the law of nations;

Seeing that it is desirable that the Powers should issue detailed enactments to regulate the results of the attitude of neutrality when adopted by them;

Seeing that it is, for neutral Powers, an admitted duty to apply these rules impartially to the several belligerents;

Seeing that, in this category of ideas, these rules should not, in principle, be altered, in the course of the war, by a neutral Power, except in a case where experience has shown the necessity for such change for the protection of the rights of that Power;

Have agreed to observe the following common rules, which can not however modify provisions laid down in existing general treaties, and have appointed as their plenipotentiaries, namely:

[Here follow the names of plenipotentiaries.]

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

Article 1

Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality.

Article 2

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.

Article 3

When a ship has been captured in the territorial waters of a neutral Power, this Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral Power, the captor Government, on the demand of that Power, must liberate the prize with its officers and crew.

Article 4

A prize court can not be set up by a belligerent on neutral territory or on a vessel in neutral waters.

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Article 5

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea.

Article 6

The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.

Article 7

A neutral Power is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

Article 8

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the said jurisdiction for use in war.

Article 9

A neutral Power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral Power may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or roadsteads.

Article 10

The neutrality of a Power is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

Article 11

A neutral Power may allow belligerent war-ships to employ its licensed pilots.

Article 12

In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

Article 13

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or roadsteads, or in its territorial waters, it must notify the said ship to depart within twenty-four hours or within the time prescribed by local regulations.

Article 14

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels may remain in neutral ports, roadsteads, or waters, do not apply to war-ships devoted exclusively to religious, scientific, or philanthropic purposes.

Article 15

In the absence of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that Power simultaneously shall be three.

Article 16

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant ship flying the flag of its adversary.

Article 17

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

Article 18

Belligerent war-ships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

Article 19

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

If, in accordance with the law of the neutral Power, the ships are not supplied with coal within twenty-four hours of their arrival, the permissible duration of their stay is extended by twenty-four hours.

Article 20

Belligerent war-ships which have shipped fuel in a port belonging to a neutral Power may not within the succeeding three months replenish their supply in a port of the same Power.

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Article 21

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

Article 22

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

Article 23

A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a Prize Court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

Article 24

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must, however, be always left on board.

The officers may be left at liberty on giving their word not to quit the neutral territory without permission.

Article 25

A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above articles occurring in its ports or roadsteads or in its waters.

Article 26

The exercise by a neutral Power of the rights laid down in the present Convention can under no circumstances be considered as an unfriendly act by one or other belligerent who has accepted the articles relating thereto.

Article 27

The contracting Powers shall communicate to each other in due course all laws, proclamations, and other enactments regulating in their respective countries the status of belligerent war-ships in their ports and waters, by means of a communication addressed to the Government of the Netherlands, and forwarded immediately by that Government to the other contracting Powers.

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Article 28

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 29

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 ratifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once 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 inform them at the same time of the date on which it received the notification.

Article 30

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.

That 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 31

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

Article 32

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, who 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 been made to the Netherland Government.

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Article 33

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made by Article 29, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 30, paragraph 2) or of denunciation (Article 32, paragraph 1) have been 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.

CONCLUDING NOTES

Signatures, Ratifications, Accessions, and Successions¹

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	—	
Brazil	18 October	1907	5 January	1914 r
Bulgaria	18 October	1907	—	
Byelorussian SSR ²			4 June	1962 s
Chile	18 October	1907	—	
*China			15 January	1910 a
Colombia	18 October	1907	—	
Denmark	18 October	1907	27 November	1909 r
*Dominican Republic	18 October	1907	—	
Ecuador	18 October	1907	—	
El Salvador	18 October	1907	27 November	1909 r
Ethiopia			5 August	1935 a
Finland ³			30 December	1918 a
France	18 October	1907	7 October	1910 r
*Germany	18 October	1907	27 November	1909 r
German Democratic Republic ²			9 February	1959 s
*Great Britain	18 October	1907	—	
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
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

¹ Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981.

² 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.

³ The Depositary states that Finland's accession became effective on 9 June 1922. See above, p. 58, n. 6.

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State (* denotes Reservation: see below)	Date of Signature	Date of Ratification (r), Accession (a), or Succession (s)
Paraguay	18 October 1907	--
*Persia	18 October 1907	--
Peru	18 October 1907	--
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
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		3 December 1909 a
USSR ²		7 March 1955 s
Venezuela	18 October 1907	--

Total Number of Parties Listed: 30

Note on Entry into Force for States Parties

In accordance with Article 31, 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

Reservations⁴

China, at accession, made reservation of Article 14, paragraph 2; Article 19, paragraph 3; and Article 27.

Dominican Republic, at signature, made reservation of Article 12. It did not ratify the Convention.

Germany, at signature, made reservation of Articles 11, 12, 13, and 20. At ratification, it maintained its reservation.

Great Britain, at signature, made reservation of Articles 19 and 23. It did not ratify the Convention.

Japan, at signature, made reservation of Articles 19 and 23. At ratification, it maintained its reservation.

Persia, at signature, made reservation of Articles 12, 19, and 21. It did not ratify the Convention.

⁴ This list, based on information supplied by the Netherlands Ministry of Foreign Affairs, contains English versions from J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907*, pp. 218-19.

Siam, at signature, made reservation of Articles 12, 19, and 23. At ratification, it maintained its reservation.

Turkey, at signature, referred in its reservation to its declaration at the Conference on 9 October 1907 concerning Article 10: 'The Ottoman delegation declares that the straits of the Dardanelles and the Bosphorus can not in any case be referred to by Article 10. The Imperial Government could undertake no engagement whatever tending to limit its undoubted rights over these straits.' It did not ratify the Convention.

USA, at accession: 'That the United States adheres to the said Convention, subject to the reservation and exclusion of its Article 23 and with the understanding that the last clause of Article 3 thereof implies the duty of a neutral power to make the demand therein mentioned for the return of a ship captured within the neutral jurisdiction and no longer within that jurisdiction.'

Note on Entry into Force for States Parties

In accordance with Article 12, 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

None

12. 1907 Hague Convention XIII Concerning the Rights and Duties of Neutral Powers in Naval War

PREFATORY NOTE

The general remarks on neutrality in the prefatory note to 1907 Hague Convention V on neutrality in land war are also germane to this Convention. Like 1907 Hague Convention V, this Convention was regarded at the time of its adoption as being largely declaratory of customary international law; and to the extent that this Convention may be considered customary international law, it would be binding on all states and its 'general participation clause' (Article 28) would cease to be relevant.

This Convention *inter alia* prohibits hostile acts by belligerents in neutral ports and waters, and in turn requires a neutral state to use the means at its disposal to prevent such acts.

However, in practice belligerents have occasionally departed from certain provisions of the Convention. For example, there have been several instances in which a belligerent has acted within neutral waters, claiming that this was done because the neutral state was unable or unwilling to assert its neutral rights as against the other belligerent. In addition, different interpretations regarding other neutral rights and duties have led to varying state practice. Despite these problems, however, the Convention has been widely referred to by both neutrals and belligerents in twentieth-century conflicts, including both world wars.

Certain other international agreements have a bearing on neutrality in naval war, including: 1856 Paris Declaration on maritime law, 1907 Hague Convention VII on the conversion of merchant ships, 1907 Hague Convention VIII on automatic submarine mines, 1907 Hague Convention XI on the right of capture, the unratified 1907 Hague Convention XII on an International Prize Court, the unratified 1909 Declaration of London on the laws of naval war, and 1949 Geneva Convention II on wounded, sick, and shipwrecked.

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. 209-19. (English translation by US Department of State, with minor corrections by J. B. Scott.)
Also published in: 3 Martens NRG, 3ème sér. (1862-1910) 713-44 (Fr. Ger.);

ALFA BIBLIOTEK

DOK. NR.:

100 *BFSP* (1906-1907) 448-54 (Fr.);
2 *AJIL* (1908) Supplement 202-16 (Eng. Fr.);
205 *CTS* (1907) 395-402 (Fr.)

Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War

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

With a view to harmonizing the divergent views which, in the event of naval war, are still held on the relations between neutral Powers and belligerent Powers, and to anticipating the difficulties to which such divergence of views might give rise;

Seeing that, even if it is not possible at present to concert measures applicable to all circumstances which may in practice occur, it is nevertheless undeniably advantageous to frame, as far as possible, rules of general application to meet the case where war has unfortunately broken out;

Seeing that, in cases not covered by the present Convention, it is expedient to take into consideration the general principles of the law of nations;

Seeing that it is desirable that the Powers should issue detailed enactments to regulate the results of the attitude of neutrality when adopted by them;

Seeing that it is, for neutral Powers, an admitted duty to apply these rules impartially to the several belligerents;

Seeing that, in this category of ideas, these rules should not, in principle, be altered, in the course of the war, by a neutral Power, except in a case where experience has shown the necessity for such change for the protection of the rights of that Power;

Have agreed to observe the following common rules, which can not however modify provisions laid down in existing general treaties, and have appointed as their plenipotentiaries, namely:

[Here follow the names of plenipotentiaries.]

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

Article 1

Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality.

Article 2

Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.

Article 3

When a ship has been captured in the territorial waters of a neutral Power, this Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral Power, the captor Government, on the demand of that Power, must liberate the prize with its officers and crew.

Article 4

A prize court can not be set up by a belligerent on neutral territory or on a vessel in neutral waters.

Article 5

Belligerents are forbidden to use neutral ports and waters as a base of naval operations against their adversaries, and in particular to erect wireless telegraphy stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea.

Article 6

The supply, in any manner, directly or indirectly, by a neutral Power to a belligerent Power, of war-ships, ammunition, or war material of any kind whatever, is forbidden.

Article 7

A neutral Power is not bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which could be of use to an army or fleet.

Article 8

A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that Government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the said jurisdiction for use in war.

Article 9

A neutral Power must apply impartially to the two belligerents the conditions, restrictions, or prohibitions made by it in regard to

the admission into its ports, roadsteads, or territorial waters, of belligerent war-ships or of their prizes.

Nevertheless, a neutral Power may forbid a belligerent vessel which has failed to conform to the orders and regulations made by it, or which has violated neutrality, to enter its ports or roadsteads.

Article 10

The neutrality of a Power is not affected by the mere passage through its territorial waters of war-ships or prizes belonging to belligerents.

Article 11

A neutral Power may allow belligerent war-ships to employ its licensed pilots.

Article 12

In the absence of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

Article 13

If a Power which has been informed of the outbreak of hostilities learns that a belligerent war-ship is in one of its ports or roadsteads, or in its territorial waters, it must notify the said ship to depart within twenty-four hours or within the time prescribed by local regulations.

Article 14

A belligerent war-ship may not prolong its stay in a neutral port beyond the permissible time except on account of damage or stress of weather. It must depart as soon as the cause of the delay is at an end.

The regulations as to the question of the length of time which these vessels may remain in neutral ports, roadsteads, or waters, do not apply to war-ships devoted exclusively to religious, scientific, or philanthropic purposes.

Article 15

In the absence of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war-ships belonging to a belligerent which may be in one of the ports or roadsteads of that Power simultaneously shall be three.

Article 16

When war-ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war-ship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant ship flying the flag of its adversary.

Article 17

In neutral ports and roadsteads belligerent war-ships may only carry out such repairs as are absolutely necessary to render them seaworthy, and may not add in any manner whatsoever to their fighting force. The local authorities of the neutral Power shall decide what repairs are necessary, and these must be carried out with the least possible delay.

Article 18

Belligerent war-ships may not make use of neutral ports, roadsteads, or territorial waters for replenishing or increasing their supplies of war material or their armament, or for completing their crews.

Article 19

Belligerent war-ships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard.

Similarly these vessels may only ship sufficient fuel to enable them to reach the nearest port in their own country. They may, on the other hand, fill up their bunkers built to carry fuel, when in neutral countries which have adopted this method of determining the amount of fuel to be supplied.

If, in accordance with the law of the neutral Power, the ships are not supplied with coal within twenty-four hours of their arrival, the permissible duration of their stay is extended by twenty-four hours.

Article 20

Belligerent war-ships which have shipped fuel in a port belonging to a neutral Power may not within the succeeding three months replenish their supply in a port of the same Power.

Article 21

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral Power must order it to leave at once; should it fail to obey, the neutral Power must employ the means at its disposal to release it with its officers and crew and to intern the prize crew.

Article 22

A neutral Power must, similarly, release a prize brought into one of its ports under circumstances other than those referred to in Article 21.

Article 23

A neutral Power may allow prizes to enter its ports and roadsteads, whether under convoy or not, when they are brought there to be sequestered pending the decision of a Prize Court. It may have the prize taken to another of its ports.

If the prize is convoyed by a war-ship, the prize crew may go on board the convoying ship.

If the prize is not under convoy, the prize crew are left at liberty.

Article 24

If, notwithstanding the notification of the neutral Power, a belligerent ship of war does not leave a port where it is not entitled to remain, the neutral Power is entitled to take such measures as it considers necessary to render the ship incapable of taking the sea during the war, and the commanding officer of the ship must facilitate the execution of such measures.

When a belligerent ship is detained by a neutral Power, the officers and crew are likewise detained.

The officers and crew thus detained may be left in the ship or kept either on another vessel or on land, and may be subjected to the measures of restriction which it may appear necessary to impose upon them. A sufficient number of men for looking after the vessel must, however, be always left on board.

The officers may be left at liberty on giving their word not to quit the neutral territory without permission.

Article 25

A neutral Power is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of the provisions of the above articles occurring in its ports or roadsteads or in its waters.

Article 26

The exercise by a neutral Power of the rights laid down in the present Convention can under no circumstances be considered as an unfriendly act by one or other belligerent who has accepted the articles relating thereto.

Article 27

The contracting Powers shall communicate to each other in due course all laws, proclamations, and other enactments regulating in their respective countries the status of belligerent war-ships in their ports and waters, by means of a communication addressed to the Government of the Netherlands, and forwarded immediately by that Government to the other contracting Powers.

Article 28

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 29

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 ratifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be at once 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 inform them at the same time of the date on which it received the notification.

Article 30

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.

That 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 31

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

Article 32

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, who 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 been made to the Netherland Government.

Article 33

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made by Article 29, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 30, paragraph 2) or of denunciation (Article 32, paragraph 1) have been 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.

CONCLUDING NOTES

<i>Signatures, Ratifications, Accessions, and Successions¹</i>				
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	—	
Brazil	18 October	1907	5 January	1914 r
Bulgaria	18 October	1907	—	
Byelorussian SSR ²			4 June	1962 s
Chile	18 October	1907	—	
*China			15 January	1910 a
Colombia	18 October	1907	—	
Denmark	18 October	1907	27 November	1909 r
*Dominican Republic	18 October	1907	—	
Ecuador	18 October	1907	—	
El Salvador	18 October	1907	27 November	1909 r
Ethiopia			5 August	1935 a
Finland ³			30 December	1918 a
France	18 October	1907	7 October	1910 r
*Germany	18 October	1907	27 November	1909 r
German Democratic Republic ²			9 February	1959 s
*Great Britain	18 October	1907	—	
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
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

¹ Information supplied in communications from the Netherlands Ministry of Foreign Affairs between December 1979 and April 1981.

² 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.

³ The Depositary states that Finland's accession became effective on 9 June 1922. See above, p. 58, n. 6.

State (* denotes Reservation: see below)	Date of Signature		Date of Ratification (r), Accession (a), or Succession (s)			
Paraguay	18 October	1907	—			
*Persia	18 October	1907	—			
Peru	18 October	1907	—			
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	
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			3 December	1909	a	
USSR ²			7 March	1955	s	
Venezuela	18 October	1907	—			

Total Number of Parties Listed: 30

Note on Entry into Force for States Parties

In accordance with Article 31, 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

Reservations⁴

China, at accession, made reservation of Article 14, paragraph 2; Article 19, paragraph 3; and Article 27.

Dominican Republic, at signature, made reservation of Article 12. It did not ratify the Convention.

Germany, at signature, made reservation of Articles 11, 12, 13, and 20. At ratification, it maintained its reservation.

Great Britain, at signature, made reservation of Articles 19 and 23. It did not ratify the Convention.

Japan, at signature, made reservation of Articles 19 and 23. At ratification, it maintained its reservation.

Persia, at signature, made reservation of Articles 12, 19, and 21. It did not ratify the Convention.

⁴ This list, based on information supplied by the Netherlands Ministry of Foreign Affairs, contains English versions from J. B. Scott (ed.), *The Hague Conventions and Declarations of 1899 and 1907*, pp. 218-19.

Siam, at signature, made reservation of Articles 12, 19, and 23. At ratification, it maintained its reservation.

Turkey, at signature, referred in its reservation to its declaration at the Conference on 9 October 1907 concerning Article 10: 'The Ottoman delegation declares that the straits of the Dardanelles and the Bosphorus can not in any case be referred to by Article 10. The Imperial Government could undertake no engagement whatever tending to limit its undoubted rights over these straits.' It did not ratify the Convention.

USA, at accession: 'That the United States adheres to the said Convention, subject to the reservation and exclusion of its Article 23 and with the understanding that the last clause of Article 3 thereof implies the duty of a neutral power to make the demand therein mentioned for the return of a ship captured within the neutral jurisdiction and no longer within that jurisdiction.'

13. 1923 Hague Rules of Aerial Warfare

PREFATORY NOTE

The 1923 Hague Draft Rules were never adopted in legally binding form, but at the time of their conclusion they were regarded as an authoritative attempt to clarify and formulate rules of air warfare, and largely corresponded to customary rules and general principles underlying the laws of war on land and at sea.

Apart from siege warfare, bombing from the air is probably the form of warfare which most directly affects non-combatants. Yet (except for the 1907 Hague Declaration on balloons, which is of limited value) there is in fact no single international agreement in force which exclusively addresses either air warfare in general or bombing in particular. However, many binding international agreements, adopted both before and since the 1923 Hague Draft Rules, have a considerable bearing on the subject.

The first codifications of rules of air warfare were the 1899 and 1907 Hague Declarations relating to balloons. 1899 Hague Declaration I, prohibiting the launching of projectiles and explosives from balloons and other methods of a similar nature, entered into force in 1900 but, in accordance with its terms, expired after five years. It was replaced by the similar 1907 Hague Declaration (XIV) prohibiting the discharge of projectiles and explosives from balloons, which entered into force in 1909 and is still technically binding. However, the 1907 Declaration is of relatively minor contemporary significance. First, many important states (including France, Germany, Italy, Japan and Russia) never signed or acceded to it; and in 1942 one of the two great powers bound under it, the USA, announced that it would not observe its terms. (Like 1899 Hague Declaration I, the 1907 Hague Declaration on balloons contains a 'general participation clause' which affects its technical application in hostilities where not all belligerents are parties.) Second, state practice has further reduced the significance of the 1907 Declaration: during the 1911-12 Turco-Italian War, Italy employed balloons to spot and bomb enemy troops; during the First World War dirigibles and aircraft were employed; and during the Second World War aircraft were used on an unprecedented scale, and in 1944-5 Japan sent some balloons carrying small bombs over the USA. Third, although the Declaration does contain a reference to 'other new methods of a similar nature' which can be interpreted as including aircraft, its particular reference to balloons is now more or less obsolete.

In addition to the 1899 and 1907 Hague Declarations on balloons, the Regulations annexed to both 1899 Hague Convention II and 1907 Hague Convention IV make brief reference to air warfare. In Articles 29 and 53 the reference is explicit, and in Articles 25, 26, and 27 it is implied.

The subject of air warfare was further considered at the meeting of the Institute of International Law held in Madrid in 1911. The Institute recommended that air warfare must not pose a greater danger to the civilian population than land or sea warfare, but this was not acted upon by states.

The experience of the First World War demonstrated the need for air warfare to be regulated by a comprehensive code, but the heightened awareness of the

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military potential of aircraft was a serious obstacle to reaching agreement. Article 38 of the 1919 Paris Aerial Navigation Convention left all parties with complete freedom of action in time of war, and the 1921-2 Washington Conference on the Limitation of Armament failed to produce an agreement on air warfare. States represented at the Washington Conference did agree to appoint a Commission of Jurists (composed of representatives of the USA, Great Britain, France, Italy, Japan, and the Netherlands, and under the chairmanship of John Bassett Moore of the USA) to study the subject and to report its conclusions to each of the governments represented in its membership.

The Commission met in The Hague, and in February 1923 adopted a General Report on the Revision of the Rules of Warfare, Part II of which was the Rules of Aerial Warfare. (Part I was the Rules for the Control of Radio in Time of War.) The USA proposed that the draft rules be incorporated into a treaty for general acceptance, but these rules were never adopted in legally binding form.

The most important provisions may be those relating to bombing, particularly the principle that aerial bombardment to terrorize the civilian population or destroy and damage private property is prohibited. In the period following the Commission's Report, several states announced that they would comply with the regime.

Shortly after the formulation of the Hague Draft Rules, an important agreement having a bearing on air warfare was concluded: the 1925 Geneva Protocol on gas and bacteriological warfare. At the 1932-4 Geneva Disarmament Conference the issue of air warfare was discussed; although the General Commission of the Conference adopted a resolution on air bombardment, no binding agreement was reached. The 1936 London Procès-Verbal on submarine warfare against merchant ships was regarded by various states as also being applicable to military aircraft in operations against merchant shipping.

Before the Second World War, the actions of the Italian air force during the invasion of Ethiopia, the German air force during the Spanish civil war, and the Japanese air force during the invasion of China, demonstrated the need for binding rules on air bombardment. On 21 June 1938 the British Prime Minister, Neville Chamberlain, enunciated in the House of Commons three fundamental principles of international law applicable to warfare from the air: (1) direct attack against the civilian population is unlawful; (2) targets for air bombardment must be legitimate, identifiable military objectives; and (3) reasonable care must be taken in attacking military objectives to avoid bombardment of a civilian population in the neighbourhood. These principles were embodied in a resolution which the League of Nations Assembly unanimously adopted on 30 September 1938.

During the Second World War, the practice of indiscriminate bombardment seriously challenged the application of the most fundamental principles developed in respect of air warfare. To the extent that such practices continue, the significance of certain principles embodied in the 1923 Hague Draft Rules will be called into greater question.

In the period since the Second World War, certain provisions of other international agreements (for example, the four 1949 Geneva Conventions, the 1954 Hague Cultural Property Convention, 1977 Geneva Protocol I, and the 1981 UN Weapons Convention) have expressly or impliedly addressed particular aspects of air warfare.

The fact remains that, unlike either land or sea warfare, there is no formally binding agreement which exclusively addresses air warfare. However, in addition

to the various treaty articles which do relate to air warfare, certain general principles underlying the laws of war are considered to be applicable in air warfare, even if in practice their application is not free from difficulty.

The text reproduced here consists of the draft articles only, without the commentary which accompanied them. Complete versions of the commentary are to be found in the sources listed under 'Also published in' below.

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 XXVII *UKPP* (1924) 1017 (Eng.);
 32 *AJIL* (1938) Supplement 12-56 (Eng.)

Rules of Aerial Warfare

CHAPTER I — *Applicability: Classification and Marks*

Article 1

The rules of aerial warfare apply to all aircraft, whether lighter or heavier than air, irrespective of whether they are, or are not, capable of floating on the water.

Article 2

The following shall be deemed to be public aircraft:

- (a) military aircraft;
- (b) non-military aircraft exclusively employed in the public service.

All other aircraft shall be deemed to be private aircraft.

Article 3

A military aircraft shall bear an external mark indicating its nationality and military character.

Article 4

A public non-military aircraft employed for customs or police purposes shall carry papers evidencing the fact that it is exclusively employed in the public service. Such an aircraft shall bear an external mark indicating its nationality and its public non-military character.

Article 5

Public non-military aircraft other than those employed for customs or police purposes shall in time of war bear the same external marks, and for the purposes of these rules shall be treated on the same footing, as private aircraft.

Article 6

Aircraft not comprised in Articles 3 and 4 and deemed to be private aircraft shall carry such papers and bear such external marks as are required by the rules in force in their own country. These marks must indicate their nationality and character.

Article 7

The external marks required by the above articles shall be so affixed that they cannot be altered in flight. They shall be as large as is practicable and shall be visible from above, from below and from each side.

Article 8

The external marks, prescribed by the rules in force in each state, shall be notified promptly to all other Powers.

Modifications adopted in time of peace of the rules prescribing external marks shall be notified to all other Powers before they are brought into force.

Modifications of such rules adopted at the outbreak of war or during hostilities shall be notified by each Power as soon as possible to all other Powers and at latest when they are communicated to its own fighting forces.

Article 9

A belligerent non-military aircraft, whether public or private, may be converted into a military aircraft, provided that the conversion is effected within the jurisdiction of the belligerent state to which the aircraft belongs and not on the high seas.

Article 10

No aircraft may possess more than one nationality.

CHAPTER II — *General Principles*

Article 11

Outside the jurisdiction of any state, belligerent or neutral, all aircraft shall have full freedom of passage through the air and of alighting.

Article 12

In time of war any state, whether belligerent or neutral, may forbid or regulate the entrance, movement or sojourn of aircraft within its jurisdiction.

CHAPTER III — *Belligerents*

Article 13

Military aircraft are alone entitled to exercise belligerent rights.

Article 14

A military aircraft shall be under the command of a person duly commissioned or enlisted in the military service of the state; the crew must be exclusively military.

Article 15

Members of the crew of a military aircraft shall wear a fixed distinctive emblem of such character as to be recognizable at a distance in case they become separated from their aircraft.

Article 16

No aircraft other than a belligerent military aircraft shall engage in hostilities in any form.

The term 'hostilities' includes the transmission during flight of military intelligence for the immediate use of a belligerent.

No private aircraft, when outside the jurisdiction of its own country, shall be armed in time of war.

Article 17

The principles laid down in the Geneva Convention, 1906, and the convention for the Adaptation of the said Convention to Maritime War (No. X of 1907) shall apply to aerial warfare and to flying ambulances, as well as to the control over flying ambulances exercised by a belligerent commanding officer.

In order to enjoy the protection and privileges allowed to mobile medical units by the Geneva Convention, 1906, flying ambulances must bear the distinctive emblem of the Red Cross in addition to the usual distinguishing marks.

CHAPTER IV — *Hostilities*

Articles 18

The use of tracer, incendiary or explosive projectiles by or against aircraft is not prohibited.

This provision applies equally to states which are parties to the Declaration of St'Petersburg, 1868, and to those which are not.

Article 19

The use of false external marks is forbidden.

Article 20

When an aircraft has been disabled, the occupants when endeavoring to escape by means of a parachute must not be attacked in the course of their descent.

Article 21

The use of aircraft for the purpose of disseminating propaganda shall not be treated as an illegitimate means of warfare.

Members of the crews of such aircraft must not be deprived of their rights as prisoners of war on the charge that they have committed such an act.

*Bombardment**Article 22*

Aerial bombardment for the purpose of terrorizing the civilian population, of destroying or damaging private property not of military character, or of injuring non-combatants is prohibited.

Article 23

Aerial bombardment for the purpose of enforcing compliance with requisitions in kind or payment of contributions in money is prohibited.

Article 24

(1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

(2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition or distinctively military supplies; lines of communication or transportation used for military purposes.

(3) The bombardment of cities, towns, villages, dwellings or buildings not in the immediate neighborhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph 2 are so situated, that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

(4) In the immediate neighborhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important

to justify such bombardment, having regard to the danger thus caused to the civilian population.

(5) A belligerent state is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article.

Article 25

In bombardment by aircraft, all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are collected, provided such buildings, objects or places are not at the time used for military purposes. Such buildings, objects and places must by day be indicated by marks visible to aircraft. The use of marks to indicate other buildings, objects, or places than those specified above is to be deemed an act of perfidy. The marks used as aforesaid shall be in the case of buildings protected under the Geneva Convention the red cross on a white ground, and in the case of other protected buildings a large rectangular panel divided diagonally into two pointed triangular portions, one black and the other white.

A belligerent who desires to secure by night the protection for the hospitals and other privileged buildings above mentioned must take the necessary measures to render the special signs referred to sufficiently visible.

Article 26

The following special rules are adopted for the purpose of enabling states to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and a surrounding zone for military purposes, and to accept a special régime for their inspection.

(1) A state shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall in time of war enjoy immunity from bombardment.

(2) The monuments round which a zone is to be established shall be notified to other Powers in peace time through the diplomatic channel; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.

(3) The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not exceeding 500 metres in width, measured from the circumference of the said area.

(4) Marks clearly visible from aircraft either by day or by night

will be employed for the purpose of ensuring the identification by belligerent airmen of the limits of the zones.

(5) The marks on the monuments themselves will be those defined in Article 25. The marks employed for indicating the surrounding zones will be fixed by each state adopting the provisions of this article, and will be notified to other Powers at the same time as the monuments and zones are notified.

(6) Any abusive use of the marks indicating the zones referred to in paragraph 5 will be regarded as an act of perfidy.

(7) A state adopting the provisions of this article must abstain from using the monument and the surrounding zone for military purposes, or for the benefit in any way whatever of its military organization, or from committing within such monument or zone any act with a military purpose in view.

(8) An inspection committee consisting of three neutral representatives accredited to the state adopting the provisions of this article, or their delegates, shall be appointed for the purpose of ensuring that no violation is committed of the provisions of paragraph 7. One of the members of the committee of inspection shall be the representative (or his delegate) of the state to which has been entrusted the interests of the opposing belligerent.

Espionage

Article 27

Any person on board a belligerent or neutral aircraft is to be deemed a spy only if acting clandestinely or on false pretences he obtains or seeks to obtain, while in the air, information within belligerent jurisdiction or in the zone of operations of a belligerent with the intention of communicating it to the hostile party.

Article 28

Acts of espionage committed after leaving the aircraft by members of the crew of an aircraft or by passengers transported by it are subject to the provisions of the Land Warfare Regulations.

Article 29

Punishment of the acts of espionage referred to in Articles 27 and 28 is subject to Articles 30 and 31 of the Land Warfare Regulations.

CHAPTER V — Military Authority over Enemy and Neutral Aircraft and Persons on Board

Article 30

In case a belligerent commanding officer considers that the presence

of aircraft is likely to prejudice the success of the operations in which he is engaged at the moment, he may prohibit the passing of neutral aircraft in the immediate vicinity of his forces or may oblige them to follow a particular route. A neutral aircraft which does not conform to such directions, of which it has had notice issued by the belligerent commanding officer, may be fired upon.

Article 31

In accordance with the principles of Article 53 of the Land Warfare Regulations, neutral private aircraft found upon entry in the enemy's jurisdiction by a belligerent occupying force may be requisitioned, subject to the payment of full compensation.

Article 32

Enemy public aircraft, other than those treated on the same footing as private aircraft, shall be subject to confiscation without prize proceedings.

Article 33

Belligerent non-military aircraft, whether public or private, flying within the jurisdiction of their own state, are liable to be fired upon unless they make the nearest available landing on the approach of enemy military aircraft.

Article 34

Belligerent non-military aircraft, whether public or private, are liable to be fired upon, if they fly (1) within the jurisdiction of the enemy, or (2) in the immediate vicinity thereof and outside the jurisdiction of their own state or (3) in the immediate vicinity of the military operations of the enemy by land or sea.

Article 35

Neutral aircraft flying within the jurisdiction of a belligerent, and warned of the approach of military aircraft of the opposing belligerent, must make the nearest available landing. Failure to do so exposes them to the risk of being fired upon.

Article 36

When an enemy military aircraft falls into the hands of a belligerent, the members of the crew and the passengers, if any, may be made prisoners of war.

The same rule applies to the members of the crew and the passengers, if any, of an enemy public non-military aircraft, except that in the case of public non-military aircraft devoted exclusively to the transport of passengers, the passengers will be entitled to be released unless they are in the service of the enemy, or are enemy nationals fit for military service.

CHAPTER 1 — *Belligerent Duties towards Neutral States
and Neutral Duties towards Belligerent States*

If an enemy private aircraft falls into the hands of a belligerent, members of the crew who are enemy nationals or who are neutral nationals in the service of the enemy, may be made prisoners of war. Neutral members of the crew, who are not in the service of the enemy, are entitled to be released if they sign a written undertaking not to serve in any enemy aircraft while hostilities last. Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerent so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

The names of individuals released after giving a written undertaking in accordance with the third paragraph of this article will be notified to the opposing belligerent, who must not knowingly employ them in violation of their undertaking.

Article 37

Members of the crew of a neutral aircraft which has been detained by a belligerent shall be released unconditionally, if they are neutral nationals and not in the service of the enemy. If they are enemy nationals or in the service of the enemy, they may be made prisoners of war.

Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerent so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

Article 38

Where under the provisions of Articles 36 and 37 it is provided that members of the crew or passengers may be made prisoners of war, it is to be understood that, if they are not members of the armed forces, they shall be entitled to treatment not less favourable than that accorded to prisoners of war.

Article 39

Belligerent aircraft are bound to respect the rights of neutral Powers and to abstain within the jurisdiction of a neutral state from the commission of any act which it is the duty of that state to prevent.

Article 40

Belligerent military aircraft are forbidden to enter the jurisdiction of a neutral state.

Article 41

Aircraft on board vessels of war, including aircraft-carriers, shall be regarded as part of such vessel.

Article 42

A neutral government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft and to compel them to alight if they have entered such jurisdiction.

A neutral government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted for any reason whatsoever, together with its crew and the passengers, if any.

Article 43

The personnel of a disabled belligerent military aircraft rescued outside neutral waters and brought into the jurisdiction of a neutral state by a neutral military aircraft and there landed shall be interned.

Article 44

The supply in any manner, directly or indirectly, by a neutral government to a belligerent Power of aircraft, parts of aircraft, or material, supplies or munitions required for aircraft is forbidden.

Article 45

Subject to the provisions of Article 46, a neutral Power is not bound to prevent the export or transit on behalf of a belligerent of aircraft, parts of aircraft, or material, supplies or munitions for aircraft.

Article 46

A neutral government is bound to use the means at its disposal:

(1) To prevent the departure from its jurisdiction of an aircraft in a condition to make a hostile attack against a belligerent Power, or carrying or accompanied by appliances or materials the mounting

or utilization of which would enable it to make a hostile attack, if there is reason to believe that such aircraft is destined for use against a belligerent Power;

(2) To prevent the departure of an aircraft the crew of which includes any member of the combatant forces of a belligerent Power;

(3) To prevent work upon an aircraft designed to prepare it to depart in contravention of the purposes of this article.

On the departure by air of any aircraft despatched by persons or companies in neutral jurisdiction to the order of a belligerent Power, the neutral government must prescribe for such aircraft a route avoiding the neighborhood of the military operations of the opposing belligerent, and must exact whatever guarantees may be required to ensure that the aircraft follows the route prescribed.

Article 47

A neutral state is bound to take such steps as the means at its disposal permit to prevent within its jurisdiction aerial observation of the movements, operations or defenses of one belligerent, with the intention of informing the other belligerent.

This provision applies equally to a belligerent military aircraft on board a vessel of war.

Article 48

The action of a neutral Power in using force or other means at its disposal in the exercise of its rights or duties under these rules cannot be regarded as a hostile act.

CHAPTER VII — *Visit and Search, Capture and Condemnation*

Article 49

Private aircraft are liable to visit and search and to capture by belligerent military aircraft.

Article 50

Belligerent military aircraft have the right to order public non-military and private aircraft to alight in or proceed for visit and search to a suitable locality reasonably accessible.

Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination exposes an aircraft to the risk of being fired upon.

Article 51

Neutral public non-military aircraft, other than those which are to be treated as private aircraft, are subject only to visit for the purpose of the verification of their papers.

Article 52

Enemy private aircraft are liable to capture in all circumstances.

Article 53

A neutral private aircraft is liable to capture if it:

- (a) resists the legitimate exercise of belligerent rights;
- (b) violates a prohibition of which it has had notice issued by a belligerent commanding officer under Article 30;
- (c) is engaged in unneutral service;
- (d) is armed in time of war when outside the jurisdiction of its own country;
- (e) has no external marks or uses false marks;
- (f) has no papers or insufficient or irregular papers;
- (g) is manifestly out of the line between the point of departure and the point of destination indicated in its papers and after such enquiries as the belligerent may deem necessary, no good cause is shown for the deviation. The aircraft, together with its crew and passengers, if any, may be detained by the belligerent, pending such enquiries.

(h) carries, or itself constitutes, contraband of war;

(i) is engaged in breach of a blockade duly established and effectively maintained;

(k) has been transferred from belligerent to neutral nationality at a date and in circumstances indicating an intention of evading the consequences to which an enemy aircraft, as such, is exposed.

Provided that in each case, (except k), the ground for capture shall be an act carried out in the flight in which the neutral aircraft came into belligerent hands, i.e. since it left its point of departure and before it reached its point of destination.

Article 54

The papers of a private aircraft will be regarded as insufficient or irregular if they do not establish the nationality of the aircraft and indicate the names and nationalities of the crew and passengers, the points of departure and destination of the flight, together with particulars of the cargo and the conditions under which it is transported. The logs must also be included.

Article 55

Capture of an aircraft or of goods on board an aircraft shall be made the subject of prize proceedings, in order that any neutral claim may be duly heard and determined.

Article 56

A private aircraft captured upon the ground that it has no external

marks or is using false marks, or that it is armed in time of war outside the jurisdiction of its own country, is liable to condemnation.

A neutral private aircraft captured upon the ground that it has disregarded the direction of a belligerent commanding officer under Article 30 is liable to condemnation, unless it can justify its presence within the prohibited zone.

In all other cases, the prize court in adjudicating upon any case of capture of an aircraft or its cargo, or of postal correspondence on board an aircraft, shall apply the same rules as would be applied to a merchant vessel or its cargo or to postal correspondence on board a merchant vessel.

Article 57

Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent commanding officer finds it necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been preserved.

Article 58

Private aircraft which are found upon visit and search to be neutral aircraft liable to condemnation upon the ground of un-neutral service, or upon the ground that they have no external marks or are bearing false marks, may be destroyed, if sending them in for adjudication would be impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. Apart from the cases mentioned above, a neutral private aircraft must not be destroyed except in the gravest military emergency, which would not justify the officer in command in releasing it or sending it in for adjudication.

Article 59

Before a neutral private aircraft is destroyed, all persons on board must be placed in safety, and all the papers of the aircraft must be preserved.

A captor who had destroyed a neutral private aircraft must bring the capture before the prize court, and must first establish that he was justified in destroying it under Article 58. If he fails to do this, parties interested in the aircraft or its cargo are entitled to compensation. If the capture is held to be invalid, though the act of destruction is held to have been justifiable, compensation must be paid to the parties interested in place of the restitution to which they would have been entitled.

Article 60

Where a neutral private aircraft is captured on the ground that it is carrying contraband, the captor may demand the surrender of any absolute contraband on board, or may proceed to the destruction of such absolute contraband, if sending in the aircraft for adjudication is impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. After entering in the log book of the aircraft the delivery or destruction of the goods, and securing, in original or copy, the relevant papers of the aircraft, the captor must allow the neutral aircraft to continue its flight.

The provisions of the second paragraph of Article 59 will apply where absolute contraband on board a neutral private aircraft is handed over or destroyed.

CHAPTER VIII – Definitions

Article 61

The term 'military' throughout these rules is to be read as referring to all branches of the forces, i.e. the land forces, the naval forces and the air forces.

Article 62

Except so far as special rules are here laid down and except also so far as the provisions of Chapter VII of these rules or international conventions indicate that maritime law and procedure are applicable, aircraft personnel engaged in hostilities come under the laws of war and neutrality applicable to land troops in virtue of the custom and practice of international law and of the various declarations and conventions to which the states concerned are parties.

14. 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

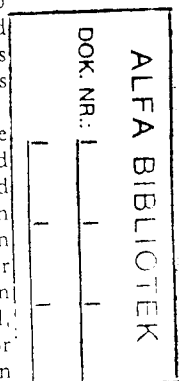
PREFATORY NOTE

At the First Hague Peace Conference of 1899, Hague Declaration 2 prohibited the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases. As mentioned in the prefatory note to that document, 1899 Hague Declaration 2 was derived from the customary rules prohibiting the use of poison and materials causing unnecessary suffering.

At the conclusion of the First World War, articles in various peace treaties reiterated and in some respects enlarged the prohibition embodied in the 1899 Declaration. For example, Article 171 of the 1919 Treaty of Versailles stated: 'The use of asphyxiating, poisonous or other gases and all analogous liquids, materials or devices being prohibited, their manufacture and importation are strictly forbidden in Germany.' (This was a ban on possession as well as use.) The 1922 Treaty of Washington on the Use of Submarines and Noxious Gases in Warfare prohibited the use of 'asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices' but did not enter into force.

The 1925 Geneva Protocol was adopted by the International Conference on the Control of the International Trade in Arms, Munitions, and Implements of War, which had been convened by the Council of the League of Nations and met in Geneva in May and June 1925. Under the Protocol, so far as the states parties were not already parties to treaties prohibiting the use in war of asphyxiating, poisonous, or other gases, and of all analogous liquids, materials, and devices, the states accepted this prohibition; and they also extended it to the use of bacteriological methods of warfare. Like earlier agreements referred to above, the 1925 Geneva Protocol was derived from the general principles of customary international law prohibiting the use of poison and materials causing unnecessary suffering.

The Protocol is regarded as having two main flaws. First, its terms leave considerable room for divergent interpretations of the prohibitions embodied therein. States have taken different positions on whether or not tear-gas and other normally non-lethal gases, or herbicides and similar agents, fall within the Protocol's prohibitions. As regards tear-gas, an early attempt at clarification was made in 1930. On 2 December 1930, in the Preparatory Commission for the Disarmament Conference, the British Government submitted a memorandum drawing attention to 'a serious ambiguity' in the wording of the Protocol, namely that where the English text referred to 'asphyxiating, poisonous or other gases', the equally authentic French text had 'similaires' rather than 'other'. The memorandum said that the British Government took the view that under the Protocol the use of 'other' gases, including lachrymatory (i.e. tear) gases, was prohibited. In reply, the French delegate stated unequivocally: 'The



French Government . . . considers that the use of lachrymatory gases is covered by the prohibition arising out of the Geneva Protocol of 1925.' Eleven other members of the Commission expressed their governments' endorsement of this Anglo-French interpretation. Only the USA (not at that time a party to the Protocol) dissented. It did so partly on the grounds that it would be inconsistent to prohibit the use in warfare of gases which could still continue to be used within states in peacetime for police purposes. On 22 January 1975, in connection with the US ratification of the Protocol, the President made a statement affirming the US understanding of the scope of the Protocol as not extending to control agents and chemical herbicides, but announced that as a matter of policy the use of such substances would be restricted. On 2 February 1970 the British Foreign Secretary announced a significant and controversial change of the UK position when he said in a written answer in the House of Commons: ' . . . we regard CS and other such gases . . . as being outside the scope of the Geneva Protocol.' This unilateral reinterpretation of the Protocol relied on a claimed distinction between CS smoke and older forms of tear-gas as they had existed in 1930.

Since 1966, the UN General Assembly has adopted several resolutions calling for strict observance of the principles of the 1925 Geneva Protocol: GA Resolution 2603A (XXIV) of 16 December 1969 interprets the Protocol, declaring that it prohibits the use in international armed conflicts of: '(a) Any chemical agents of warfare — chemical substances, whether gaseous liquid or solid — which might be employed because of their direct toxic effects on man, animals or plants; (b) Any biological agents of warfare — living organisms, whatever their nature, or infective material derived from them — which are intended to cause disease or death in man, animals or plants, and which depend for their effects on their ability to multiply in the person, animal or plant attacked.'

The second main flaw in the Protocol is that a number of states have become parties to it subject to the reservation that the Protocol is binding only in relation to other states bound by it and shall cease to be binding if the enemy or its allies fail to respect the prohibitions embodied therein. In other words, the Protocol is regarded by such states as containing not an absolute prohibition of the use of such weapons, but only an agreement not to use such weapons first.

The observance of the Protocol has been uneven. Italy used gas in 1935-6 during its invasion of Ethiopia. At the outbreak of the Second World War, several states, including Germany, declared that they would observe the prohibitions of the Protocol subject to reciprocity. In military operations during the Second World War, gas and bacteriological weapons were not used to any great extent. The most important exception was the Japanese use of gas in China between 1937 and 1945. In so far as the belligerents refrained from using such weapons (of which they had stocks) in warfare, this was due to a variety of factors which included fear of retaliation in kind. In conflicts since the Second World War, the use of toxic gases has often been alleged; and also, occasionally, the use of bacteriological weapons. In most such cases at least one party to the conflict was not a party to the Protocol.

The majority view is that, given the large number of states presently bound by the 1925 Geneva Protocol, the prohibitions embodied in the Protocol should be viewed as having become a part of customary international law. As customary international law, the Protocol would be applicable to all states and not merely

those which have formally ratified or adhered to the instrument. However, some suggest that the controversy over the Protocol's interpretation, as well as the character of reservations, have reduced the Protocol's usefulness as a guide to customary international law in this area. The weight of opinion appears to recognize that at least the first use of lethal chemical and biological weapons is prohibited by customary international law. Less consensus exists on the status under customary international law of non-lethal chemical and biological weapons. However, the distinction between lethal and non-lethal agents is very difficult to draw.

Biological weapons are now also the subject of the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, which entered into force in 1975.

The 1925 Geneva Protocol has been cited as the basis for establishing the illegality of certain contemporary weapons whose use in hostilities is not explicitly regulated by written agreement. In particular, it has been suggested that the effects of nuclear weapons imply, by analogy, that their use is prohibited by the 1925 Geneva Protocol as well as by the customary principles prohibiting the use of poison and materials causing unnecessary suffering. Others suggest that such an analogy only indicates that the use of nuclear weapons is prohibited if directed against non-military objectives, or against military targets which cannot be destroyed without serious loss of life or injury to health. Still others find difficulty in prohibiting nuclear weapons by such an analogy and consider that, in the absence of any express prohibition, the use of such weapons may in some circumstances be permitted.

Date of signature: 17 June 1925
Entry into force: 8 February 1928 (But see note on pp. 143-4 below.)
Depository: France
Authentic languages: French and English
Text reprinted from: XCIV LNTS (1929) 65-74
Also published in: 26 Martens NRG, 3ème sér. (1932-1933) 643-50 (Eng. Fr.);
126 BFSP (1927) 324-5 (Eng.);
UKTS 24 (1930), Cmd. 3604 (Eng. Fr.);
XXXII UKPP (1929-1930) 293 (Eng. Fr.);
25 AJIL (1931) Supplement 94-6 (Eng.)

Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

THE UNDERSIGNED PLENIPOTENTIARIES, in the name of their respective Governments:

Whereas the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids materials or devices, has been justly

condemned by the general opinion of the civilised world, and

Whereas the prohibition of such use has been declared in Treaties to which the majority of Powers of the world are Parties; and

To the end that this prohibition shall be universally accepted as a part of International Law, binding alike the conscience and the practice of nations;

DECLARE:

That the High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this declaration.

The High Contracting Parties will exert every effort to induce other States to accede to the present Protocol. Such accession will be notified to the Government of the French Republic, and by the latter to all signatory and acceding Powers, and will take effect on the date of the notification by the Government of the French Republic.

The present Protocol, of which the French and English texts are both authentic, shall be ratified as soon as possible. It shall bear to-day's date.

The ratifications of the present Protocol shall be addressed to the Government of the French Republic, which will at once notify the deposit of such ratification to each of the signatory and acceding Powers.

The instruments of ratification of and accession to the present Protocol will remain deposited in the archives of the Government of the French Republic.

The present Protocol will come into force for each signatory Power as from the date of deposit of its ratification, and, from that moment, each Power will be bound as regards other Powers which have already deposited their ratifications.

In witness whereof the Plenipotentiaries have signed the present Protocol.

Done at Geneva in a single copy, the seventeenth day of June, One Thousand Nine Hundred and Twenty-Five.

CONCLUDING NOTES

<i>Signatures, Ratifications, Accessions, and Successions¹</i>				
State (* denotes Reservation etc.: see below)	Date of Signature		Date of Ratification (r), Accession (a), or Succession (s) ²	
Argentina			12 May	1969 a
*Australia			24 May	1930 a
Austria	17 June	1925	9 May	1928 r
Barbados ³			16 July	1976 s
*Belgium	17 June	1925	4 December	1928 r
Bhutan			19 February	1979 a
Brazil	17 June	1925	28 August	1970 r
*Bulgaria	17 June	1925	7 March	1934 r
*Canada	17 June	1925	6 May	1930 r
Central African Republic			31 July	1970 a
Ceylon			20 January	1954 a
*Chile	17 June	1925	2 July	1935 r
China			24 August	1929 a
*China, People's Republic of			16 July	1952 s
Cuba			24 June	1966 a
Cyprus			29 November	1966 s
*Czechoslovakia	17 June	1925	16 August	1938 r
Denmark	17 June	1925	5 May	1930 r
Dominican Republic			8 December	1970 a
Ecuador			16 September	1970 a
Egypt	17 June	1925	6 December	1928 r
El Salvador	17 June	1925	—	
*Estonia	17 June	1925	28 August	1931 r
Ethiopia	17 June	1925	7 October	1935 r
*Fiji			21 March	1973 s
Finland	17 June	1925	26 June	1929 r
*France	17 June	1925	10 May	1926 r
Gambia			5 November	1966 s
Germany	17 June	1925	25 April	1929 r
German Democratic Republic ⁴			2 March	1959 s
Ghana			3 May	1967 a

¹ Information supplied in communications from the French Ministry of Foreign Affairs between April 1980 and April 1981, supplemented by various volumes of *LNTS*.

² The dates for accessions given below are the dates on which such accessions become effective. In most cases, instruments of accession were deposited on an earlier date. See below, 'Note on Entry into Force for States Parties'.

³ In notifying succession, Barbados withdrew from the reservation made by Great Britain.

⁴ On 2 March 1959 the German Democratic Republic, through the Czechoslovak Embassy in Paris, communicated a declaration confirming the application of the Protocol; and it confirmed this on 21 October 1974.

State (* denotes Reservation etc.: see below)	Date of Signature	Date of Ratification (r), Accession (a), or Succession (s)
*Great Britain and Empire ⁵	17 June 1925	9 April 1930 <i>r</i>
Greece	17 June 1925	30 May 1931 <i>r</i>
Holy See		18 October 1966 <i>a</i>
Hungary		11 October 1952 <i>a</i>
Iceland		2 November 1967 <i>a</i>
*India	17 June 1925	9 April 1930 <i>r</i>
Indonesia		21 January 1971 <i>s</i>
*Iraq		8 September 1931 <i>a</i>
*Ireland		29 August 1930 <i>a</i>
*Israel		20 February 1969 <i>a</i>
Italy	17 June 1925	3 April 1928 <i>r</i>
Ivory Coast		27 July 1970 <i>a</i>
Jamaica		28 July 1970 <i>s</i>
Japan	17 June 1925	21 May 1970 <i>r</i>
*Jordan		20 January 1977 <i>a</i>
Kenya		6 July 1970 <i>a</i>
*Kuwait		15 December 1971 <i>a</i>
Latvia	17 June 1925	3 June 1931 <i>r</i>
Lebanon		17 April 1969 <i>a</i>
Lesotho		10 March 1972 <i>s</i>
Liberia		17 June 1927 <i>a</i>
*Libya		29 December 1971 <i>a</i>
Lithuania	17 June 1925	15 June 1933 <i>r</i>
Luxembourg	17 June 1925	1 September 1936 <i>r</i>
Madagascar		2 August 1967 <i>a</i>
Malawi		14 September 1970 <i>a</i>
Malaysia		10 December 1970 <i>a</i>
Maldives		27 December 1966 <i>s</i>
Malta		9 October 1970 <i>s</i>
Mauritius		23 December 1970 <i>s</i>
Mexico		28 May 1932 <i>a</i>
Monaco		6 January 1967 <i>a</i>
*Mongolia		6 December 1968 <i>a</i>
Morocco		13 October 1970 <i>a</i>
Nepal		9 May 1969 <i>a</i>
*Netherlands ⁶	17 June 1925	31 October 1930 <i>r</i>
*New Zealand		24 May 1930 <i>a</i>
Nicaragua	17 June 1925	—
Niger		5 April 1967 <i>s</i>
*Nigeria		15 October 1968 <i>a</i>
Norway	17 June 1925	27 July 1932 <i>r</i>
*Pakistan		15 April 1960 <i>s</i>

⁵ On signing, the British declared that their signature 'does not bind India or any British Dominion which is a separate Member of the League of Nations and does not separately sign or adhere to the Protocol.'

⁶ Including the Netherlands Indies, Surinam and Curacao.

State (* denotes Reservation etc.: see below)	Date of Signature	Date of Ratification (r), Accession (a), or Succession (s)
Panama		4 December 1970 <i>a</i>
Papua New Guinea		2 December 1980 <i>s</i>
Paraguay ⁷		22 October 1933 <i>a</i>
Persia		5 November 1929 <i>a</i>
Philippines		8 June 1973 <i>a</i>
Poland	17 June 1925	4 February 1929 <i>r</i>
*Portugal	17 June 1925	1 July 1930 <i>r</i>
Qatar		18 October 1976 <i>a</i>
*Romania	17 June 1925	23 August 1929 <i>r</i>
Rwanda		11 May 1964 <i>s</i>
Saudi Arabia		27 January 1971 <i>a</i>
Senegal		20 July 1977 <i>a</i>
*Serbs, Croats and Slovenes, Kingdom of ⁸	17 June 1925	12 April 1929 <i>r</i>
Siam	17 June 1925	6 June 1931 <i>r</i>
Sierra Leone		20 March 1967 <i>a</i>
*South Africa		24 May 1930 <i>a</i>
*Spain	17 June 1925	22 August 1929 <i>r</i>
Sudan		17 December 1980 <i>a</i>
Sweden	17 June 1925	25 April 1930 <i>r</i>
Switzerland	17 June 1925	12 July 1932 <i>r</i>
*Syria		17 December 1968 <i>a</i>
Tanganyika		22 April 1963 <i>a</i>
Togo		5 April 1971 <i>a</i>
Tonga		19 July 1971 <i>s</i>
Trinidad and Tobago		24 November 1970 <i>s</i>
Tunisia		12 July 1967 <i>a</i>
Turkey	17 June 1925	5 October 1929 <i>r</i>
Uganda		24 May 1965 <i>a</i>
Upper Volta		3 March 1971 <i>a</i>
Uruguay	17 June 1925	12 April 1977 <i>r</i>
*USA	17 June 1925	10 April 1975 <i>r</i>
*USSR		5 April 1928 <i>a</i>
Venezuela	17 June 1925	8 February 1928 <i>r</i>
*Vietnam		11 December 1980 <i>a</i>
Yemen Arab Republic (North)		17 March 1971 <i>a</i>

Total Number of Parties Listed: 106

Note on Entry into Force for States Parties

According to the Depositary, the Protocol entered into force on 8 February 1928. That was the date of the second ratification, by Venezuela. (However, it could be argued that the Protocol had already been in force as between

⁷ Notification regularized on 13 January 1969.

⁸ Since 1930, Yugoslavia.

France and Liberia, the latter having acceded on 17 June 1927.) For each of the other ratifying states, the Protocol entered into force on the date (given in the right-hand column above) of deposit of the instrument of ratification. For each of the acceding states it entered into force on the date (given in the right-hand column above) when the French government gave notification of the accession concerned to the other signatory and acceding powers: this date is often several days, or even several months, later than the date of deposit of the instrument of accession by the acceding state with the French government.

Denunciations

None

Reservations etc.⁹

All the following reservations were made at ratification, accession or succession.

Australia, Belgium, Bulgaria, Canada, Chile, Czechoslovakia, Estonia, Fiji, Great Britain and Empire, India, Iraq, Netherlands, New Zealand, Nigeria, Pakistan, Portugal, Romania, South Africa, USSR and Vietnam all made reservations similar to those of France.

China, People's Republic of, stated that it would implement the provisions of the Protocol 'provided that all the other contracting and acceding powers observe them reciprocally'.

France: '(1) The said Protocol is only binding on the Government of the French Republic as regards States which have signed or ratified it or which may accede to it. (2) The said Protocol shall *ipso facto* cease to be binding on the Government of the French Republic in regard to any enemy State whose armed forces or whose Allies fail to respect the prohibitions laid down in the Protocol.'

Ireland made reservations similar to those of France; but it withdrew these reservations with effect from 10 February 1972.

Israel: 'The Protocol is binding on the State of Israel only in respect of those States which have signed and ratified it or have acceded thereto. The Protocol shall *ipso facto* cease to be binding on the State of Israel in respect of any enemy State whose armed forces or those of its allies, or regular or irregular forces, or groups or individuals operating from its territory do not comply with the prohibitions which are the subject of this Protocol.'

Jordan stated that its accession 'shall not in any way imply recognition of Israel' and 'shall not entail for it the obligation to conclude with Israel any of the arrangements indicated in the Protocol'. Jordan 'undertakes to observe the obligations contained in the Protocol in relation to those States which have entered into similar undertakings'. The undertakings entered into by Jordan 'shall not apply in relation to those States whose armed forces, regular or otherwise, do not observe the provisions' of the Protocol.

Kuwait: 'The accession of the State of Kuwait to this Protocol does not in any way imply recognition of Israel nor the establishment with Israel of relations governed by this Protocol. In the case of a breach of the prohibition referred

to in this Protocol by any of the parties to it, the State of Kuwait will not be bound to apply the provisions of the Protocol to such party.'

Libya: Accession 'does not imply recognition of nor the establishment of relations of any kind with Israel'. Libya is only bound 'in regard to those States which are bound by the Protocol and . . . will cease to be bound by the Protocol in respect of those States whose forces or whose allies' armed forces do not respect the prohibition which is the object of the Protocol'.

Mongolia: 'In the case of violation of this prohibition by any State in respect of the People's Republic of Mongolia or their allies, the government of the People's Republic of Mongolia will not consider itself bound by the obligations of the Protocol as regards that State.'

Serbs, Croats and Slovenes, Kingdom of: The Protocol shall cease to be binding 'in regard to any enemy State whose armed forces or whose Allies fail to respect the prohibitions laid down in the Protocol'.

Spain declares the Protocol 'as compulsory *ipso facto* and without special agreement in relation to any other Member [of the League of Nations] or State accepting and executing the same obligation, that is to say, on condition of reciprocity'.

Syria: Accession 'shall under no circumstances signify recognition of Israel and cannot lead to entry into dealings with the latter on the subject of the provisions laid down by this Protocol'.

USA: 'The said Protocol shall cease to be binding on the Government of the United States with respect to the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, in regard to an enemy state if such state or any of its allies fails to respect the prohibition laid down in the Protocol.'

⁹This list is based on the sources referred to in footnote 1 above, and also (for the period since 1945) on various volumes of *UKTS* and *AJIL*.

15. 1936 London Procès-Verbal Relating to the Rules of Submarine Warfare Set Forth in Part IV of the Treaty of London of 22 April 1930

PREFATORY NOTE

This agreement (also known as the 1936 London Protocol) is one of several which relate to the long-standing and difficult question of action by belligerents in relation to merchant ships.

At the outbreak of the First World War, the traditional rules of naval warfare were given general recognition by belligerents, but the practice of belligerents soon called the traditional régime into question. In particular, Germany began to use submarines against merchant ships, and this practice (justified by Germany primarily as reprisals) has been regarded as seriously violating the principle distinguishing combatants from non-combatants in naval warfare; however, that principle was difficult to apply due to the arming of British merchant ships. Other belligerents followed these practices, and the conduct of naval warfare significantly weakened the traditional immunity of merchant ships from attack.

After the First World War, it was hoped that the authority of the traditional rules of naval warfare could be restored. At the conclusion of the 1921-2 Washington Conference on the Limitation of Armament, the United States, Great Britain, France, Italy, Japan, and certain other states signed (in addition to a treaty limiting naval armaments) the 1922 Washington Treaty Relating to the Use of Submarines and Noxious Gases in Warfare. The treaty required the ratification of all signatories in order to enter into force; France did not ratify and hence the treaty did not become formally binding.

On 22 April 1930 the International Treaty for the Limitation and Reduction of Naval Armament was signed in London by eleven states. Nine of them ratified the Treaty in 1930, and two in 1936. Although primarily an agreement on arms limitation, one part of the Treaty related to the laws of war: Part IV, which consisted of one article, Article 22. This set forth rules regarding the use of submarines in warfare, and explicitly stated that they 'are accepted as established rules of international law'. According to Article 23, Part IV was to remain in force without limit of time. Consequently, when the remainder of the 1930 London Naval Treaty expired on 31 December 1936, Part IV (i.e. Article 22) remained in force.

With a view to enlarging the number of states expressly accepting the provisions embodied in Article 22 of the 1930 London Naval Treaty, representatives of the eleven states which had signed the 1930 Treaty, meeting in London, signed a Procès-Verbal on 6 November 1936 which incorporated verbatim the provisions of Article 22 of the 1930 London Naval Treaty, and also provided for the accession of other states without limit of time. Many states, including in 1936 both Germany and the Soviet Union, acceded to the Procès-Verbal.

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By the outbreak of the Second World War, forty-eight states (including almost all of the belligerents involved in the war) had become parties to the Procès-Verbal.

The provisions of the 1936 London Procès-Verbal were included in the naval regulations issued by many states to their naval forces. They were also referred to in the preamble to the 1937 Nyon Agreement (concluded by eight states) as being declaratory of international law. In addition, these provisions were regarded by various states as also being applicable to military aircraft in operations against enemy merchant shipping.

After the outbreak of the Second World War, unrestricted submarine and air warfare by Germany against merchant ships was regarded as violating both the Procès-Verbal and the customary principles embodied therein. Germany recognized the obligations of the Procès-Verbal, but contended that its actions were justified as measures of reprisal, and that the British integration of merchant shipping into its military effort prevented German compliance with the Procès-Verbal. Soon thereafter, Great Britain and France adopted retaliatory measures and stated that one of the reasons for this was Germany's violation of the Procès-Verbal. In the Pacific both of the major naval belligerents adopted a policy of unrestricted submarine and air warfare against merchant ships.

A particular difficulty in the implementation of the Procès-Verbal relates to the danger to which a submarine is exposed if it surfaces which it has to do to fulfil the obligations incumbent on surface ships.

In the trials of Admirals Doenitz and Raeder at Nuremberg in 1945-6, the International Military Tribunal found the accused had violated the Procès-Verbal, but because it recognized that the United States and Great Britain had also carried on unrestricted submarine warfare, it was neither prepared to hold them guilty, nor to assess their sentences, on the basis of such violations.

Although the Procès-Verbal was not very effective in regulating belligerent conduct during the war, the International Military Tribunal at Nuremberg did not imply that this agreement no longer possessed the status of law. Indeed, despite the great practical difficulty of distinguishing combatants from non-combatants, the Nuremberg Judgment can be interpreted as assuming the continuing validity of the Procès-Verbal. None the less, the practice of belligerents during the two world wars and the changing nature of naval warfare continue to raise questions as to the extent to which the principles embodied in the Procès-Verbal may remain applicable.

Date of signature: 6 November 1936
Entry into force: 6 November 1936
Depositary: United Kingdom
Authentic languages: English and French
Text reprinted from: CLXXIII LNTS (1936-1937) 353-7
Also published in: 33 *Martens NRG*, 3ème sér. (1937) 3-5 (Eng. Fr.);
140 *BFSP* (1936) 300-2 (Eng.);
UKTS 29 (1936), Cmd. 5302 (Eng. Fr.);
XXVIII UKPP (1936-1937) 693 (Eng. Fr.);
31 *AJIL* (1937) Supplement 137-9 (Eng.)

Procès-Verbal Relating to the Rules of Submarine Warfare Set Forth in Part IV of the Treaty of London of April 22 1930

Whereas the Treaty for the Limitation and Reduction of Naval Armaments signed in London on the 22nd April, 1930, has not been ratified by all the signatories;

And whereas the said Treaty will cease to be in force after the 31st December, 1936, with the exception of Part IV thereof, which sets forth rules as to the action of submarines with regard to merchant ships as being established rules of international law, and remains in force without limit of time;

And whereas the last paragraph of Article 22 in the said Part IV states that the High Contracting Parties invite all other Powers to express their assent to the said rules;

And whereas the Governments of the French Republic and the Kingdom of Italy have confirmed their acceptance of the said rules resulting from the signature of the said Treaty;

And whereas all the signatories of the said Treaty desire that as great a number of Powers as possible should accept the rules contained in the said Part IV as established rules of international law;

The undersigned, representatives of their respective Governments, bearing in mind the said Article 22 of the Treaty, hereby request the Government of the United Kingdom of Great Britain and Northern Ireland forthwith to communicate the said rules, as annexed hereto, to the Governments of all Powers which are not signatories of the said Treaty, with an invitation to accede thereto definitely and without limit of time.

RULES

'(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject.

'(2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of

safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board.'

Signed in London, the 6th day of November, nineteen hundred and thirty-six.

CONCLUDING NOTES

*Signatures, Accessions, and Successions*¹

State	Date of Signature ²	Date of Accession (a), or Succession (s)
Afghanistan		25 May 1937 a
Albania		3 March 1937 a
Australia	6 November 1936	
Austria		1 April 1937 a
Belgium		23 December 1936 a
Brazil		31 December 1937 a
Bulgaria		1 March 1937 a
Canada	6 November 1936	
Costa Rica		7 July 1937 a
Czechoslovakia		14 September 1937 a
Denmark		21 April 1937 a
Egypt		23 June 1937 a
El Salvador		24 November 1937 a
Estonia		26 June 1937 a
Fiji		6 March 1973 s
Finland		18 February 1937 a
France	6 November 1936	
Germany		23 November 1936 a
Greece		11 January 1937 a
Guatemala		8 September 1938 a
Haiti		23 January 1937 a
Holy See		16 March 1937 a
Hungary		8 December 1937 a
India	6 November 1936	
Iran		21 January 1939 a
Iraq		27 December 1937 a
Ireland	6 November 1936	
Italy	6 November 1936	
Japan	6 November 1936	
Latvia		7 March 1938 a

¹Information supplied in communications from the UK Foreign and Commonwealth Office between December 1979 and January 1981.

²Like the 1856 Paris Declaration and the 1868 St. Petersburg Declaration, the 1936 London Procès-Verbal became binding on the signatory states without need of ratification.

State	Date of Signature	Date of Accession (a), or Succession (s)
Lithuania		27 January 1938 a
Mexico		3 January 1938 a
Nepal		27 January 1937 a
Netherlands		30 September 1937 a
New Zealand	6 November 1936	
Norway		21 May 1937 a
Panama		26 February 1937 a
Peru		3 June 1937 a
Poland		21 July 1937 a
Saudi Arabia		11 June 1937 a
Siam		12 January 1938 a
South Africa	6 November 1936	
Sweden		15 February 1937 a
Switzerland		22 May 1937 a
Tonga		7 July 1971 s
Turkey		7 July 1937 a
United Kingdom	6 November 1936	
USA	6 November 1936	
USSR		27 December 1936 a
Yugoslavia		19 April 1937 a

Total Number of Parties Listed: 50

Note on Entry into Force for States Parties

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

Denunciations

None

Reservations

None

16. 1946 Judgment of the International Military Tribunal at Nuremberg: Extracts on Crimes Against International Law

PREFATORY NOTE

The principal international agreements on the laws of war concluded before 1945 contain inadequate references to the punishment of violations. For example, Article 3 of 1907 Hague Convention IV only recognizes in rather general terms a state's responsibility for acts committed by its armed forces, and provides for the payment of compensation for violations of the Regulations annexed to the Convention; and there are also some rather vague references to compensation and to proceedings in Articles 53 and 56 of the Regulations.

Despite this relative dearth of formal provisions, there have been many civil and criminal cases involving the laws of war. Some cases concerned the question of the punishment of violations by enemy individuals. For example, at the end of the First World War, Articles 227 to 230 of the Treaty of Versailles required Germany to surrender for trial members of its armed forces charged with violations of the laws of war. By subsequent arrangement with Allied governments, Germany itself tried German offenders on charges formulated by the Allies, but very few were convicted.

The overwhelming majority of those accused of committing crimes against international law in the Second World War were tried (whether during or after the war) by national courts, or by military courts established by occupying states. In addition, some members of armed forces were tried by their own national military courts.

However, the best known Second World War trials were those held by the International Military Tribunals at Nuremberg and Tokyo. During the course of the war, the Allied governments had resolved in both unilateral and joint statements to ensure an effective post-war punishment of enemy individuals violating the laws of war. On 8 August 1945 the USA, Britain, France, and the USSR concluded in London an Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis; and nineteen other states adhered to this Agreement, seventeen of them before the trial began. The Agreement provided for the establishment of an International Military Tribunal for the trial of war criminals whose offences had no particular geographical location. Annexed to the Agreement was the Charter of the Tribunal which established the jurisdiction of the Tribunal and set forth principles to be applied by it. The trial began in Nuremberg on 20 November 1945. There were twenty-two defendants, of whom all but three were found guilty in the Judgment, which was rendered on 30 September and 1 October 1946.

The trial of Japanese major war criminals by the International Military Tribunal for the Far East was based on the same principles as the Nuremberg trial: it was convened in Tokyo on 3 May 1946 and judgment was rendered on 4-12 November 1948.

ALFA BIBLIOTEK
DOK. NR.: | | |

In reaching its verdict, the Nuremberg Tribunal focused attention on many issues of central importance to the application of the laws of war, including the responsibility of individuals to observe international law, the question of obedience to superior orders, the concepts of 'war crimes' and 'crimes against humanity', and questions relating to jurisdiction and fair trial. On many of these matters, the doctrines recognized at Nuremberg have come to be known as the 'Nuremberg principles'.

The United Nations has on a number of occasions concerned itself with the Nuremberg principles. On 11 December 1946 the UN General Assembly unanimously adopted Resolution 95(I) which affirmed 'the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal'. In 1950 the International Law Commission of the UN adopted a statement formulating those principles.

The sheer length of the Nuremberg Judgment (it runs to over 170 printed pages), and the range of issues and evidence it covers, make any choice of extracts difficult. The two extracts reprinted below have been selected because of their general relevance to war crimes and to the application of the law.

The first extract is taken from the beginning of the Judgment, and simply sets forth Article 6 of the Tribunal's Charter, with its definitions of 'crimes against peace' (relating to *jus ad bellum*), and of 'war crimes' and 'crimes against humanity' (comprehending *jus in bello*). It is acts falling under the latter headings which are of particular interest so far as the law governing the actual conduct of armed hostilities is concerned. Note that, as defined by the Charter, 'crimes against humanity' may include acts committed against fellow-citizens, and even certain acts committed before the war.

The second extract, taken from a later part of the Judgment, elaborates on what Article 6 of the Charter states concerning war crimes. Four points may be noted. First, the Judgment (here as elsewhere) refers much more to war crimes in the strict sense, as defined by Article 6(b), than to crimes against humanity. Second, the Charter's definition of war crimes was recognized by the Tribunal as being in accord with existing international law. Third, to determine the applicability of a particular international agreement on the laws of war, reference must be made to its specific terms (such as the 'general participation clause' found in early conventions) which may affect its formal application. Fourth, if any international agreement can be regarded as embodying customary international law, its provisions are fully binding on all states, whatever the particular terms of the agreement.

Text reprinted from: *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg*, vol. XXII, IMT Secretariat, Nuremberg, 1948, pp. 413-14 and 497.

Also published in: *The Trial of German Major War Criminals: Proceedings of the International Military Tribunal Sitting at Nuremberg Germany*, Part 22, HMSO, London, 1950, pp. 412-13 and 467;
Annual Digest and Reports of Public International Law Cases 1946, Butterworth, London, 1951, pp. 204 and 212

Judgment (Extracts)

The Charter Provisions

The individual defendants are indicted under Article 6 of the Charter, which is as follows:

'Article 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes:

'The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

'(a) Crimes against Peace: namely, planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing:

'(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment, or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity:

'(c) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

'Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.'

* * *

*The Law Relating to War Crimes and
Crimes Against Humanity*

The Tribunal is of course bound by the Charter, in the definition which it gives both of War Crimes and Crimes against Humanity. With respect to War Crimes, however, as has already been pointed out, the crimes defined by Article 6, section (b) of the Charter were already recognized as War Crimes under international law. They were covered by Articles 46, 50, 52, and 56 of the Hague Convention of 1907, and Articles 2, 3, 4, 46, and 51 of the Geneva Convention of 1929. That violations of these provisions constituted crimes for which the guilty individuals were punishable is too well settled to admit of argument.

But it is argued that the Hague Convention does not apply in this case, because of the 'general participation' clause in Article 2 of the Hague Convention of 1907. That clause provided:

'The provisions contained in the regulations (Rules of Land Warfare) referred to in Article I, 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.'

Several of the belligerents in the recent war were not parties to this convention.

In the opinion of the Tribunal it is not necessary to decide this question. The rules of land warfare expressed in the convention undoubtedly represented an advance over existing international law at the time of their adoption. But the convention expressly stated that it was an attempt 'to revise the general laws and customs of war,' which it thus recognized to be then existing, but by 1939 these rules laid down in the convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war which are referred to in Article 6(b) of the Charter.

17. 1948 United Nations Convention on the
Prevention and Punishment of the Crime of
Genocide

PREFATORY NOTE

The practices of the German government before and during the Second World War, and particularly the mass murder of millions of people during the war, led after the war to a formal consideration of the question of genocide. The term 'genocide' was first used by the Polish scholar Raphael Lemkin in his book *Axis Rule in Occupied Europe*, published in the USA in 1944, in which he defined it as 'the destruction of a nation or of an ethnic group'.

The Convention was the result of extensive negotiations at the United Nations. On 2 November 1946 the delegations of Cuba, India, and Panama requested the UN Secretary-General to include in the agenda of the General Assembly the question of the prevention and punishment of genocide. On 11 December 1946 the General Assembly unanimously adopted Resolution 96 (I), which affirmed that genocide is a crime under international law and requested that the Economic and Social Council undertake studies which would lead to the drafting of a convention on genocide. On 28 March 1947 the ECOSOC called upon the UN Secretary-General to draft such a convention. The resulting text was considered by various bodies of the UN. On 3 March 1948 the ECOSOC established the UN *Ad Hoc* Committee on Genocide, and instructed it to prepare a draft convention on genocide (taking into consideration the draft convention prepared by the Secretariat). The *Ad Hoc* Committee's draft was considered by certain UN bodies, and on 26 August 1948 the ECOSOC transmitted the draft convention to the General Assembly.

After further revision, the General Assembly adopted Resolution 260 (III) on 9 December 1948. Part A of the Resolution approved the text of the Convention, annexed thereto, and proposed that it be submitted to states for their signature and ratification, or accession; Part B invited the International Law Commission to study the possibility of establishing an international judicial organ, possibly in the form of a criminal chamber of the International Court of Justice, for the trial of persons charged with genocide; and Part C referred to extending the application of the Convention to administered territories.

Several points should be mentioned. First, the prohibition of genocide can be regarded as a principle of customary international law. Second, the Convention confirms that genocide, whether committed in time of war or peace, is a crime under international law. Third, while the term 'homicide' relates to the destruction of individual human beings, the term 'genocide' relates exclusively to the destruction of human groups. Fourth, the Convention's definition of genocide includes acts other than killing. Fifth, the Convention defines punishable acts as including not only the crime of genocide itself, but also conspiracy, incitement, attempts, and complicity in relation to the crime. Sixth, to constitute genocide, prohibited acts must be accompanied by the

regard to the provisions of Article XII which do not define the obligations of countries having colonies with regard to questions of colonial exploitation and to acts which might be described as genocide.'

India, at ratification only, declared that, for the submission of any dispute in terms of Article IX to the jurisdiction of the ICJ, the consent of all the parties to the dispute is required in each case.

Mongolia made a reservation identical to that of USSR, but drawing attention, additionally, 'to the discriminatory character of Article XI . . . under the terms of which a number of States are precluded from acceding to the Convention and declares that the Convention deals with matters which affect the interests of all States and it should, therefore, be open for accession by all States.'

Morocco, with reference to Article VI, 'considers that Moroccan courts and tribunals alone have jurisdiction with respect to acts of genocide committed within the territory of the Kingdom of Morocco. The competence of international courts may be admitted exceptionally in cases with respect to which the Moroccan Government has given its specific agreement. With reference to Article IX . . . no dispute relating to the interpretation, application or fulfilment of the present Convention can be brought before the International Court of Justice, without the prior agreement of the parties to the dispute.'

Philippines, at ratification only, with reference to Article IV, stated *inter alia* that this does not override 'the existing immunities from judicial processes guaranteed certain public officials by the Constitution of the Philippines.' With reference to Article VII, the Government does not undertake to give effect to this 'until the Congress of the Philippines has enacted the necessary legislation defining and punishing the crime of genocide . . .' With reference to Articles VI and IX, 'nothing contained in said articles shall be construed as depriving Philippine courts of jurisdiction over all cases of genocide committed within Philippine territory save only in those cases where the Philippine Government consents to have the decision of the Philippine courts reviewed by either of the international tribunals referred to in said articles.' With further reference to Article IX, the Philippines 'does not consider the said article to extend the concept of State responsibility beyond that recognized by the generally accepted principles of international law.'

Poland 'does not regard itself as bound' by Article IX, 'since the agreement of all the parties to a dispute is a necessary condition in each specific case for submission to the International Court of Justice.' Poland 'does not accept the provisions' of Article XII, 'considering that the Convention should apply to Non-Self-Governing Territories, including Trust Territories.'

Rwanda and Spain made reservation of Article IX.

USSR: 'The Soviet Union does not consider as binding upon itself the provisions of Article IX which provides that disputes between the Contracting Parties with regard to the interpretation, application and implementation of the present Convention shall be referred for examination to the International Court at the request of any party to the dispute, and declares that, as regards the International Court's jurisdiction in respect of disputes concerning the interpretation, application and implementation of the Convention, the Soviet Union will, as hitherto, maintain the position that in each particular case the agreement of all parties to the dispute is essential for the submission of any particular dispute to the International Court for decision . . .

The USSR declares that it is not in agreement with Article XII of the Convention and considers that all the provisions of the Convention should extend to Non-Self-Governing Territories, including Trust Territories.'

Venezuela: 'With reference to Article VI, notice is given that any proceedings to which Venezuela may be a party before an international penal tribunal would be invalid without Venezuela's prior express acceptance of the jurisdiction of such international tribunal. With reference to Article VII, notice is given that the laws in force in Venezuela do not permit the extradition of Venezuelan nationals. With reference to Article IX, the reservation is made that the submission of a dispute to the International Court of Justice shall be regarded as valid only when it takes place with Venezuela's approval, signified by the express conclusion of a prior agreement in each case.'

Objections

Except where otherwise indicated, the objections were made at ratification or accession by the objecting state.

Australia, in communications of 15 November 1950 and 19 January 1951, stated that it does not accept the reservations made by Bulgaria, Byelorussian SSR, Czechoslovakia, Philippines, Poland, Romania, Ukrainian SSR, and USSR.

Belgium 'does not accept the reservations made by Bulgaria, Byelorussian SSR, Czechoslovakia, Poland, Romania, Ukrainian SSR and USSR.'

Brazil stated that it objects to the reservations made by eight states (identical list to Australia's, see above), adding that these reservations are 'compatible with the object and purpose of the Convention. The position taken by the Government of Brazil is founded on the Advisory Opinion of the International Court of Justice of 28 May 1951 and on the resolution adopted by the sixth session of the General Assembly on 12 January 1952, on reservations to multilateral conventions. The Brazilian Government reserves the right to draw any such legal consequences as it may deem fit from its formal objection to the above-mentioned reservations.'

Ceylon, in a communication received on 6 February 1951, stated that it does not accept the reservations made by Romania.

China, Republic of, in communications received on 15 November 1954, 13 September 1955, and 25 July 1956, stated that it objects to the reservations made by Albania, Bulgaria, Burma, Byelorussian SSR, Czechoslovakia, Hungary, Poland, Romania, Ukrainian SSR, and USSR. It 'considers the above-mentioned reservations as incompatible with the object and purpose of the Convention and, therefore, by virtue of the Advisory Opinion of the International Court of Justice of 28 May 1951, would not regard the above-mentioned States as being Parties to the Convention.'

Cuba made an identical objection to that of Belgium.

Ecuador, in communications received on 31 March and 21 August 1950, and 9 January 1951, objected to the reservations made by seven states (identical list to Belgium's, see above), adding that 'they do not apply to Ecuador.'

Greece: 'We have not accepted and do not accept any reservation which has already been made or which may hereafter be made by the countries signatory to this instrument or by countries which have acceded or may hereafter accede thereto.'

Netherlands 'considers the reservations made by Albania, Algeria, Bulgaria, Byelorussian SSR, Czechoslovakia, Hungary, India, Morocco, Poland, Romania, Ukrainian SSR and USSR in respect of Article IX . . . to be incompatible with the object and purpose of the Convention. The Government of the Kingdom of the Netherlands therefore does not deem any State which has made or which will make such reservation a party to the Convention.'

Norway, in a communication received on 10 April 1952, stated that it does not accept the reservations made by the Philippines.

United Kingdom, at accession and in a further communication of 21 November 1975, stated that it does not accept the reservations to Articles IV, VII, VIII, IX, or XII made by twenty states (that is, every state which made reservations except Finland).

Vietnam, Republic of (South), in a communication received on 3 November 1950, stated that it could not accept the reservations submitted by Bulgaria, Byelorussian SSR, Czechoslovakia, Philippines, Ukrainian SSR, and USSR, or by any other state.

18. 1949 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

PREFATORY NOTE

The four 1949 Geneva Conventions: General

On 12 August 1949 a diplomatic conference in Geneva approved the text of four conventions which have come to be adhered to by more states than any other agreements on the laws of war. They deal respectively with (I) wounded and sick in armed forces in the field; (II) wounded, sick and shipwrecked in armed forces at sea; (III) prisoners of war; and (IV) civilians.

The central concern of all four 1949 Geneva Conventions is thus the protection of victims of war. Since 1864, when a Geneva Convention on wounded was adopted, several binding international agreements have been concluded which address various aspects of this question. The 1949 Conventions were the outgrowth of efforts undertaken before the Second World War to draft new conventions; and they were also the product of the experience of the war itself.

During the Second World War, existing conventions relating to the protection of war victims had benefited significant numbers, but events had also confirmed the need to revise and extend the laws of war. First, in many areas the law was insufficiently clear and precise. Second, even in areas of relative clarity and precision, violations of the law highlighted the need for more specific provisions about monitoring the observance of the law and punishing violations.

After the Second World War the International Committee of the Red Cross formulated proposals to adapt and develop international humanitarian law applicable in armed conflicts. Between 1945 and 1948 a series of consultations, in which experts from various states participated, resulted in the preparation of draft conventions. At the 17th International Conference of the Red Cross, held in Stockholm in 1948, these were amended and approved for submission to a diplomatic conference.

The Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949, was attended by the representatives of sixty-four states. Convened by the Swiss government (as Depositary of the Geneva Conventions), the Conference had as its stated purpose the revision of (1) the 1929 Geneva Convention for the Relief of Wounded and Sick in Armies in the Field; (2) 1907 Hague Convention X for the Adaptation to Maritime Warfare of the Principles of the 1906 Geneva Convention; and (3) the 1929 Geneva Convention Relative to the Treatment of Prisoners of War. In addition, the Conference was to establish (4) a Convention for the Protection of Civilian Persons in Time of War. The four ICRC draft conventions were taken as the sole negotiating texts, and the outcome was the four 1949 Geneva Conventions.

The four Conventions are linked not only by certain general principles, but more specifically by certain common articles. Such common articles are found

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17. 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide

PREFATORY NOTE

The practices of the German government before and during the Second World War, and particularly the mass murder of millions of people during the war, led after the war to a formal consideration of the question of genocide. The term 'genocide' was first used by the Polish scholar Raphael Lemkin in his book *Axis Rule in Occupied Europe*, published in the USA in 1944, in which he defined it as 'the destruction of a nation or of an ethnic group'.

The Convention was the result of extensive negotiations at the United Nations. On 2 November 1946 the delegations of Cuba, India, and Panama requested the UN Secretary-General to include in the agenda of the General Assembly the question of the prevention and punishment of genocide. On 11 December 1946 the General Assembly unanimously adopted Resolution 96 (I), which affirmed that genocide is a crime under international law and requested that the Economic and Social Council undertake studies which would lead to the drafting of a convention on genocide. On 28 March 1947 the ECOSOC called upon the UN Secretary-General to draft such a convention. The resulting text was considered by various bodies of the UN. On 3 March 1948 the ECOSOC established the UN *Ad Hoc* Committee on Genocide, and instructed it to prepare a draft convention on genocide (taking into consideration the draft convention prepared by the Secretariat). The *Ad Hoc* Committee's draft was considered by certain UN bodies, and on 26 August 1948 the ECOSOC transmitted the draft convention to the General Assembly.

After further revision, the General Assembly adopted Resolution 260 (III) on 9 December 1948. Part A of the Resolution approved the text of the Convention, annexed thereto, and proposed that it be submitted to states for their signature and ratification, or accession; Part B invited the International Law Commission to study the possibility of establishing an international judicial organ, possibly in the form of a criminal chamber of the International Court of Justice, for the trial of persons charged with genocide; and Part C referred to extending the application of the Convention to administered territories.

Several points should be mentioned. First, the prohibition of genocide can be regarded as a principle of customary international law. Second, the Convention confirms that genocide, whether committed in time of war or peace, is a crime under international law. Third, while the term 'homicide' relates to the destruction of individual human beings, the term 'genocide' relates exclusively to the destruction of human groups. Fourth, the Convention's definition of genocide includes acts other than killing. Fifth, the Convention defines punishable acts as including not only the crime of genocide itself, but also conspiracy, incitement, attempts, and complicity in relation to the crime. Sixth, to constitute genocide, prohibited acts must be accompanied by the

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intent to partially or completely destroy a particular group. Seventh, the practical value of the Convention's provisions relating to punishment, and particularly the emphasis on trial by a tribunal in the state in which the act was committed (Article VI), has been questioned.

Date of signature: Signed on 11 December 1948, and open for signature (see Article XI) until 31 December 1949.
Entry into force: 12 January 1951
Depositary: United Nations
Authentic languages: Chinese, English, French, Russian, and Spanish
Text reprinted from: 78 *UNTS* (1951) 277-323
Also published in: 151 *BFSP* (1948) 682-7 (Eng.);
UKTS 58 (1970), Cmd. 4421 (Ch. Eng. Fr. Rus. Sp.);
XXIII *UKPP* (1970-1971) 675 (Ch. Eng. Fr. Rus. Sp.);
45 *AJIL* (1951) Supplement 7-13 (Eng.)

Convention on the Prevention and Punishment of the Crime of Genocide

THE CONTRACTING PARTIES,
HAVING CONSIDERED the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

RECOGNIZING that at all periods of history genocide has inflicted great losses on humanity; and

BEING CONVINCED that, in order to liberate mankind from such an odious scourge, international co-operation is required,

HEREBY AGREE AS HEREINAFTER PROVIDED:

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;

- (e) Forcible transfer of children of the group to another group.

Article III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.

Article VI

Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII

Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any

of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950 the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

CONCLUDING NOTES

*Signatures, Ratifications, Accessions, and Successions*¹

State (* denotes Reservation etc.: see below)	Date of Signature	Date of Ratification (r), Accession (a), or Succession (s)	
Afghanistan		22 March	1956 a
*Albania		12 May	1955 a
*Algeria		31 October	1963 a
*Argentina		5 June	1956 a
*Australia ²	11 December 1948	8 July	1949 r
Austria		19 March	1958 a
Bahamas		5 August	1975 s
Barbados		14 January	1980 a
*Belgium ³	12 December 1949	5 September	1951 r
Bolivia	11 December 1948	—	
*Brazil	11 December 1948	15 April	1952 r
*Bulgaria		21 July	1950 a
*Burma	30 December 1949	14 March	1956 r
*Byelorussian SSR	16 December 1949	11 August	1954 r
Cambodia		14 October	1950 a
Canada	28 November 1949	3 September	1952 r
*Ceylon		12 October	1950 a
Chile	11 December 1948	3 June	1953 r
*China, Republic of ⁴	20 July 1949	19 July	1951 r
Colombia	12 August 1949	27 October	1959 r
Congo, Democratic Republic of (now Zaire)		31 May	1962 s
Costa Rica		14 October	1950 a

¹ Information supplied in communications from the Treaty Section of the United Nations between January 1980 and February 1981, supplemented by various volumes of *UNTS* and of the annual UN publication entitled *Multilateral Treaties in Respect of Which the Secretary-General Performs Depositary Functions: List of Signatures, Ratifications, Accessions, etc.*

² At ratification, Australia extended the application of the Convention to all territories for the conduct of whose foreign relations Australia is responsible.

³ By note received on 13 March 1952, Belgium extended the application of the Convention to Belgian Congo and Ruanda-Urundi.

⁴ On 29 September 1972 the Depositary received a communication from the Foreign Minister of the People's Republic of China stating: '1. With regard to the multilateral treaties signed, ratified or acceded to by the defunct Chinese government before the establishment of the Government of the People's Republic of China, my Government will examine their contents before making a decision in the light of the circumstances as to whether or not they should be recognized. 2. As from October 1, 1949, the day of the founding of the People's Republic of China, the Chiang Kai-shek clique has no right at all to represent China. Its signature and ratification of, or accession to, any multilateral treaties by usurping the name of "China" are all illegal and null and void . . .'

State (* denotes Reservation etc.: see below)	Date of Signature	Date of Ratification (r), Accession (a), or Succession (s)	
*Cuba	28 December 1949	4 March	1953 r
*Czechoslovakia	28 December 1949	21 December	1950 r
Denmark	28 September 1949	15 June	1951 r
Dominican Republic	11 December 1948	—	
*Ecuador	11 December 1948	21 December	1949 r
Egypt	12 December 1948	8 February	1952 r
El Salvador	27 April 1949	28 September	1950 r
Ethiopia	11 December 1948	1 July	1949 r
Fiji		11 January	1973 s
*Finland		18 December	1959 a
France	11 December 1948	14 October	1950 r
Gambia		29 December	1978 a
*German Democratic Republic		27 March	1973 a
Germany, Federal Republic of ⁵		24 November	1954 a
Ghana		24 December	1958 a
*Greece	29 December 1949	8 December	1954 r
Guatemala	22 June 1949	13 January	1950 r
Haiti	11 December 1948	14 October	1950 r
Honduras	22 April 1949	5 March	1952 r
*Hungary		7 January	1952 a
Iceland	14 May 1949	29 August	1949 r
*India	29 November 1949	27 August	1959 r
Iran	8 December 1949	14 August	1956 r
Iraq		20 January	1959 a
Ireland		22 June	1976 a
Israel	17 August 1949	9 March	1950 r
Italy		4 June	1952 a
Jamaica		23 September	1968 a
Jordan		3 April	1950 a
Korea, Republic of (South)		14 October	1950 a
Laos		8 December	1950 a
Lebanon	30 December 1949	17 December	1953 r
Lesotho		29 November	1974 a
Liberia	11 December 1948	9 June	1950 r
Mali		16 July	1974 a
Mexico	14 December 1948	22 July	1952 r
Monaco		30 March	1950 a

⁵ At accession, the Federal Republic of Germany stated that the Convention would also apply to *Land Berlin*. In a note received by the Depositary on 27 December 1973 the German Democratic Republic objected to this. Subsequent communications were received from these states and also from others: France, UK, USA, USSR, and Ukrainian SSR.

State (* denotes Reservation etc.: see below)	Date of Signature	Date of Ratification (r), Accession (a), or Succession (s)
*Mongolia		5 January 1967 a
*Morocco		24 January 1958 a
Nepal		17 January 1969 a
*Netherlands		20 June 1966 a
New Zealand	25 November 1949	28 December 1978 r
Nicaragua		29 January 1952 a
*Norway	11 December 1948	22 July 1949 r
Pakistan	11 December 1948	12 October 1957 r
Panama	11 December 1948	11 January 1950 r
Paraguay	11 December 1948	—
Peru	11 December 1948	24 February 1960 r
*Philippines	11 December 1948	7 July 1950 r
*Poland		14 November 1950 a
*Romania		2 November 1950 a
*Rwanda		16 April 1975 a
Saudi Arabia		13 July 1950 a
*Spain		13 September 1968 a
Sweden	30 December 1949	27 May 1952 r
Syria		25 June 1955 a
Tonga		16 February 1972 a
Tunisia		29 November 1956 a
Turkey		31 July 1950 a
*Ukrainian SSR	16 December 1949	15 November 1954 r
*United Kingdom ⁶		30 January 1970 a
Upper Volta		14 September 1965 a
Uruguay	11 December 1948	11 July 1967 r
USA	11 December 1948	—
*USSR	16 December 1949	3 May 1954 r
*Venezuela		12 July 1960 a
*Vietnam, Republic of (South)		11 August 1950 a
Yugoslavia	11 December 1948	29 August 1950 r

Total Number of Parties Listed: 86

Note on Entry into Force for States Parties

In accordance with Article XIII, the Convention entered into force on 12 January 1951 for the states which had ratified it ninety or more days earlier. For each of the other ratifying states, and for each of the acceding states, the Convention formally entered into force ninety days after the date indicated in the right-hand column above.

Denunciations

None

⁶ At accession, and also in a subsequent notification received on 2 June 1970, the UK extended the application of the Convention to certain territories for whose conduct of international relations the UK is responsible.

Reservations etc.⁷

Except where otherwise stated, all of the following were (in the case of signatory states) made at signature and maintained at ratification; or (in the case of acceding states) made at accession. All were the subject of specific or general objections: the objections are listed separately in the following section.⁸

Albania, Bulgaria, Byelorussian SSR, Czechoslovakia, Romania, and Ukrainian SSR all made reservations identical to that of USSR.

Algeria 'does not consider itself bound by Article IX of the Convention, which confers on the International Court of Justice jurisdiction in all disputes relating to the said Convention . . . No provision of Article VI . . . shall be interpreted as depriving its tribunals of jurisdiction in cases of genocide or other acts enumerated in Article III which have been committed on its territory or as conferring such jurisdiction on foreign tribunals. International tribunals may, as an exceptional measure, be recognized as having jurisdiction, in cases in which the Algerian Government has given its express approval.' *Algeria* 'does not accept the terms of Article XII . . . and considers that all of the provisions of the said Convention should apply to Non-Self-Governing Territories, including Trust Territories.'

Argentina reserved the right not to submit to the procedure laid down in Article IX 'any dispute relating directly or indirectly to the territories referred to in its reservation to Article XII.' On Article XII: 'If any other Contracting Party extends the application of the Convention to territories under the sovereignty of the Argentine Republic, this extension shall in no way affect the rights and duties of the Republic.'

Burma, at ratification only, stated that nothing in Article VI 'shall be construed as depriving the courts and tribunals of the Union of jurisdiction or as giving foreign courts and tribunals jurisdiction over any cases of genocide or any of the other acts enumerated in Article III committed within the Union territory.' Article VIII 'shall not apply to the Union.'

Finland: ' . . . Subject to the provisions of Article 47, paragraph 2, of the Constitution Act, 1919, concerning the impeachment of the President of the Republic of Finland.'

German Democratic Republic made a reservation identical to that of USSR, but stating, additionally, that Article XI 'deprives a number of States of the opportunity to become Parties to the Convention. As the Convention regulates matters affecting the interests of all States, it should be open to participation by all States whose policies are guided by the purposes and principles of the Charter of the United Nations.'

Hungary 'reserves its rights with regard to the provisions of Article IX . . . which grant wide jurisdiction to the International Court at The Hague, and with

⁷ This list is based on the sources referred to in footnote 1 above. The objections, listed in the following section, are from the same sources.

⁸ Controversy over the effect to be given to reservations to the Convention led the UN General Assembly, on 16 November 1950, to request an Advisory Opinion of the International Court of Justice. On 28 May 1951 the ICJ gave an Advisory Opinion. The significance of the issue goes beyond the Genocide Convention to the law of treaties in general. See 'Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide: Advisory Opinion of May 28th, 1951', *ICJ Reports*, 1951, pp. 15-55.

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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:

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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 I 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.

2. 1868 St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 grammes Weight

PREFATORY NOTE

Attempts to prohibit the use of particular weapons in warfare have been made in various civilizations over a long period of time. For example, in ancient times, the Laws of Manu (the greatest of the ancient Hindu codes) prohibited Hindus from using poisoned arrows; and the Greeks and Romans customarily observed a prohibition against using poison or poisoned weapons. During the Middle Ages the Lateran Council of 1132 declared that the crossbow and arbalest were 'unchristian' weapons. When the laws of war began to be codified by states in the mid-nineteenth century, the prohibition of a particular weapon was the subject of one of the first international agreements.

The 1868 St. Petersburg Declaration has been regarded as the first major international agreement prohibiting the use of a particular weapon in warfare. The prohibition followed the development of a bullet which exploded upon contact with a hard surface. In 1863 the bullet was introduced into the Imperial Russian Army to be used for blowing up ammunition wagons. In 1864 the Imperial War Minister considered it to be improper to use such a bullet against troops and its use was therefore strictly controlled. However, in 1867 a modification of the bullet was developed which enabled it to explode on contact with even a soft surface. Moreover, unlike the previous projectile, the new bullet shattered upon explosion. Understanding that such a bullet posed a greater danger to troops, the Imperial War Minister did not want it used either by the Imperial Russian Army or the armies of other states. The Imperial War Minister proposed to Tsar Alexander II that the use of all explosive bullets, or at least the bullet developed in 1867, should be renounced. Tsar Alexander II invited states to attend an International Military Commission in St. Petersburg to consider the matter.

The conference met in St. Petersburg in three sessions, on 9, 13, and 16 November 1868 (all dates are by the Western calendar), attended by the representatives of sixteen states. All of these states, with the single addition of Persia, formally signed the Declaration on 11 December.

At the conference, Prussia reiterated a request it had made earlier, that the scope of the enquiry be broadened to deal generally with the application of scientific discoveries to armed conflict and to extend the proposed prohibition to other types of projectile. British and French opposition to any general consideration of projectiles led to the Prussian suggestion being dropped. However, the Swiss suggestion that the proposed prohibition be extended to include inflammable bullets was accepted. Because none of the states objected to the use of explosives in shells, the prohibition was restricted to projectiles under 400 grammes weight.

The St. Petersburg Declaration is regarded as expressing, with respect to a particular means of warfare, the customary principle prohibiting the use of

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means of warfare causing unnecessary suffering. This general customary principle was later embodied in Article 23(e) of the Regulations annexed to the 1864 Hague Convention II and 1907 Hague Convention IV. To the extent that the St. Petersburg Declaration represents customary international law, it would be binding upon all states and not merely those which are formally parties to it, and its 'general participation clause' would cease to be relevant.

The St. Petersburg Declaration led to the adoption of other declarations renouncing particular means of warfare at the First Hague Peace Conference of 1899 and the Second Hague Peace Conference of 1907.

The application of the St. Petersburg Declaration to certain weapons which were developed later raises difficult questions. With respect to incendiary weapons, such as flame-throwers and napalm, the Declaration's prohibition does relate to projectiles under 400 grammes weight containing inflammable substances, and this has been taken by some to imply, by analogy, that it is unlawful to use fire weapons. Others suggest that it is thereby only unlawful to use such fire weapons so as to cause unnecessary suffering to individuals. Still others doubt that any prohibition may be inferred by analogy. State practice has demonstrated that such incendiary weapons have been widely used. (Indeed, the use of tracer, incendiary or explosive projectiles by or against aircraft was specifically not prohibited in Article 18 of the 1923 draft Hague Air Rules.) With respect to incendiary weapons in general, reference should be made to the 1981 UN Weapons Convention, Protocol III.

Date of signature: 11 December 1868 (29 November by the Julian calendar)
Entry into force: 11 December 1868
Depositary: None specified in the text. Presumably Russia. See footnote 1 in the concluding notes below.
Authentic language: French
Text reprinted from: LXIV UKPP (1869) 659
Also published in: 18 *Martens NRG*, 1ère sér. (1860-1873) 474-5 (Fr.);
58 *BFSP* (1867-1868) 16-17 (Fr.);
1 *AJIL* (1907) Supplement 95-6 (Eng.);
138 *CTS* (1868-1869) 297-9 (Fr.)

Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 grammes Weight

ON the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburg in order to examine into the expediency of forbidding the use of certain projectiles in times of war between civilized nations, and that Commission, having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare as follows:—

Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

That the only legitimate object which States should endeavour

to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would, therefore, be contrary to the laws of humanity;

The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.

They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St. Petersburg, by sending Delegates thereto, to accede to the present engagement.

This engagement is obligatory only upon the Contracting or Acceding Parties thereto, in case of war between two or more of themselves: it is not applicable with regard to non-Contracting Parties, or Parties who shall not have acceded to it.

It will also cease to be obligatory from the moment when, in a war between Contracting or Acceding Parties, a non-Contracting Party or a non-Acceding Party shall join one of the belligerents.

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.

Done at St. Petersburg, the twenty-ninth of November/eleventh of December, one thousand eight hundred and sixty-eight.

CONCLUDING NOTES

Signatures and Accessions¹

State	Date of Signature ²	Date of Accession (a) ³
Austria-Hungary	11 December 1868	
Baden		11 January 1869 a
Bavaria	11 December 1868	
Belgium	11 December 1868	
Brazil		23 October 1869 a
Denmark	11 December 1868	
France	11 December 1868	
Great Britain	11 December 1868	
Greece	11 December 1868	
Italy	11 December 1868	
Netherlands	11 December 1868	
Persia	11 December 1868	
Portugal	11 December 1868	
Prussia and the North German Confederation	11 December 1868	
Russia	11 December 1868	
Sweden and Norway	11 December 1868	
Switzerland	11 December 1868	
Turkey	11 December 1868	
Wurtemberg	11 December 1868	

Total Number of Parties Listed: 19

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.

¹ Although no Depositary is specified in the agreement itself, the French Ministry of Foreign Affairs states that the original copy was placed in the Russian archives. However, the Ministry of Foreign Affairs of the USSR has not responded to requests for a list of states parties. In the absence of information from the Depositary, this list has been compiled from information supplied by the UK Foreign and Commonwealth Office, and the French Ministry of Foreign Affairs, between December 1979 and January 1981. This information has been checked in a variety of published sources, including those mentioned under the prefatory notes and also F. Martens, *Recueil des Traités et Conventions conclus par la Russie*, vol. IV, part 2, Devrient, St. Petersburg, 1878, pp. 953-61; and J. Basdevant, *Traités et Conventions en Vigueur entre la France et les Puissances Etrangères*, vol. III, Imprimerie Nationale, Paris, 1920, pp. 750-1. The latter alone gives the exact dates of accession of Baden and Brazil.

All dates in this table are according to the Western calendar, not the Julian one which was in use in Russia at the time.

² Like the 1856 Paris Declaration, the 1868 Declaration became binding on the signatory states without need of ratification.

³ There is no evidence of any instruments of succession.

Denunciations

There is no evidence of any.

Reservations

There is no evidence of any.

the application of the agreement in its entirety between all parties is intended, and, therefore, acceptance of an reservation 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) to the so-called

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'long-distance blockade'. The 'long-distance block' 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.

⁴Spain 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 of the Declaration.

Note B. *USA* expressed readiness to accede to the Declaration provided it was 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