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# **THE LAW OF LAND WARFARE**

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**U.S. Marine Corps**

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## FOREWORD

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

The 1949 Geneva Conventions for the Protection of War Victims have been ratified by the United States and came into force for this country on 2 February 1956. The effect of these four conventions upon previous treaties to which the United States is a party is discussed in detail in [paragraph 5](#) of the text. Each of the Hague Conventions of 1899 and 1907 and each of the Geneva Conventions of 1864, 1906, and 1929 will, of course, continue in force as between the United States and such of the other parties to the respective conventions as have not yet ratified or adhered to the later, superseding convention(s) governing the same subject matter. Moreover, even though States may not be parties to, or strictly bound by, the 1907 Hague Conventions and the 1929 Geneva Convention relative to the Treatment of Prisoners of War, the general principles of these conventions have been held declaratory of the customary law of war to which all States are subject. For this reason, the United States has adopted the policy of observing and enforcing the terms of these conventions in so far as they have not been superseded by the 1949 Geneva Conventions which necessarily govern the relations between the parties to the latter (see [pars. 6](#) and [7](#) of the text).

The essential provisions of each of the earlier conventions mentioned above have been substantially incorporated into the more recent and more comprehensive conventions on the same subject matter, so that observance of the latter will usually include observance of the former. For this reason, only the more recent 1949 Geneva Conventions and the relevant provisions of the 1907 Hague Conventions are quoted in this Manual.

Pertinent information concerning the current status of ratifications, adherences, reservations, and denunciations (withdrawals) will be transmitted by higher authority to commanders in the field, as occasions arise, thus rendering unnecessary the inclusion of such data in this Manual, and avoiding the frequent changes that such inclusion would entail.

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

# CHAPTER 1

## BASIC RULES AND PRINCIPLES

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### Section I. GENERAL

#### 1. Purpose and Scope

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

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

#### 2. Purposes of the Law of War

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

- a. Protecting both combatants and noncombatants from unnecessary suffering;
- b. Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and
- c. Facilitating the restoration of peace.

#### 3. Basic Principles

a. *Prohibitory Effect.* The law of war places limits on the exercise of a belligerent's power in the interests mentioned in [paragraph 2](#) and requires that belligerents refrain from employing any kind or degree of violence which is not actually necessary for military purposes and that they conduct hostilities with regard for the principles of humanity and chivalry.

The prohibitory effect of the law of war is not minimized by "military necessity" which has been defined as that principle which justifies those measures not forbidden by international law which are indispensable for securing the complete submission of the enemy as soon as possible. Military necessity has been generally rejected as a defense for acts forbidden by the customary and conventional laws of war inasmuch as the latter have been developed and framed with consideration for the concept of military necessity.

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

#### **4. Sources**

The law of war is derived from two principal sources:

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

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

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

#### **5. Lawmaking Treaties**

*a. Treaties to Which the United States Is a Party.* The United States is a party to the following [conventions](#) pertinent to warfare on land:

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

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

**(3) Hague Convention No. V of 18 October 1907, Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land.** (36 Stat. 2310; *Treaty Series* 540), cited herein as *H. V*.

**(4) Hague Convention No. IX of 18 October 1907, Concerning Bombardment by Naval Forces in Time of War** (36 Stat. 2351; *Treaty Series* 542), cited herein as *H. IX*.

**(5) Hague Convention No. X of 18 October 1907, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention (36 Stat. 2371; Treaty Series No. 543), cited herein as *H. X*.**

**(6) Geneva Convention Relative to the Treatment of Prisoners of War of 27 July 1929 (47 Stat. 2021; Treaty Series 846), cited herein as *GPW 1929*.**

**(7) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field of 27 July 1929 (47 Stat. 2074; Treaty Series 847), cited herein as *GWS 1929*.**

**(8) Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments of 15 April 1954 (49 Stat. 3267; Treaty Series 899), cited herein as the *Roerich Pact*. Only the United States and a number of the American Republics are parties to this treaty.**

**(9) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (T. I. A. S. <sup>2</sup> 3362), cited herein as *GWS*.**

**(10) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 (T. I. A. S. 3363), cited herein as *GWS Sea*.**

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

**(12) Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (T. I. A. S. 3365), cited herein as *GC*.**

**\* (13) Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare of 17 June 1925 (T.I.A.S. \_\_), cited herein as Geneva Protocol of 1925.**

*b. Effect of the Geneva Convention of 1949.* *GWS* replaces the previous Geneva Wounded and Sick Conventions of 22 August 1864, 6 July 1906, and 27 July 1929 in relations between parties to *GWS* (see *GWS*, art. 59). *GWS Sea* replaces Hague Convention No. X of 18 October 1907, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906 in relations between parties to *GWS Sea* (see *GWS Sea*, art. 58). *GPW* replaces *GPW 1929* in relations between parties to *GPW* (see *GPW*, art. 134); in relations between parties to *H. IV* and the corresponding convention of 1899 and which are also parties to *GPW*, it is complementary to Chapter II of the *HR* (see *GPW*, art. 135). *GC*, in relations between parties to *H. IV* and the corresponding convention of 1899, is supplementary to Sections II and III of the *HR* (see *GC*, art. 154).

## 6. Custom

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

The Preamble to the *HR* specifically provides:

**Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.**

Similarly, a common article of the Geneva Conventions of 1949 (*GWS, art. 63; GWS Sea, art. 62; GPW, art. 142; GC, art. 158*) provides that the denunciation of (withdrawal from) any of the Geneva Conventions of 1949, \* \* \* **shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.**

## 7. Force of the Law of War

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

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

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