

THE LAWS OF ARMED CONFLICTS



SCHINDLER | TOMAN

THE LAWS OF ARMED CONFLICTS

*A Collection of Conventions, Resolutions
and Other Documents*

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INTRODUCTION

THE CONVENTIONS ON THE LAW OF ARMED CONFLICTS

The present volume reproduces the texts of the Conventions, draft Conventions and Resolutions relating to the law of armed conflicts, many of which have been difficult of access in recent times. Since the publication of the voluminous collection *Recueil général des lois et coutumes de la guerre* by Deltenre in 1943, no comprehensive collection of the law of armed conflicts has been published. National manuals on the law of warfare are generally confined to the Conventions in force in the countries concerned. Not only has it been difficult to find the texts, it has often been even harder to find the lists of Contracting Parties and reservations.

The laws of war were the first part of international law to be codified. Various factors led to their restatement and development in international conventions in the second half of the 19th Century. First, the introduction of compulsory military service changed the nature of warfare. Large national armies took the place of the small professional forces which had been subject to rigid discipline. Consequently wars were fought on a different scale from before. A growing need was felt for a binding and widely accessible codification of rules governing the conduct of war. The Institute of International Law clearly emphasized this need in the preface to its Oxford Manual, published in 1880, by urging that the codification ought to end the "painful uncertainty" and the "endless accusations" and ought to be worded in a popular form in order to be made known to everyone.

Second, the horrors of war, and above all, the number of victims, had greatly increased due to the enlargement of armies and the improvement of arms. This was the decisive factor in the foundation of the Red Cross and the adoption of the Geneva Convention of 1864, which, in turn, gave the impetus to the conclusion of further Conventions on the laws of war.

Third, during the second half of the 19th Century, a growing conviction spread over the Western world that civilization was advancing rapidly and that it was therefore necessary "to restrain the destructive force of war" (Preface to the Oxford Manual of the Institute of International Law, 1880). The preamble to the Declaration of St. Petersburg of 1868 (No. 8) states "that the progress of civilization should have the effect of alleviating as much as possible the calamities of war." Similarly, the preambles to the Hague Conventions of 1899 and 1907 on the laws and customs of war on land (Nos. 6 and 7) speak of the "ever increasing needs of civilization."

Finally, the codification of the laws of war was stimulated by the progress of the codification of private law on the European Continent in the same period.

The codification of the laws of war reached its peak before World War I. Never since that time has it been possible to adopt Conventions on as many different aspects of the laws of war as at the two Hague Peace Conferences of 1899 and 1907. The Conventions adopted in the following decades were mainly intended to refine and specify the principles embodied in the earlier

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agreements and to adapt them to the changes in the conduct of hostilities and to the innovations of military technology. Among the basic principles to be found in all the Conventions, mention should first be made of the distinction between armed forces and civilians which is essential not only for the question who may take part in hostilities but also for the determination of the persons and objects against which acts of war may be directed or which are to be protected. The Declaration of St. Petersburg of 1868 states that "the only legitimate object which states should endeavour to accomplish during war is to weaken the military forces of the enemy." Persons who do not take part or who have ceased to take part in hostilities may not be the object of attack. As to the means of warfare, the ruling principle remains "that the right of the belligerents to adopt means of injuring the enemy is not unlimited" (Brussels Declaration of 1874, Art. 12; Oxford Manual of 1880, Art. 4; Hague Regulations of 1899 and 1907, Art. 22; Protocol I Additional to the Geneva Conventions, 1977, Art. 35(1)) and that it is forbidden "to employ arms, projectiles or material of a nature to cause unnecessary suffering" (Declaration of St. Petersburg, Preamble; Brussels Declaration, Art. 13 (e); Oxford Manual, Art. 9 (a); Hague Regulations, Art. 23 (e); Protocol I Additional to the Geneva Conventions, Art. 35(2)).

After World War I a period of neglect of the laws of war set in although the war had given ample proof of the inadequacies of the existing Conventions. The prevailing opinion was that the revision of the laws of war would undermine confidence in the League of Nations and in the new methods of preventing war. Only the Geneva Convention was revised and completed by a Convention on the treatment of prisoners of war, in 1929. Moreover, two rudimentary Protocols on the prohibition of poisonous gases and of bacteriological methods of warfare (Geneva Protocol of 1925, No. 12) and on submarine warfare (London Protocol of 1936, No. 68) were adopted. Other attempts to codify parts of the laws of war, especially the law of air warfare and the protection of civilians against modern means of warfare, remained unsuccessful (see Nos. 19 and 21). Thus, when World War II broke out, the laws of war were even less capable of coping with the horrors of war than was the case in World War I.

World War II was followed by a similar period of neglect of the laws of war. When in 1949 the International Law Commission of the United Nations, at its first session, selected the topics for codification, the majority of the Commission declared itself opposed to the study of the laws of war. It considered that if the Commission, at the very beginning of its work, were to undertake this study, public opinion might interpret its action as showing lack of confidence in the effectiveness of the means at the disposal of the United Nations for maintaining peace.¹ In the same year, however, on the initiative of the International Committee of the Red Cross, the Geneva Conventions were revised and an additional Convention relative to the protection of civilian persons in time of war was adopted. Furthermore, in 1954, the Convention for the protection of cultural property in the event of armed conflict was adopted on the initiative of UNESCO. The Hague Conventions of 1899 and

¹ Report of the International Law Commission to the General Assembly, Yearbook of the International Law Commission 1949, p. 281, No. 18.

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1907, however, once again remained unchanged. The result was a growing discrepancy between the revised Geneva Conventions and the cultural property Convention on the one hand, and the outdated Hague Conventions on the other.

It was not until the mid-1960's that a new interest in the law of armed conflicts became apparent. It was brought about especially by the armed conflicts in Vietnam, the Middle East and Nigeria and by the struggles of peoples against colonial and alien domination and racist régimes which led to a growing pressure for the application of the Geneva Conventions to combatants against such régimes. It was in this period, that the United Nations took up the problem for the first time and joined the Red Cross, whose efforts to improve the laws of war had never ceased. The incentive was provided by the International Conference on Human Rights convened by the United Nations General Assembly in Teheran in 1968 which, in its resolution on "Human Rights in Armed Conflicts" (No. 25) declared "that the provisions of the Hague Conventions of 1899 and 1907 were intended to be only the first step in the provision of a code prohibiting or limiting the use of certain methods of warfare and that they were adopted at a time when the present means and methods of warfare did not exist." The General Assembly in the same year adopted Resolution 2444 (XXIII) (No. 26) in which it confirmed some of the basic principles of the law of armed conflicts and invited the Secretary-General, in consultation with the ICRC and other appropriate international organizations, to study, *inter alia*, the need for appropriate legal instruments to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare. The most remarkable aspect of this development is that it linked the development of the law of armed conflicts with the international protection of human rights with which it had until then had no connection. In 1969, the International Conference of the Red Cross invited the ICRC to work out proposals for the completion of the humanitarian law. The ICRC there-upon convened two conferences of government experts in 1971 and 1972 and prepared two draft protocols additional to the Geneva Conventions. A Diplomatic Conference convened by the Swiss Federal Council took place in Geneva from 1974 to 1977 and adopted the two Additional Protocols which mark the last achievement in the development of the laws of armed conflict.

The two Protocols of 1977 fill lacunae which had been strongly felt for years or even tens of years. In the first place, adequate provisions were adopted on the protection of the civilian population against effects of hostilities, provisions for which efforts had been undertaken in vain since the early 1920's. Secondly, the basic principles of the Hague Conventions of 1899 and 1907 on the conduct of hostilities are reaffirmed and developed, a fact which is particularly important regarding the considerable age of those Conventions and the many new States which had no part in their elaboration. In the framework of those provisions the status of guerilla fighters is newly defined. Thirdly, Protocol II brings more elaborate rules on non-international conflicts. The minimum rules embodied in Article 3 common to the Geneva Conventions of 1949 proved to be inadequate in view of the great number of in-

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ternal conflicts and the magnitude of their humanitarian problems.

Although the two Protocols of 1977 have greatly improved the law of armed conflicts there remain many deficiencies in this part of international law. One of the shortcomings is the great complexity of the existing rules. The Geneva Conventions and the Additional Protocols of 1977 alone embrace approximately 600 Articles many of which are highly complicated and differentiated. Special measures are necessary for an appropriate dissemination and instruction and for their correct application. Many of them are furthermore open to various interpretations. On the other hand, there remain obvious lacunae in the laws of war. There are, for instance, no adequate rules on the use of many new weapons as yet although efforts are being continued to reach agreement on this subject. There is furthermore no regulation of the application of the laws of armed conflict to hostilities in which United Nations forces are engaged, nor on problems arising when multi-national armed forces take part in a conflict. The conventions on sea warfare are for the most part outdated, and economic warfare remains to a large extent outside the scope of the laws of war. Finally, the rights and duties between belligerents and third States (neutrals) are highly uncertain.

On the whole, however, the Diplomatic Conference of 1974-1977 brought a better result as was to be apprehended in view of the political and ideological cleavages of the present world.

As long as war is not abolished, the law of armed conflicts is essential for peace. The number of armed conflicts which have occurred since the use of force in international relations has been prohibited does not leave hope that armed conflicts can be prevented entirely in the future. During such conflicts, however, the laws of war remain one of the sole common grounds between enemies. They correspond to their mutual interest and constitute a bridge for a new understanding after the end of the conflict. It is not untimely to recall that the legal and military experts who attempted to codify the laws of war more than a hundred years ago declared that the final object of an armed conflict is the "re-establishment of good relations and a more solid and lasting peace between the belligerent States."¹ Even if it is true that the character of wars has fundamentally changed since then, the same principle should be recognized in all armed conflicts of the present time.

¹ Final Protocol of the Brussels Conference of 1874, paragraph 5 (No. 2). See also Lieber Code, Art. 29, paragraph 2 (No. 1).

EXPLANATORY NOTES

1. Selection of Texts

The present collection contains texts on the *law of armed conflicts* (law of war, *ius in bello*) only. It excludes texts concerning

- the limitation and prohibitions of force in international relations (*ius ad bellum*);
- the limitation of armaments, especially the prohibition on the manufacture or acquisition of certain arms, the testing of arms and trade in arms;
- the neutralization, demilitarization and denuclearization of certain territories;
- human rights.

The collection reproduces all *multilateral conventions* on the law of armed conflicts.

- which are in force;
- which have not (or not yet) entered into force;
- which are no longer in force.

The following categories of *further texts* are reproduced:

- Final acts and resolutions adopted by the intergovernmental conferences which drew up the conventions reproduced in this collection;
- Resolutions of intergovernmental or non-governmental organizations in which rules of the law of armed conflicts are stated. No resolutions are, however, reproduced which contain only a recommendation to apply existing rules in a particular situation;

No national regulations are published, the only exception being the Lieber Instructions of 1863 (No. 1 of this volume) which marked the beginning of the codification of the law of armed conflicts.

2. Order of the Texts

The texts are grouped into chapters. Minor overlappings between the chapters are inevitable, e.g. between Chapter III (Air Warfare) and Chapter IV (Protection of Populations against Effects of Hostilities). Within the chapters the texts are reproduced in chronological order.

EXPLANATORY NOTES

3. Types of Print

The texts are printed in four different types:

Normal type, large,	used for:	Conventions in force
Normal type, small,	used for:	Conventions which have not (or not yet) entered into force or which are no longer in force. Draft conventions and draft articles, including those adopted by non-governmental organizations
<i>Italics, large,</i>	<i>used for:</i>	Resolutions adopted by intergovernmental organizations. Final acts and resolutions adopted by intergovernmental conferences (except where small italics are applicable)
<i>Italics, small,</i>	<i>used for:</i>	Resolutions adopted by non-governmental organizations. Final acts and resolutions adopted by intergovernmental conferences insofar as the conventions adopted by such conferences are no longer in force or have not entered into force.

4. Notes

The following editorial notes are made below the titles of the conventions, resolutions and other texts:

- Introductory note (indications as to the events which led to the adoption of the texts and the bodies which adopted them).
- Entry into force (only made if the text in question has entered into force).
- Authentic text(s) (Authentic language(s) as well as the treaty collection or other publication from which the text has been reprinted).
- Text published in (Treaty collections and other publications in which the texts of the conventions or other documents are reprinted in English, French, Russian and Spanish).
- Table of Contents (only furnished in case of conventions which are divided into several parts or chapters).

5. Footnotes

Footnotes have no official character except in special cases.

EXPLANATORY NOTES

6. Lists of signatures, ratifications, accessions, notifications of continuity and reservations.

The dates indicated under the heading "ratification, accession or notification of continuity" refer to the day of the deposit of the instrument of ratification, accession or notification of continuity. In case of notifications of continuity, the conventions are effective for the respective States as from the date of their accession to independence.

The abbreviation "*Res.*" (reservation) is used under the heading "signature" when a reservation was made on signature. It is used under the heading "ratification, accession or notification of continuity" when it was made on ratification or accession.

All reservations are reproduced with their full text even when they have not been maintained or have subsequently been withdrawn.

Indications concerning signatures, ratifications, accessions, notifications of continuity and reservations are listed up to 30 April 1978 unless otherwise indicated.

ABBREVIATIONS

- AJIL* *The American Journal of International Law.*
- Bevans** *Treaties and other International Agreements of the USA, 1776-1949, compiled under the direction of Charles I. Bevans, LL.B.; Department of State publication 8407, November 1968.*
 Vol. I 1776-1917
 Vol. II 1918-1930
 Vol. III 1931-1945
 Vol. IV 1946-1949
- BFSP* *British and Foreign State Papers, 1812-, published by His (or Her) Majesty's Stationery Office, London, from 1887-.*
- Bluntschli** J.C. Bluntschli, *Sovremennoe mezhdunarodnoe pravo tsivilizovannykh' gosudarstv' izlozhennoe v' vide Kodeksa*. Pervod so vtorogo nemetskogo izdaniia V. Ul'yanitskago i A.Lodyzhenskago pod redaktsieyu L. Kamarovskago, Moskva, 1876.
- Komarovskii**
- Bustamante** Antonio S. de Bustamante y Sirven, *La Segunda Conferencia de la Paz reunida en el Haya en 1907*, tomo segundo, Madrid, Libreria General de Victoriano Suarez, 1908, 2 vols.
- De Clercq** *Recueil des Traités de la France*, publié sous les auspices du Ministère des Affaires étrangères par M. Jules de Clercq, Paris, A. Durand et Pedone-Lauriel, 1864-1907, 23 tomes.
- Conférence internationale de la Paix 1899* *Conférence internationale de la Paix.*
 La Haye, 18 mai-29 juillet 1899, Ministère des Affaires étrangères, La Haye, Imprimerie Nationale, 1899.
- Conférence internationale de la Paix 1907* *Deuxième Conférence internationale de la Paix.*
 La Haye 15 juin-18 octobre 1907; *Actes et documents* (tome premier: Séances plénières de la Conférence). Ministère des Affaires étrangères, La Haye, Imprimerie Nationale, 1907.
- Deltenre** *Recueil Général des lois et coutumes de la guerre terrestre, maritime, sous-marine et aérienne d'après les Actes élaborés par les Conférences internationales depuis 1856*, Documents recueillis et annotés par M. Marcel Deltenre, les Editions Fred. Wellens-Pay, Bruxelles, 1943.

ABBREVIATIONS

Friedman	<i>The Law of War</i> , A Documentary History, Edited by Leon Friedman, New York, Random House, 1972, Volume I.
Genet	Raoul Genet, <i>Précis de droit maritime pour le temps de guerre</i> , Paris, 1937, Vol. 2.
GBTS	<i>Treaty Series No. ... (year)</i> . Presented to both Houses of Parliament by Command of His (Her) Majesty, Stationery Office, 1892-.
<i>Handbook of the International Red Cross</i> , 1953	<i>Handbook of the International Red Cross</i> , 10th edition, ICRC/LRCS, Geneva 1953.
<i>Handbook of the International Red Cross</i> , 1971	<i>Handbook of the International Red Cross</i> , 11th edition, ICRC/LRCS, Geneva, 1971.
Heffter-Taube	A.G. Heffter, <i>Evropeiskoe mezhdunarodnoe pravo</i> , perevel' K. Taube, S. Peterburg', 1880. Prilozheniya.
Higgins	<i>The Hague Peace Conferences and Other International Conferences Concerning the Laws and Usages of War</i> , texts of Conventions with commentaries, by A. Pearce Higgins, LL.D., Cambridge, at the University Press, 1909.
Hudson	Manley O. Hudson, <i>International Legislation</i> , A collection of the texts of multipartite international instruments of general interest beginning with the Covenant of the League of Nations, Washington, Carnegie Endowment for International Peace, 1931-1950, 9 vols.
Korovin	Prof. E.A. Korovin, <i>Mezhdunarodnye dogovory i akty novogo vremeni</i> , Gosudarstvennoe izdatelstvo, Moskva-Leningrad, 1924.
<i>Les deux Conférences de la Paix</i>	<i>Les deux Conférences de la Paix 1899 et 1907</i> , Recueil des textes arrêtés par ces Conférences et des différents Documents complémentaires, avec un Avant-Propos de M. Louis Renault, 2ème édition, Paris, A. Rousseau, 1909, 225p.
LNTS	<i>League of Nations Treaty Series</i> .

ABBREVIATIONS

- | | |
|---|--|
| Malloy | <i>Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and Other Powers</i>
1776-1909 (I, II)
1910-1923 (III)
1923-1937 (IV)
compiled by William M. Malloy, Washington, Government Printing Office 1910-1938, 4 vols. |
| <i>Manual de la Cruz Roja Internacional</i> , 1953 | <i>Manual de la Cruz Roja Internacional</i> , 10 edición CICR/LSCR, Ginebra, 1953. |
| <i>Manuel de la Croix-Rouge internationale</i> , 1953 | <i>Manuel de la Croix-Rouge internationale</i> , 10ème édition, CICR/LSCR, Genève, 1953. |
| <i>Manuel de la Croix Rouge internationale</i> , 1971 | <i>Manuel de la Croix-Rouge internationale</i> , 11ème édition, CICR, LSCR, Genève, 1971. |
| Martens, NRG | Georges Frédéric de Martens, <i>Nouveau Recueil Général de Traités et autres actes relatifs aux rapports de droit international</i> , Gottingue, (Leipzig, à partir du tome XXII, 1897), Dieterich. 1ère série, 1843-1875, 20 vol.; 2ème série, 1876-1908, 35 vol.; 3ème série, 1915-1944, 41 vol. |
| <i>Mezhdunarodnoe pravo</i> | <i>Mezhdunarodnoe pravo v izbrannykh dokumentakh</i> , tom I-III, Izdatelstvo IMO, Moskva 1957. |
| Olivart | <i>Colección de los tratados, convenios y documentos internacionales celebrados por nuestros gobiernos con los estados extranjeros desde el reinado de Doña Isabel II hasta nuestros días</i> , Marqués de Olivart, Madrid, 1890. |
| Olivart, <i>Tratados</i> | <i>Tratados y documentos internacionales de España publicados oficialmente y collectionados en la Revista de derecho internacional y politica exterior</i> , Marqués de Olivart, tomo IV, 1908-1909, Madrid, 1912. |
| <i>The Proceedings of the Hague Peace Conference 1899</i> | <i>The Proceedings of the Hague Peace Conferences</i> . Translation of the official texts. Prepared in the Division of International Law of the Carnegie Endowment for International Peace, under the supervision of James Brown Scott. The Conference of 1899. New York, Oxford University Press, 1920. |

ABBREVIATIONS

*The Proceedings
of the Hague Peace
Conferences 1907*

The Proceedings of the Hague Peace Conferences. Translation of the official texts. Prepared in the Division of International Law of the Carnegie Endowment for International Peace, under the supervision of James Brown Scott. The Conference of 1907, New York, Oxford University Press, 1920.

RGDIP

Revue Générale de Droit International Public

*Sbornik
dogovorov RSFSR*

Sbornik deistvuyunshchikh dogovorov, soglasheny i Konventsy zaklyuchennykh RSFSR s inostrannymi gosudarstvami, Petersburg, Gosudarstvennoe izdatel'stvo, 1921-1923, 5 vols.

*Sbornik
dogovorov SSSR*

Sbornik deistvuyushchikh dogovorov, soglasheny i konventsy zaklyuchennykh SSSR s inostrannymi gosudarstvami, Moskva, NKID/MID, 1924-.

*Scott,
Hague Conventions*

The Hague Conventions and Declarations of 1899 and 1907, edited by James Brown Scott, Carnegie Endowment for International Peace, Oxford University Press, 2nd edition, New York, 1915.

*Scott,
Resolutions of
the Institute of
International Law*

Resolutions of the Institute of International Law, edited by James Brown Scott, Carnegie Endowment for International Peace, New York, 1916.

*Sobranie
zakonov*

Sobranie zakonov i rasporiazheny Rabochekrestianskogo Pravitelstva SSSR 1924-1938 (from 1938 to 1946 under the title *Sobranie postonovleny i rasporiazheny pravitelstva SSSR*).

UNTS

United Nations Treaty Series.

Wilson - Tucker

George G. Wilson: *International Law*, 9th edition (edition 1901-1917 by G.G. Wilson and G.F. Tucker), Silver, Burdett and Co., New York, 1935.

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