

**INTERNATIONAL LAW
DISCUSSIONS, 1903; THE
UNITED STATES NAVAL
WAR CODE OF 1900**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649495016

International Law Discussions, 1903; The United States Naval War Code of 1900 by Naval War College

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

NAVAL WAR COLLEGE

**INTERNATIONAL LAW
DISCUSSIONS, 1903; THE
UNITED STATES NAVAL
WAR CODE OF 1900**

NAVAL WAR COLLEGE

INTERNATIONAL LAW DISCUSSIONS, 1903

THE UNITED STATES
NAVAL WAR CODE OF 1900

APPENDICES

CONTAINING

THE UNITED STATES NAVAL WAR CODE, 1900.

INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE
UNITED STATES IN THE FIELD, 1863.

HAGUE CONVENTION WITH RESPECT TO THE LAWS AND CUS-
TOMS OF WAR ON LAND, 1899.

HAGUE CONVENTION FOR THE ADAPTATION TO MARITIME
WARFARE OF THE PRINCIPLES OF THE GENEVA CONVEN-
TION OF AUGUST 22, 1864, 1899.

WASHINGTON
GOVERNMENT PRINTING OFFICE
1904

PREFACE.

The discussion of the United States Naval War Code, 1900, during the summer of 1903, was carried on with the assistance of Mr. George Grafton Wilson, professor in Brown University, by the staff of the college and a large body of active officers of long experience. The discussion should be considered with reference to the explanation set forth on pages 11 and 12.

The discussion resulted in a recommendation that the Code be withdrawn, and accordingly this has been done by the Navy Department's General Order No. 150, February 4, 1904.

C. S. SPERRY.

Captain, U. S. N., President.

U. S. NAVAL WAR COLLEGE,

Newport, R. I.,

February 9, 1904.

CONTENTS.

INTRODUCTORY.	Page.
The preparation of the Code.....	5
Opinions upon the Code.....	7
Nature of the discussions for 1903.....	11
DISCUSSIONS.	
Explanation.....	13
Section I.—Hostilities:	
Article 1. Hostile measures.....	13
Revised form.....	17
2. Area of maritime warfare.....	18
3. Military measures.....	19
Canals, other public works.....	20
Launching of projectiles from balloons.....	22
4. Bombardment open towns.....	23
5. Submarine telegraphic cables.....	27
In the high seas.....	28
Conclusions.....	35
6. Seizure of neutral vessels.....	36
7. Use of false colors.....	37
Conclusions.....	42
8. Baprissals.....	42
Section II.—Belligerents:	
Article 9. Armed forces.....	44
10. Personnel.....	45
Treatment.....	46
11. Captured private vessels.....	48
12. Military occupation.....	50
Section III.—Belligerent and neutral vessels:	
Article 13. Public vessels.....	51
14. Private vessels.....	53
Coast fishing vessels.....	53
15. Private vessels sailing, etc., prior to declaration of war.....	54
Questions in regard to.....	57
Opinion of committee on.....	63
16. Enemy service.....	65
17. Asylum for vessels of war.....	65
18. Regulation of asylum.....	66
19. Freedom of neutral vessel.....	67
20. Dispatches, mail service, etc.....	68
Unneutral service.....	68
Section IV.—Hospital ships—the shipwrecked, sick, and wounded:	
Articles 21-22. Hospital ships—the shipwrecked, sick, and wounded.....	71
Conclusions.....	77
Section V.—The exercise of the right of search:	
Article 30. Convoy.....	77
31. Visit or search.....	78
32. Boarding.....	80
33. Causes for visit.....	81
Section VI.—Contraband of war:	
Articles 34-36. Rules for.....	82
Section VII.—Blockade:	
Articles 37-43. Regulations.....	83
Section VIII.—The sending in of prizes:	
Articles 44-50. Regulations.....	87
Section IX.—Armistice, truce, and capitulations; violations of laws of war:	
Articles 51-55. General rules.....	88
Summary of general conclusions.....	89
Summary of suggested changes in Code.....	91
APPENDICES.	
I.—The United States Naval War Code of 1900.....	101
II.—Instructions for the Government of Armies of the United States in the field.....	115
III.—Hague Convention with Respect to the Laws and Customs of War on Land, 1864.....	141
IV.—Hague Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22, 1864, 1899.....	159

INTRODUCTORY.

THE PREPARATION OF THE CODE.

The publication of a code to determine the course of action in maritime war is in itself an act significant of the progress that has been made in recent years in the conduct of hostilities. The issue of such a code by the United States in 1900 is in accord with the precedent set in the publication in 1863 of rules prepared by Dr. Lieber for the government of armies in the field. This codification of rules for the regulation of land warfare by Dr. Lieber was followed by such regulations as those of the Geneva Convention of October 30, 1868, the Declaration of Brussels of 1874, the Oxford Resolutions of 1880, and other later rules pertaining to the conduct of war upon land.

These rules for warfare upon the sea were prepared by Capt. Charles H. Stockton, U. S. N., in accordance with an order of the Secretary of the Navy, made in 1899, while Captain Stockton was president of the Naval War College. He was requested to draw up a set of rules which should serve for the Navy the purpose which the rules drawn up by Dr. Lieber served in the Army. Captain Stockton consulted with various officers of the Navy and also with several civilians who were interested in maritime international law.

The preliminary draft of the code prepared in the main by Captain Stockton was sent out with the following memorandum:

The regulations respecting the laws and usages of war at sea, a preliminary draft of which is herewith forwarded, are proposed, primarily, to be put in force for the Navy of the United States. For that reason, and on account of our existing laws in regard to privateers and the capture of enemy merchant vessels, the articles relating to privateers and letters of marque, and to the capture and destruction of private property at sea, are included in the code.

If the code should be presented to other countries as an international *projet*, it is presumed that these articles would be omitted or modified, in view of our adherence to the Declaration of Paris during the late war and of the stand, as to the capture of private property at sea, taken by the President of the United States in a recent message and in his instructions to our representatives at The Hague Conference.

The regulations for the laws of war upon land, adopted at The Hague Conference, cover a number of subjects that are applicable to the naval service afloat and ashore, such as those bearing upon

matters of prisoners, spies, military occupation, etc., and hence these matters are not included in the Naval Code, which extends, by Article 55, the authority of the laws of war to the naval service, when applicable and when not in conflict with the proposed Naval Code. These regulations for land warfare, as adopted at The Hague, accompany this memorandum and have been adhered to by the United States, but are not yet in force for the Army of the United States, though it is presumed that, after submission to and confirmation by the Senate, they will be duly promulgated and authorized.

I am informed unofficially by the Judge-Advocate General of the Army that the present, or "Lieber Code" (General Order No. 100), now in force, will in all probability be incorporated or amalgamated, where possible, with The Hague Regulations.¹

The Geneva-Hague additional articles for the amelioration of warfare at sea, on the lines of the Geneva Convention, have been incorporated in the Naval Code, with the exception of Article 8, which is omitted, and of Article 6, which is modified. The presence of these two articles prevented the adoption of the additional articles, as a whole, by the representatives of the United States. It is believed that the possibilities of the South African war have justified Captain Mahan's views as to Article 8.² If it had been a maritime war we might have seen sympathetic neutral hospital ships of different countries arrayed on opposite sides, and even hospital ships of the same neutral country so opposed, in accordance with the sympathies of the contributors. Probably from the United States would have come two or more antagonistic hospital ships, fitted out by sympathizers having opposing opinions as to the merits of the war. It can readily be imagined what confusion and complications might follow—all the articles would have been discredited.

It is believed also, by the proposed modification of Article 6, that the danger of a repetition of the *Deerhound* affair, in the *Kearsarge-Alabama* fight, would be avoided in the future. The phraseology of these articles given in the two official translations (English and American) is retained wherever the translations do not conflict.

In addition to the manifest advantages of a formulation and crystallization of the laws and usages of naval war (a work that has never before been attempted, it is believed, by any other nation), it is also hoped that this code will tend toward the amelioration of the hardships of naval warfare in general, and more particularly in the following respects:

1. By the adoption of all that is of practical value to be found in the additional articles proposed at The Hague to extend the articles of the Geneva Convention to maritime warfare.
2. By restricting to narrow limits the bombardment of unfortified and undefended towns.
3. By forbidding bombardment as a means of levying a ransom upon undefended towns.
4. By forbidding the use of false colors.
5. By forbidding reprisals in excess of the offense calling for them.
6. By exempting coast fishing vessels from capture, where innocently employed.
7. By incorporating the liberal allowances for vessels of the enemy at the outbreak of war, and for blockaded vessels, given in the General Order No. 492, of 1898, of the Navy Department.
8. By providing definitely that free ships make free goods.
9. By giving all the exemption possible to mail steamers in time of war.

¹ Laws and Customs of War on Land proclaimed by President, April 11, 1902.

² Holla, "Peace Conference at The Hague," p. 493.

10. By exempting neutral convoys from the right of search.
11. By promulgating the general classification of contraband of war in such a manner as to make an international adoption of the general principles possible.
12. By authorizing the use of the regulations for land warfare, whenever applicable, to the naval service of the United States. This has not been officially done heretofore.

I am, very respectfully,

C. H. STOCKTON,
*Captain, U. S. Navy,
 President Naval War College.*

These points and many others were considered and several tentative drafts of the code were made. These were subjected to the criticism of various officers of the Navy and to several other persons outside the Navy. Captain Stockton's untiring labor in the preparation of this valuable compilation deserves high recognition.

The code was finally issued in accord with General Orders No. 551, Navy Department, Washington, June 27, 1900, which states:

"The following code of naval warfare, prepared for the guidance and use of the naval service by Capt. Charles H. Stockton, United States Navy, under direction of the Secretary of the Navy, having been approved by the President of the United States, is published for the use of the Navy and for the information of all concerned.

"JOHN D. LONG, Secretary."

OPINIONS UPON THE CODE.

The issue of the code very quickly called forth expressions of opinion from foreign sources, though not especially widely mentioned in the United States. It has been translated several times and has been made the subject of both practical and academic discussion. The following are examples of expression of opinion from English sources:

(From London Times, Friday, April 5, 1901.)

A NAVAL WAR CODE.

From a Naval Correspondent.

There has been recently issued to the officers of the United States Navy a compact handbook of twenty-seven pages and fifty-five articles comprising laws and usages of war at sea. As the work is quite unknown in England, and as it includes a great deal of matter that must affect the policy of other nations, it is proposed to summarize briefly in this article some of its most salient features. In the first place, we are concerned as to the official sanction to laws given in the general order prefacing the handbook, informing us that it is "Prepared for the guidance and use of the naval service, by Capt. Charles H. Stockton, under the direction of the Secretary of the Navy, having been approved by the President of the United States."

There has of late been some discussion as to the measures that may be adopted in dealing with an opponent under the assumption, recognized in this handbook, that the object of war is to procure complete submission at the earliest possible period, with the least expenditure of life and property. The proceedings of General Sheridan and others in the civil war have been frequently referred

to; and it may be of interest if we quote from this handbook a few passages dealing with this question. Articles 3, 4, 8, and 12 set forth that:

Military necessity permits measures that are indispensable for securing the ends of the war and that are in accordance with modern laws and usages of war.

It does not permit wanton devastation, use of poison, or the doing of any hostile act that would make the return of peace unnecessarily difficult.

Noncombatants are to be spared in person and property during hostilities, as much as the necessities of war and the conduct of such noncombatants will permit. * * *

The bombardment by a naval force of unfortified and undefended towns, villages, or buildings is forbidden, except when such bombardment is incidental to the destruction of military or naval establishments, public depots of munitions of war, or vessels of war in port, or unless reasonable requisitions for provisions and supplies, essential at the time to such naval vessel, or vessels, are forcibly withheld, in which case due notice of bombardment shall be given.

The bombardment of unfortified or undefended towns and places for the nonpayment of ransom is forbidden.

In the event of an enemy failing to observe the laws and usages of war, if the offender is beyond reach, resort may be had to reprisals if such action should be considered a necessity; but due regard must always be had to the duties of humanity. Reprisals should not exceed in severity the offense committed, and must not be resorted to when the injury complained of has been repaired.

If the offender is within the power of the United States he can be punished, after due trial, by a properly constituted military or naval tribunal. Such offenders are liable to the punishments specified by the criminal law.

The United States of America acknowledge and protect, in hostile countries occupied by their forces, religion and morality; the persons of the inhabitants, especially those of women; and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

In the columns of the Times during the Spanish-American War, there occurred an interesting controversy concerning the position of submarine cables in war. Professor Holland's views that a cable going from a belligerent's territory to a neutral was only liable under international usage to be cut within the belligerent's territorial waters, were regarded at the time as rather academic. They are reinforced by Article 5 of the American War Code, which lays down that—

The following rules are to be followed with regard to submarine telegraphic cables in time of war, irrespective of their ownership:

(a) Submarine telegraphic cables between points in the territory of an enemy, or between the territory of the United States and that of an enemy, are subject to such treatment as the necessities of war may require.

(b) Submarine telegraphic cables between the territory of an enemy and neutral territory may be interrupted within the territorial jurisdiction of the enemy.

(c) Submarine telegraphic cables between two neutral territories shall be inviolable and free from interruption.

There is a point of controversy as to what is contraband of war. The Naval War Code divides contraband of war into what is absolutely contraband and what is conditionally contraband. The first class includes the general kinds of war equipments all set forth at length; but as these are generally recognized as contraband there is