

Synopsis VIII

Conventions and Neutral Powers

by Jean de Preux

I. SICK AND WOUNDED

1. Right of passage

a) *By land*

Conditions governing the right of passage

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 (Hague Conv. No. V, Art. 14). (Personnel and materials necessary to treat the sick and wounded are consequently authorized).

Detention of sick and wounded prisoners of war

The sick or wounded brought by virtue of the right of passage 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 (Hague Conv. No. V, Art. 14). The said neutral Power is also duty bound to detain prisoners transported by their captors in a medical aircraft that has landed, voluntarily or not, on neutral territory (P. I. Art. 31).

Persons interned shall be treated as prisoners of war (C. I, Art. 14; C. III, Art. 4 B 2).¹ (*See below for general conditions of internment*). The cost of hospital treatment and internment shall be borne by the State to which those persons belong (P. I, Art. 31).

Detention in naval warfare

Wounded, sick or shipwrecked members of the armed forces taken on board a neutral warship or a neutral military aircraft or landed in neutral ports with the consent of the local authorities shall be so guarded by the neutral Power that the said persons cannot again take part in operations of war (C. II, Arts. 15, 17). (According to legal experts, this rule does not apply if the wounded, sick or shipwrecked are taken aboard a neutral merchant vessel that has not been hailed for inspection.²

The costs of hospital accommodation and internment shall be borne by the Power on whom the wounded, sick or shipwrecked persons depend (C. II, Art. 17).

Exception to the obligation to detain

The neutral Power is obliged to detain only where so required by international law (C. I, Art. 37; C. II, Art. 40; C. III, Art. 4 B 2; P. I, Art. 31). This means that persons who accompany the armed forces without actually being members thereof (P. I, Art. 50; C. III, Art. 4 A 4) and other civilians (particularly those mentioned in C. III, Art. 4 A 5) shall not be detained except for medical reasons. Medical and religious personnel belonging or attached to the armed forces may be detained only in circumstances similar to those laid down in the First and Second Conventions (C. I, Art. 28; C. II, Art. 37).

Treatment on neutral territory

The First, Second and Third Conventions as well as the pertinent provisions of Protocol I apply to the sick and wounded and to members

¹ Except where indicated otherwise, the Roman numerals refer to the First (I), the Second (II), the Third (III) and the Fourth (IV) Geneva Conventions (C). The abbreviation P. I stands for Additional Protocol I.

² See Morris Greenspan, *The Modern Law of Land Warfare*, University of California Press, Berkeley and Los Angeles, 1959, p. 567.

of the medical and religious personnel of a Party to the conflict, whether they belong to the armed forces or not, who are received or interned on neutral territory, as well as to dead persons found (Hague Conv. No. V, Art. 15; C. I, Art. 4; C. II, Art. 5; P. I, Art. 19; C. III, Arts. 4 B 2 and 4 C).

At the conclusion of peace the expenses caused by the internment shall be made good (Hague Conv. No. V, Art. 12; C. III, Art. 4 B 2).

b) *By air*

Flying over neutral territory

Except by prior agreement, medical aircraft belonging to the Parties to the conflict shall not fly over the territory of neutral States.

In the event of such an agreement, medical aircraft shall obey any summons to land or to alight on water. Should the aircraft fly over neutral territory by accident (navigational error, emergency), it shall make every effort to give notice of the flight, to identify itself and to obey any summons to land or to alight on water (P. I, Art. 31).

If a medical aircraft seeks refuge on the territory of a neutral State, the latter is free to grant or refuse the request (Hague Conv. No. V, Art. 11, by analogy).

Inspection

A medical aircraft having landed or alighted on water is subject to inspection to determine that it is indeed a medical aircraft. Any such inspection shall be undertaken without delay and conducted expeditiously. The wounded and sick shall not be removed from the aircraft unless their removal is essential for the inspection (P. I, Arts. 30, 31).

Resumption of flight

If the inspection discloses that the aircraft is in fact a medical aircraft, the aircraft with its occupants (except for prisoners of war) shall be allowed to continue its flight and shall be given the necessary facilities to do so (P. I, Arts. 30, 31).

Seizure

If the inspection discloses that the aircraft is not a medical aircraft, it shall be seized (P. I, Arts. 30, 31).

Detention of occupants

The military crew of an aircraft that is not in fact a medical aircraft shall be detained (Hague Conv. No. V, Art. 11; C. III, Art. 4 b 2; P. I, Art. 31). The civilian crew of such an aircraft should likewise be interned until the cessation of hostilities (Hague Conv. No. V, Art. 11, by analogy; C. III, Art. 4 B 2). Prisoners of war brought in these circumstances into the territory of a neutral State shall be released (Hague Conv. No. V, Art. 13). (See also above “Detention of sick and wounded prisoners of war” and “Exception to the obligation to detain”).

2. Accommodation agreements

Principle

Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the co-operation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of sick and wounded prisoners of war and the internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity (C. III, Art. 109).

Categories of persons covered

The following categories of persons may be accommodated in a neutral country:

- Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness;
- Prisoners whose mental or physical health is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat (C. III, Art. 110).

Status and treatment

The status of prisoners of war accommodated in a neutral country is in principle established by agreement between the Powers concerned (C. III, Art. 110). The First and Third Conventions are applicable to their case (C. I, Art. 4; C. III, Art. 4 B 2; Hague Conv. No. V, Art. 15). (See below for reservations contained in Art. 4 B 2).

Repatriation conditions

The conditions for repatriation from a neutral country shall be fixed by agreement between the Powers concerned, except in cases where the conditions for direct repatriation are fulfilled (C. III, Art. 110; Annexes I and II).

No sick or injured person may be repatriated against his will during hostilities (C. III, Art. 109).

II. MEDICAL SERVICES

1. Medical services on land

A neutral or other State which is not a Party to a conflict may make its medical services available to a Party to the conflict (P. I, Art. 9). A recognized Society of a neutral country may do the same with the previous consent of its own Government (C. I, Art. 27; P. I, Art. 9). These medical services shall be placed under the control of the Party to the conflict which accepts such assistance. The neutral State and the Party to the conflict receiving the assistance shall notify the latter's adversary that such a service is being rendered (C. I, Art. 27). This type of assistance does not constitute interference in the conflict (C. I, Art. 27).

Marking

The medical units belonging to neutral countries shall fly the flag of the Convention, the flag of the Party to the conflict to which they are lending their services, providing this is the latter's practice, and their own national flag unless otherwise instructed by the responsible military authorities (C. I, Arts. 42, 43).

Release

Neutral medical units which have fallen into the hands of the adversary of the country they are assisting shall have permission to return to their country as soon as a route for their return is open and military considerations permit. If this is not possible, they shall be authorized to return under the same conditions to the territory of the Party to the conflict in whose service they were (C. I, Art. 32).

Treatment

The members of these units shall receive, pending their release, the same food, lodging, allowances and pay as are granted to the corresponding personnel of their captor. The food shall in any case be sufficient to maintain a normal state of health (C. I, Art. 32). They shall continue their medical work and shall preferably be engaged in the care of the wounded and sick of the Party to the conflict in whose service they were (C. I, Art. 32).

Material and equipment

On their departure, these units shall take with them their effects, personal articles and valuables and the instruments, arms and if possible the means of transport belonging to them (C. I, Art. 32). (These provisions guarantee, in effect, that neutral medical personnel who have fallen into the hands of the adversary of the Party being assisted shall receive the treatment stipulated in 1929 for all medical personnel (1929 Geneva Conv., Arts. 9-13). The Detaining Party shall therefore bear the cost of maintaining such personnel pending their release.

Other relief organizations

These provisions apply also to the personnel made available to a Party to the conflict by an impartial humanitarian organization (P. I, Art. 9).

Civil defence

Civilian civil defence organizations of neutral States which perform their tasks in the territory of a Party to the conflict, with the consent

and under the control of that Party, shall be respected and protected. Notification of such assistance shall be given as soon as possible to any adverse Party concerned and such assistance shall not be deemed to be an interference.

In occupied territories, the Occupying Power may restrict such assistance only if it can ensure the adequate performance of civil defence tasks from its own resources or those of the occupied territory (P. I, Arts. 62, 64).

2. Medical services at sea

Appeal to neutral vessels

The Parties to the conflict may appeal to neutral merchant vessels, yachts or other craft to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead (C. II, Art. 21).

These vessels, and those having lent assistance of their own accord, shall enjoy special protection and facilities and may, in no case, be captured on account of any such transport (C. II, Art. 21). However, the adverse Party shall have the right to demand that the wounded, sick or shipwrecked members of the armed forces taken on board be surrendered (C. II, Art. 14). This does not apply to civilians (P. I, Art. 22).

Hospital ships of neutral countries

Hospital ships of neutral countries that have placed themselves under the control of a Party to the conflict, with the previous consent of their own governments and with the authorization of the Party to the conflict concerned, shall have the same protection as military hospital ships of the Parties to the conflict. They shall be exempt from capture and attack and shall be respected and protected on condition that their names and descriptions have been notified to the Parties to the conflict ten days before those ships are employed (C. II, Arts. 22, 25; P. I, Art. 22).

This protection shall extend to their lifeboats and small craft, their personnel and crews and the wounded, sick and shipwrecked on board. Civilians shall not be subject to surrender to any Party which is not their own, or to capture at sea (P. I, Art. 22).

Rescue craft

Rescue craft used by a neutral State, or by officially recognized relief societies of such a State, to take on board the wounded, sick or shipwrecked shall also be respected and protected (C. II, Arts. 21,25). They shall fly their national flag and a white flag with a red cross (C. I, Art. 43).

Marking of hospital ships

Hospital ships of neutral countries that have placed themselves under the control of a Party to the conflict shall make themselves known by hoisting their national flag and the flag of the Party to the conflict whose direction they have accepted. A white flag with a red cross shall be flown at the mainmast as high as possible (C. II, Art. 43).

Other relief organizations

These provisions apply also to hospital ships and vessels made available to a Party to the conflict by an impartial humanitarian organization (P. I, Art. 22).

Right of control and search

The Parties to the conflict shall have the right to control and search neutral ships and vessels other than warships which assist the wounded, sick and shipwrecked of a Party to the conflict (C. II, Art. 31; P. I, Art. 22).

Neutral warships

If wounded, sick or shipwrecked members of the active armed forces of a Party to the conflict are taken on board a neutral warship, it shall be ensured that they can take no further part in operations of war (C. II, Art. 15).

Stay in a neutral port

Hospital ships and rescue craft belonging to the Parties to the conflict are not classed as warships as regards their stay in a neutral

port (C. II, Art. 32). For example, their stay is not limited to 24 hours (Hague Conv. No. XIII, Art. 12) nor are they subject to time restrictions concerning repairs (*ibid.*, Art. 17) or refuelling (*ibid.*, Art. 19).

Official information bureaux

Neutral States which receive, on their territory, prisoners of war of any Party to the conflict shall institute an official information bureau for them (C. III, Art. 122).

Central agency

A central information agency shall be created in a neutral country (C. III, Art. 123; C. IV, Art. 140).

III. INTERNED MEMBERS OF THE ARMED FORCES AND PRISONERS OF WAR

1. Interned members of the armed forces

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 (Hague Conv. No. V, Art. 11).

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose (Hague Conv. No. V, Art. 11; C. III, Art. 21).

It shall decide whether officers (and internees in general: C. III, Art. 21) can be left at liberty on giving their parole not to leave the neutral territory without permission (Hague Conv. No. V, Art. 11).

This principle applies only to members of the active armed forces (C. III, Art. 4 B 2) (see “Right of passage” and “Exception to the obligation to detain” above).

2. Prisoners of war

Escaped prisoners of war

A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain on its territory it may assign them a place of residence (Hague Conv. No. V, Art. 13).

Deserters and defectors

Deserters shall be treated by neutral Powers as escaped prisoners of war. Defectors shall be interned.

Nationals of a neutral State who have enlisted in the active armed forces of a Party to the conflict

Such persons cannot avail themselves of the neutrality of their State of origin. If captured, they shall be treated as prisoners of war on equal terms with members of the active armed forces of the Party to the conflict in whose service they have placed themselves (Hague Conv. No. V, Art. 17).

Agreement concerning the internment of prisoners of war

The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers shall endeavour to conclude agreements which will enable prisoners of war to be interned on the territory of the said neutral Power until the close of hostilities (C. III, Art. 111).

When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody (C. III, Art. 12).

3. Treatment of prisoners of war and interned members of the armed forces

Interned members of the armed forces and prisoners of war received on the territory of a neutral country are protected by the provisions of the Third Convention. The expenses incurred in keeping the prisoners and internees shall nevertheless be borne by the Power on which they depend (Hague Conv. No. V, Art. 12; C. III, Art. 4 B 2).

Control

Where diplomatic relations exist between the Party to the conflict on which the prisoners and internees depend and the neutral Power,

the said Party to the conflict shall be allowed to perform the function of a Protecting Power as provided in the Third Convention (C. III, Art. 4 B 2).

Attempted escape

A neutral Power is not obliged to respect the limitations set by Art. 92 of the Third Convention concerning punishment for attempted escape applicable to prisoners or internees detained on neutral territory (Hague Conv. No. V, Art. 5).

Official information bureaux

The neutral Power shall institute an official information bureau for the interned members of the armed forces and prisoners of war it has received on its territory (C. III, Art. 122).

Central information agency

A central information agency shall be created in a neutral country (C. III, Art. 123).

Mixed medical commissions

The mixed medical commissions appointed to examine prisoners of war on the territory of the Parties to the conflict, and to make all appropriate decisions regarding them, shall be composed of three members, two of whom shall belong to a neutral country, the third being appointed by the Detaining Power. One of the neutral members shall take the chair (C. III, Art. 112; *ibid.*, Annex II, Art. 1).

IV. CIVILIANS

1. Applicability of the Fourth Convention

Nationals of a neutral State who find themselves in the territory of a belligerent State shall not be regarded as persons protected by the

Conventions while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are (C. IV, Art. 4).

2. Children

The reception in a neutral country of children who are nationals of the Parties to the conflict shall be facilitated (C. IV, Art. 24). Children who are not nationals of the Parties to the conflict may be evacuated to the territory of a neutral Power only under specific conditions (P. I, Art. 78). See “Synopsis III: Special protection of women and children”³.

3. Relief

See “Synopsis IV: Relief”.⁴

4. Accommodation in a neutral country

The Parties to the conflict shall endeavour during the course of hostilities to conclude agreements for the accommodation in a neutral country of certain classes of internees, in particular children (with the reservation mentioned below), pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time (C. IV, Art. 132).

V. PROTECTING POWERS

Neutral countries shall act as Protecting Powers and shall appoint delegates for this purpose from amongst their own nationals or the nationals of other neutral Powers (C. I-IV, Arts. 8, 8, 8, 9; P. I, Art. 5). See “Synopsis I: Protecting Power”.⁵

³ *IRRC*, No. 248, September-October 1985, pp. 292-302.

⁴ *Ibid*, No. 254, September-October 1986, pp. 268-278.

⁵ *Ibid*, No. 245, March-April 1985, pp. 86-95.

Conciliation procedure

The Protecting Powers may propose for approval by the Parties to the conflict a person belonging to a neutral Power to undertake a conciliation procedure concerning the application or interpretation of the Conventions or the Protocol (C. I-IV, Arts. 11, 11, 11, 12).

VI. METHODS AND MEANS OF WARFARE

It is prohibited to make use in an armed conflict of the flags or military emblems, insignia or uniforms of neutral or other States not Parties to the conflict (P. I, Art. 39).

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