

ICRC Rule 51.

Public and Private Property in Occupied Territory

Rule 51. In occupied territory:

- (a) movable public property that can be used for military operations may be confiscated;
 - (b) immovable public property must be administered according to the rule of usufruct; and
 - (c) private property must be respected and may not be confiscated;
- except where destruction or seizure of such property is required by imperative military necessity.

Practice

Volume II, Chapter 16, Section C.

Summary

State practice establishes this rule as a norm of customary international law applicable in international armed conflicts.

Movable public property

The rule that all movable public property that may be used for military operations may be confiscated is a long-standing rule of customary international law already recognized in the Lieber Code, the Brussels Declaration and the Oxford Manual.[1] It is codified in the Hague Regulations, which provides that the following may be confiscated: “cash, funds, and **realizable securities** which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations”.[2]

This rule is set forth in numerous military manuals.[3] It was applied in several cases after the Second World War.[4]

The military manuals of Australia, Canada and New Zealand define confiscation as “the taking of enemy public movable property without the obligation to compensate the State to which it belongs”.[5] Technically, this differs from war booty to the extent that the latter only concerns military equipment captured or found on the battlefield, but both categories have been blurred in practice as the applicable regime is the same: they may be taken without compensation.

Germany’s Military Manual, for example, refers to both as “**spoils of war**”.[6]

According to the Hague Regulations, the property of municipalities and of institutions dedicated to **religion, charity** and education, the arts and sciences, even when State property, shall be **treated as private property**. [7] As a result, it is prohibited to seize or destroy such property, including historic monuments and works of art and science (see Rule 40).

Immovable public property

The rule that immovable public property must be administered according to the rules of usufruct is a long-standing rule of customary international law already recognized in the Lieber Code, the Brussels Declaration and the Oxford Manual.[8] It is codified in the Hague Regulations as follows: **The occupying State shall be regarded only as administrator** and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.[9]

This rule is contained in several military manuals.[10] The manuals of Australia, Canada and **New Zealand** explain that, as a result, “enemy public immovable property may be administered and used but it may not be confiscated”.[11] This rule was applied in several cases after the Second World War.[12]

Several military manuals explicitly apply to immovable public property the principle that property of the adversary may be destroyed in case of imperative military necessity (see Rule 50).[13]

Private property

The protection of private property against confiscation is a long-standing rule of customary international law already recognized in the Lieber Code, the Brussels Declaration and the Oxford Manual.[14] The prohibition of confiscation of private property is codified in Article 46 of the Hague Regulations.[15] This prohibition does not mean that no private property may ever be seized because, as stated in Article 53 of the Hague Regulations:

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, ... depots of arms, and, generally, all kinds of munitions of war, may be seized, even if they belong to private individuals, but they **must be restored and compensation fixed when peace is made**. [16]

This rule is contained in numerous military manuals.[17] As explained in Australia's Defence Force Manual, "these objects may be seized by, but they do not become the property of, the occupying power. The seizure operates merely as a **transfer** of the possession of the object to the occupying power while **ownership remains with the private owner.**"[18] According to New Zealand's Military Manual, within this category fall:

cables, telegraph and telephone plant; television, telecommunications and radio equipment; horses, motorcars, bicycles, carts and carriages; railways and railway plant, tramways; ships in port, river and canal craft; aircraft of all descriptions, except ambulance aircraft; sporting weapons; and all kinds of property which could serve as war material.[19]

Several military manuals explicitly apply to private property the principle that property of the adversary may be destroyed or seized in case of imperative military necessity (see Rule 50).[20] The protection of private property against confiscation was confirmed in national case-law after the Second World War and in several other cases.[21] In the Al-Nawar case before the Israeli High Court in 1985, Judge Shamgar considered that Article 46 of the Hague Regulations did not extend to property "actually in use by the hostile army".[22]

The Hague Regulations provides detailed rules with respect to contributions in kind and services, known as requisitions, demanded from the population and authorities of the occupied territory to satisfy the needs of the occupying forces:

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.[23]

These rules are incorporated in many military manuals.[24] Their violation constitutes an offence under the legislation of many States.[25] There exist further detailed rules which restrict the requisitioning of specific types of objects: **property of aid societies**;^[26] civilian hospitals in occupied territory;^[27] civil defence materiel and buildings in occupied territories.^[28]

The principal rule of respect for private property is explicitly set forth in some manuals which are applicable in non-international armed conflicts.^[29] This rule does not, however, establish a specific separate rule outside the prohibition of destruction or seizure except in case of imperative military necessity (see Rule 50) and the prohibition of pillage (see Rule 52). No rule could be identified for non-international armed conflicts which would prohibit, according to international law, the confiscation of private property, nor is there a rule of international law which allows such confiscation. It is expected, however, that this question would be regulated in national legislation.