

icCSBs 2016 : 4th Annual International Conference on Cognitive - Social, and Behavioural Sciences

## Defining the Regulations of War in the Hague Convention of 1907

Erazak Tileubergenov<sup>a</sup>, Dana Baisymakova<sup>b\*</sup>, Dinara Belkhozhayeva<sup>c</sup>,  
Zhanar Moldakhmetova<sup>d</sup>

\* Corresponding author: Dana Baisymakova, dana\_2274@mail.ru

<sup>a, b, c, d</sup> Department of State and Civil Law Disciplines, Abai Kazakh National Pedagogical University,  
10 Zhaumbul Str., 050010 Almaty, Kazakhstan

<sup>a</sup>etm61@mail.ru, <sup>b</sup>dana\_2274@mail.ru, <sup>c</sup>dinar\_15@liet.ru, <sup>d</sup>moldaxmetova\_Zh@mail.ru

### Abstract

<http://dx.doi.org/10.15405/epsbs.2016.05.25>

International humanitarian law provided many institutional mechanisms aimed at preventing armed conflicts. However, the world is still subject to military action, even the most peace-loving nation is not completely immune to aggressive actions. Therefore, international legal regulation of war rules is constantly improved and developed in order to weaken the horrific consequences of the fighting as much as possible. The international regulations of war were established by multilateral treaties between states. The article investigates the history of the formation of the Hague system of international legal regulation of war rules. The Hague conventions defined the main rules of warfare and the legal status of their participants. These provisions are binding in armed conflicts in the countries-participants of conventions, and for states that did not signed them, the norms of international law will be applied.

© 2016 Published by Future Academy www.FutureAcademy.org.uk

**Keywords:** International humanitarian law; the laws and customs of war; prisoners of war; The Hague Peace Conference; The Hague Convention.

### 1. Introduction

The international rules of war were established by multilateral treaties usually between states. The Convention defines the following issues: who can conduct military operations, what are the warrantable means and methods of war, how the protection of civilians and prisoners of war is provided? However, history witnesses many evidences of civilian population suffering during armed conflicts and using of illegal methods of warfare, and other violations. Therefore the study of the problem of international legal regulation of war rules is still on the agenda.

The first book on the history of the Hague Conference of 1899, where the issues of war and peace



discussed, appeared in St. Petersburg in the early twentieth century. The count L.A. Komorowski was an author of the book. He described the diplomats' first attempts to develop guidelines for regulation of warfare in detail (Komarovskii, 1905). The main principles of the Hague Peace Conference and initiatives of monarch Russia in the sphere of disarmament were partly ignored during the Soviet period. However, in 1932 in the journal "Krasnyi arkhiv" published a draft letter of the Minister of Foreign Affairs of Russia to foreign governments with a proposal to convene a conference and other documents (K istorii, 1932). In 1909 in Cambridge a collection of documents of international conferences, including the Hague Conferences of 1899 and 1907 were published by the editor A.P. Higgings. Texts were accompanied by extensive commentary (Higgings, 1909). The history of the Hague Conferences of 1899 and 1907 is covered in A. Eyffinger's book (2011), dedicated to the Dutch lawyer and statesman Tobias Asser's activities.

## **2. Materials and Research Methods**

The material for the research is based on the texts of international conventions on the law of war. Sources of international law – collections of documents or other tangible objects containing norms of international law. The sources of international law are: a) the international conventions; b) international custom, as an evidence of a general practice accepted as a law; c) the general principles of the law recognized by civilized nations; d) judicial decisions and high qualified lawyers' conceptions of the various nations, as subsidiary means for the determination of rules of law. International conventions, treaties and agreements, as the legal documents contain provisions binding on the entire international community. The legal basis of the sources of international humanitarian law regarding the rules of warfare consist of 6 conventions adopted at the Hague Conference of 1899, and 14 ones – at the Hague Conference of 1907, relating to the laws and customs of war by sea and land, rights and obligations of neutral states.

During the research the well-known philosophical methods were used as conjectures and refutations; general scientific methods, such as analysis, synthesis, abstraction as well as specific methods of legal science, which essence is to study the dogma of law, i.e., directly to the content of the legal regulation.

This article is theoretical, it explores the history of the formation of the Hague system of international legal regulation of the rules of war.

## **3. Discussions and Results**

Multilateral treaties about the rules of a war did not exist until the end of the XIX century. The first legal document that defines the rules of war was a "Field guide to US troops", designed by Francis Lieber during the American Civil War. The rules of warfare and the treatment of the civilian population later known as the "Lieber Code" were set. However, the Lieber Code was used only on the territory of the United States. The first international document was the "Declaration on the abolition of the use of explosive and incendiary bullets", adopted in 1868 at an international conference in

St. Petersburg (Declaration, 1868). In this document regulation of the war is limited to only one sphere – the defining the means of warfare. Since international conferences repeatedly were convened to discuss the issue.

Brussels Declaration of 1874 on the Laws and Customs of War (Schindler & Toman, pp. 25-34), adopted at the international conference represented the first attempt to codify the laws and customs of war on land by making a special international document in the history of international relations. However a declaration did not enter into force for various reasons.

Russia was an initiator of the first Peace Conference which was held in Hague from 18 May to 29 July 1899. It was attended by representatives of 26 states. The lawyers Fyodor Martens, Léon Bourgeois, Louis Renault, Julian Pauncefote, Tobias Asser and Frederick Holls were key speakers and decision makers at the discussion. F. Martens, Russian diplomat and a lawyer, an expert in international law, a professor at the University of Petersburg in the 1873-1905. In 1885 he was elected a vice-president of the European Institute of International Law (EIL), he played a prominent role at the Hague Conference on International Law, he was a permanent member and then a chairman of the arbitral tribunal Hague. In 1891 he helped to resolve a dispute between Britain and France on Newfoundland as an arbitrator for the Anglo-Dutch dispute. He was an author of an international recognized principle of jurisdiction of the captain's offence in the open sea.

According to the Russian government's plan the issue of an international agreement about non increasing size of the peace-time land and naval forces should have been discussed. The Russian authorities also proposed to freeze the existing level of military budgets. Russia was against the proposal, Germany, the US government, France and the UK also did not support the initiative of the Russian government. F. Martens, professor of international law and one of the foremost members of the EIL as well as long-time adviser with the Russian Foreign Ministry, proposed to expand the programme of the conference to the codification of the law of war and to arbitration, thus transforming the disarmament conference into a broad peace conference (Lesaffer, 2013, p. 23). The conference mainly discussed the problems of means and methods of warfare. The conference failed to reach a common agreement on the issue of arms control. However, the conference was marked by the need to limit the military costs: "The Conference opinion is that the restriction of military charges, which are at present a heavy burden on the world, is extremely desirable for the increase of the material and moral welfare of mankind" (Baker, 2009, p. 690). Thus, the Hague Conference of 1899 was the first international forum which focused on arms limitation issue. The conference adopted a convention "for the Pacific Settlement of International Disputes", "Laws of Land Warfare", as several declarations prohibiting the use of certain types of ammunition, including missiles with suffocating and harmful gases. Convention "On the Laws and Customs of War" was signed for five years. By the expiry time of the convention, Russia and Japan were at war, so the debate on the extension of its actions was postponed.

The initiative of convening a second peace conference in Hague belonged to US President Theodore Roosevelt. In September 24, 1904 T. Roosevelt received the representatives of the Inter-Parliamentary Union in the White House in Washington. He said that he was preparing an appeal to other countries to hold the second conference in Hague. October 21, 1904 the state secretary John Hay

sent a letter to US representatives in all states who signed the Hague Final Act of 1899. US officials had to inform host countries about Inter-Parliamentary Union's intention to conduct a new meeting in Hague. The leading European countries for a long time discussed the agenda of the upcoming conference. In Russia a committee was formed under the leadership of F. Martens to develop the program of a conference.

In early 1906, the project was handed over to the governments of Great Britain, Germany, France and the United States. Arms limitation and measures for peace protection were not mentioned in the Russian project. Due to increased competition of Germany's naval force United Kingdom wished to include in the agenda the problem of limiting naval armaments. British and American responses note contained a categorical requirement to include this issue on the agenda of the conference. However, France could not agree to disarm because it feared competition from Germany. But some politicians and diplomats had different points of view on this issue in these countries. The discussion about the draft program of the conference was delayed. Professor F. Martens suggested a compromise solution to this problem - to establish a commission of military experts to discuss the issue of a separate arms limitation during negotiations in the European capitals. Germany and Austria-Hungary refused to discuss the problem either at the conference or at the meetings of the committee of military experts (Kokebayeva, 2009, pp. 35-36). Therefore, the work of the second Hague Conference was largely devoted to discussion of the rules of war. The conference also addressed issues and peaceful resolution of international conflicts, defined the tasks of the arbitral tribunal and the International Commission of Enquiry.

The Conference adopted the Convention on the opening of hostilities, the Laws and Customs of War on Land, states' and individual's rights and responsibilities in case of war on land, the status of enemy merchant ships at the outbreak of hostilities, the conversion of merchant into the military ships, about the set of exploding from contact underwater mines, the rights and duties of neutral powers in the case of naval warfare, and other important international agreements on the rules of war.

Hague Convention "On the Laws and Customs of War on Land" dated October 18, 1907 had the same structure and content of the Convention of 1899. The Convention defines the beginning of the war and its participants, methods of its conduct, regulates the occupation of the enemy territory and the captivity of a military regime. F. Martens's proposal, later called "Martens clause" were included into the preamble to the Hague Convention. Thus, the preamble to the Hague Convention stated that according to the present contract, the population and the belligerents remain under the protection of international law because they are based on established among civilized peoples customs and the laws of humanity and the requirements of public conscience. States are not signatories to the Convention are entitled to join it. Any state wishing to sign the Convention, notifies in written form its intention to the Netherlands Government and passes to it the act of accession.

The outbreak of hostilities with the declaration of war is a prerequisite for the convention: "The Contracting Powers recognize that hostilities should not commence without previous warning, in the form either of a reasoned declaration of war or an ultimatum with conditional declaration of war" (Mezhdunarodnoe, 1995, p. 14 ).

According to the convention, any significant breach of the armistice from one of the party entitles the other to give it up or to resume hostilities immediately in the emergency. However, the violation of the armistice by individuals acting on their own initiative only entitles to demand the punishment of those responsible and compensation for losses incurred, if any, occurred.

In the first chapter of the Convention the categories of combatants are defined. People entitled to wage war are primarily the personnel of armed forces. The laws, rights and responsibilities are applied not only to armies, but also to militia and volunteer corps. Militia and volunteer units are protected by the norms, if they are commanded by a person who is responsible for his subordinates; has a defined and clearly visible, distinctive sign; carries arms openly; keeps laws and customs of war in their actions. The Convention defined the status of doctors and medical staff: they were treated as belligerents, therefore, were not subject to capture. Hospitals, ambulance carriages, military medical personnel on the battlefield have a neutral status. It corresponds to the requirement of the inadmissibility of leaving the wounded on the battlefield without medical care. They had to be cared for, regardless of which side they belong to. The civilians, who came to help the wounded, also should be treated with respect.

The regulations for the treatment of prisoners of war were identified in 17 articles of the Convention "On the laws and customs of war on land". Under the Convention, prisoners of war are in the power of the hostile government, but not of the individuals or corps who captured them. The provision says that prisoners of war should be considered as prisoners of state, based on the fact that the armed conflict since the beginning of the new time is accepted not as a struggle between the individual people or rulers, but as the struggle between the States. This principle practically, firstly, protects a prisoner from the tyranny of individual soldiers of the belligerents; secondly, imposes governments of warring States certain international legal obligations to protect the rights of prisoners of war; thirdly, gives the right to governments to claim for violation of international norms on the keeping of prisoners of war. It requires humane treatment of prisoners of war. Their personal belongings remain in their disposal except arms, horses and military papers. Their imprisonment in the camp or some other place shall be used only as a necessary measure of safety and only while there are circumstances that trigger this measure. The state may attract the labour of prisoners of war to work in accordance with their rank and abilities, for the exception of officers. These works should not be too onerous and should not have any relation to military actions. Work of prisoners of war, produced for the state are paid equally to ranks of the national army for the same work, and if there is no such calculation, then at prices corresponding to the executed work. 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 maintaining them. The maintaining of prisoners of war rests with the government, into whose power they are. If there is no special agreement between warring sides, the prisoners enjoy the same food, quarters, and clothing as the troops of the government who captured them. Officers-prisoners of war receive the full pay to eligible officers of the same rank of the state where they are detained, under condition of indemnification of these expenses of their government. Prisoners of war are subject to the laws, regulations and orders in force in the army of the state into whose power they are, any disobedience from their side gives the right to use necessary measures of severity. Individuals who escaped from

captivity and being arrested in the territory occupied by the army, who captured him, subjected to disciplinary punishments. Every prisoner of war shall be obliged to declare his true name and rank, and in case of violation of these rules he is subject to the limitation of the benefits provided by the Convention of prisoners of his category. Prisoners of war may be liberated on parole of honour, if this is permitted by the laws of their country, in this case, their own government shall not require any services contrary to this word. However, release on parole is not mandatory for the government which captured him, and it also may not force the prisoner to release on parole. Prisoner of war liberated on parole and then re-captured with his participation in the hostilities against the government, in this case he loses the rights granted to prisoners of war and may be prosecuted. With the opening of hostilities in each of the belligerent States and neutral States, if they have belligerent on their territory, established information office for prisoners of war. The office is the nameplate on each prisoner of the war with indentifying number, name, surname, age, place of origin, rank, military unit, date and place of the taking prisoner, receiving wounds and death, place of detention, as well as specific information. A name card is transferred to the government of the other belligerent after the signing of peace. The information desk is obligated to maintain all the things, letters and values of prisoners of war, released on parole, exchanged, escaped or died in captivity, and then to forward them to appropriate address. Help desks are exempt from the tax levy, Letters, orders, parcels addressed to prisoners of war or sent by them are free from all postal charges.

The Hague Convention of 1907 enshrines the international legal status of prisoners of war, based on the fact that the capture of soldiers of the enemy is not revenge or punishment, it is a necessary measure taken for the purpose of preventing officers and soldiers' participation in hostilities. The Convention imposed the responsibility for the humane treatment of prisoners of war on the governments of the belligerent States.

The 22<sup>nd</sup> and the 23<sup>rd</sup> articles state that belligerents do not enjoy an unlimited-law, in the choice of means of injuring the enemy. It is prohibited to use poison and poisoned weapons, and weapons likely to cause unnecessary suffering; treacherous killing or wounding of individuals belonging to the population or to the troops of the enemy, to kill or wound an enemy who, surrender their arms, or an enemy who cannot protect himself and surrendered unconditionally, to declare that no one will have mercy; it is illegal to use a parliamentary or national flag, military insignia and uniform of the enemy. The 25<sup>th</sup> article of the Convention prohibits the bombing of undefended cities and towns. In sieges and bombardments all necessary measures should be taken to spare, as far as possible, the temples, the buildings that serve the purposes of science, the arts and charity, historic monuments, hospitals and places with sick and wounded if these buildings and places do not served at the same time for military purposes. The besieged should indicate these buildings or places by some particular and visible signs, which the besiegers must be informed in advance. The belligerent state is forbidden to compel nationals of the hostile party to take part in military action against their country, even if they were in his service before the war. The fourth Chapter is devoted to the order of surrender. The 35<sup>th</sup> article says: "At the conclusion between the Parties of the resignations must be taken into account the rules of military honour. The surrender of prisoners should be exactly observed by both Parties" (Mezhdunarodnoe, 1995, p. 18). The Convention also defined the rules of operations of a hostile army

in occupied its territories. Family values and rights, individual lives and private property, as well as religious beliefs and ritualistic exercise of faith, should be respected. Private property cannot be confiscated. Subsequently the basic provisions of the 1907 Convention were specified in the internal regulatory documents of the States acceding to the Convention.

#### 4. Conclusion

The Hague conventions defined the main rules of warfare and the legal status of their participants. These provisions are binding in armed conflicts in the countries-participants of conventions, and for states that did not signed them, the norms of international law will be applied. Although the conventions governing the rules of warfare were adopted over a hundred years ago, they have not lost their relevance today. International humanitarian law provided many institutional mechanisms aimed at preventing armed clashes. However, the world still suffers from military campaigns, even the most peace-loving nation is not fully protected against aggressive actions. Therefore, international legal regulation of war rules is constantly improved and developed in order to weaken the horrific consequences of the warfare.

#### References

- Baker, B. (2009). Hague Peace Conferences (1899 and 1907). In *Max Planck Encyclopedia of Public International Law*, (Vol. IV, 689-699). Oxford: Oxford University Press.
- Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868. Retrieved from <https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/130?OpenDocument>
- Eyffinger, A. (2011). *Dreaming the Ideal, Living the Attainable: T.M.C. Asser [1838-1913]. Founder of the Hague Tradition*. Hague: T.M.C. Asser Press.
- Higgings, A. P. (Ed.) (1909). *The Hague peace conferences and other international conferences concerning the laws and usages of war: texts of conventions with commentaries*. Cambridge: Cambridge University Press. Retrieved from <http://oll.libertyfund.org/titles/1053>
- K istorii pervoi Gaagskoi Konferentsii 1899 g. (1932). *Krasnyi arkhiv, 1-2*, 65-103. Retrieved from <http://www.twirpx.com/file/1779323>
- Kokebayeva, G.K. (2009). *Germaniia – Rossiia – SSSR: politika, voina i plen*. Almaty: Kazakh universiteti.
- Komarovskii, L.A. (1905). *Gaahskaia mirnaia konferentsiia 1899 goda*. Moskva: Tipo-litografiia G.I. Prostakova. Retrieved from <http://www.hotery.ru/66401-gaagskaja-mirnaja-konferencija-1899-goda-l-a.html>
- Lesaffer, R. (2013). The Temple of Peace The Hague Peace Conferences, Andrew Carnegie and the Building of the Peace Palace (1898-1913). *Mededelingen van de Koninklijke Nederlandse Vereniging voor Internationaal Recht, 140*, 1-38.
- Mezhdunarodnoe pravo vedeniia boevykh deistvii (1995). *Sbornik gaagskikh konventsii i inykh soglashenii*. Moskva: Iuricheskaia literatura.
- Schindler, D. & Toman, J. (1988). *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions, and Other Documents*. Geneva: Henry Dunant Institute.