

The Laws of War on Land. Oxford, 9 September 1880.

PREFACE

War holds a great place in history, and it is not to be supposed that men will soon give it up -- in spite of the protests which it arouses and the horror which it inspires -- because it appears to be the only possible issue of disputes which threaten the existence of States, their liberty, their vital interests. But the gradual improvement in customs should be reflected in the method of conducting war. It is worthy of civilized nations to seek, as has been well said (Baron Jomini), "to restrain the destructive force of war, while recognizing its inexorable necessities".

This problem is not easy of solution; however, some points have already been solved, and very recently the draft of Declaration of Brussels has been a solemn pronouncement of the good intentions of governments in this connection. It may be said that independently of the international laws existing on this subject, there are to-day certain principles of justice which guide the public conscience, which are manifested even by general customs, but which it would be well to fix and make obligatory. That is what the Conference of Brussels attempted, at the suggestion of His Majesty the Emperor of Russia, and it is what the Institute of International Law, in its turn, is trying to-day to contribute. The Institute attempts this although the governments have not ratified the draft issued by the Conference at Brussels, because since 1874 ideas, aided by reflection and experience, have had time to mature, and because it seems less difficult than it did then to trace rules which would be acceptable to all peoples.

The Institute, too, does not propose an international treaty, which might perhaps be premature or at least very difficult to obtain; but, being bound by its by-laws to work, among other things, for the observation of the laws of war, it believes it is fulfilling a duty in offering to the governments a ' Manual ' suitable as the basis for national legislation in each State, and in accord with both the progress of juridical science and the needs of civilized armies.

Rash and extreme rules will not, furthermore, be found therein. The Institute has not sought innovations in drawing up the ' Manual ' ; it has contented itself with stating clearly and codifying the accepted ideas of our age so far as this has appeared allowable and practicable.

By so doing, it believes it is rendering a service to military men themselves. In fact so long as the demands of opinion remain indeterminate, belligerents are exposed to painful uncertainty and to endless accusations. A positive set of rules, on the contrary, if they are judicious, serves the interests of belligerents and is far from hindering them, since by preventing the unchaining of passion and savage instincts -- which battle always awakens, as much as it awakens courage and manly virtues, -- it strengthens the discipline which is the strength of armies; it also ennobles their patriotic mission in the eyes of the soldiers by keeping them within the limits of respect due to the rights of humanity.

But in order to attain this end it is not sufficient for sovereigns to promulgate new laws. It is essential, too, that they make these laws known among all people, so that when a war is declared, the men called upon to take up arms to defend the causes of the belligerent States, may be thoroughly impregnated with the special rights and duties attached to the execution of such a command.

The Institute, with a view to assisting the authorities in accomplishing this part of their task, has given its work a popular form, attaching thereto statements of the reasons therefor, from which the text of a law may be easily secured when desired.

PART I : GENERAL PRINCIPLES

Article 1. The state of war does not admit of acts of violence, save between the armed forces of belligerent States.

Persons not forming part of a belligerent armed force should abstain from such acts.

' This rule implies a distinction between the individuals who compose the "armed force" of a State and its other ' ressortissants '. A definition of the term "armed force" is, therefore, necessary. '

Art. 2. The armed force of a State includes:

1. The army properly so called, including the militia;
2. The national guards, landsturm, free corps, and other bodies which fulfil the three following conditions:
 - (a) That they are under the direction of a responsible chief;
 - (b) That they must have a uniform, or a fixed distinctive emblem recognizable at a distance, and worn by individuals composing such corps;
 - (c) That they carry arms openly;
3. The crews of men-of-war and other military boats;
4. The inhabitants of non-occupied territory, who, on the approach of the enemy, take up arms spontaneously and openly to resist the invading troops, even if they have not had time to organize themselves.

Art. 3. Every belligerent armed force is bound to conform to the laws of war.

' The only legitimate end that States may have in war being to weaken the military strength of the enemy ' (Declaration of St. Petersburg, 1868), '

Art. 4. The laws of war do not recognize in belligerents an unlimited liberty as to the means of injuring the enemy.

They are to abstain especially from all needless severity, as well as from all perfidious, unjust, or tyrannical acts.

Art. 5. Military conventions made between belligerents during the continuance of war, such as armistices and capitulations, must be scrupulously observed and respected.

Art. 6. No invaded territory is regarded as conquered until the end of the war; until that time the occupant exercises, in such territory, only a ' de facto ' power, essentially provisional in character.

PART II : APPLICATION OF GENERAL PRINCIPLES

I. HOSTILITIES

A. Rules of conduct with regard to individuals

(a) Inoffensive populations

' The contest being carried on by "armed forces" only (Article 1), '

Art. 7. It is forbidden to maltreat inoffensive populations.

(b) Means of injuring the enemy

' As the struggle must be honourable (Article 4), '

Art. 8. It is forbidden:

- (a) To make use of poison, in any form whatever;
- (b) To make treacherous attempts upon the life of an enemy; as, for example, by keeping assassins in pay or by feigning to surrender;
- (c) To attack an enemy while concealing the distinctive signs of an armed force;
- (d) To make improper use of the national flag, military insignia or uniform of the enemy, of the flag of truce and of the protective signs prescribed by the ' Geneva Convention ' (Articles 17 and 40).

' As needless severity should be avoided (Article 4), '

Art. 9. It is forbidden:

(a) To employ arms, projectiles, or materials of any kind calculated to cause superfluous suffering, or to aggravate wounds - notably projectiles of less weight than four hundred grams which are explosive or are charged with fulminating or inflammable substances ' (Declaration of St. Petersburg); '

(b) To injure or kill an enemy who has surrendered at discretion or is disabled, and to declare in advance that quarter will not be given, even by those who do not ask it for themselves.

(c) The sick and wounded, and the sanitary service

' The following provisions (Articles 10 to 18), drawn from the ' Geneva Convention, ' exempt the sick and wounded, and the personnel of the sanitary service, from many of the needless hardships to which they were formerly exposed: '

Art. 10. Wounded or sick soldiers should be brought in and cared for, to whatever nation they belong.

Art. 11. Commanders in chief have power to deliver immediately to the enemy outposts hostile soldiers who have been wounded in an engagement, when circumstances permit and with the consent of both parties.

Art. 12. Evacuations, together with the persons under whose direction they take place, shall be protected by neutrality.

Art. 13. Persons employed in hospitals and ambulances -- including the staff for superintendence, medical service, administration and transport of wounded, as well as the chaplains, and the members and agents of relief associations which are duly authorized to assist the regular sanitary staff -- are considered as neutral while so employed, and so long as there remain any wounded to bring in or to succour.

Art. 14. The personnel designated in the preceding article should continue, after occupation by the enemy, to tend, according to their needs, the sick and wounded in the ambulance or hospital which it serves.

Art. 15. When such personnel requests to withdraw, the commander of the occupying troops sets the time of departure, which however he can only delay for a short time in case of military necessity.

Art. 16. Measures should be taken to assure, if possible, to neutralized persons who have fallen into the hands of the enemy, the enjoyment of fitting maintenance.

Art. 17. The neutralized sanitary staff should wear a white arm-badge with a red cross, but the delivery thereof belongs exclusively to the military authority.

Art. 18. The generals of the belligerent Powers should appeal to the humanity of the inhabitants, and should endeavour to induce them to assist the wounded by pointing out to them the advantages that will result to themselves from so doing (Articles 36 and 59). They should regard as inviolable those who respond to this appeal.

(d) The dead

Art. 19. It is forbidden to rob or mutilate the dead lying on the field of battle.

Art. 20. The dead should never be buried until all articles on them which may serve to fix their identity, such as pocket-books, numbers, etc., shall have been collected.

The articles thus collected from the dead of the enemy are transmitted to its army or government.

(e) Who may be made prisoners of war

Art. 21. Individuals who form a part of the belligerent armed force, if they fall into the hands of the enemy, are to be treated as prisoners of war, in conformity with Articles 61 et seq.

The same rule applies to messengers openly carrying official dispatches, and to civil aeronauts charged with observing the enemy, or with the maintenance of communications between the various parts of the army or territory.

Art. 22. Individuals who accompany an army, but who are not a part of the regular armed force of the State, such as correspondents, traders, sutlers, etc., and who fall into the hands of the enemy, may be detained for such length of time only as is warranted by strict military necessity.

(f) Spies

Art. 23. Individuals captured as spies cannot demand to be treated as prisoners of war.

' But '

Art. 24. Individuals may not be regarded as spies, who, belonging to the armed force of either belligerent, have penetrated, without disguise, into the zone of operations of the enemy, -- nor bearers of official dispatches, carrying out their mission openly, nor aeronauts (Article 21).

' In order to avoid the abuses to which accusations of espionage too often give rise in war it is important to assert emphatically that '

Art. 25. No person charged with espionage shall be punished until the judicial authority shall have pronounced judgment.

' Moreover, it is admitted that '

Art. 26. A spy who succeeds in quitting the territory occupied by the enemy incurs no responsibility for his previous acts, should he afterwards fall into the hands of that enemy.

(g) Parlementaires

Art. 27. A person is regarded as a parlementaire and has a right to inviolability who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag.

Art. 28. He may be accompanied by a bugler or a drummer, by a colour-bearer, and, if need be, by a guide and interpreter, who also are entitled to inviolability.

' The necessity of this prerogative is evident. It is moreover, frequently exercised in the interest of humanity. But it must not be injurious to the adverse party. This is why '

Art. 29. The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

' Besides, '

Art. 30. The commander who receives a parlementaire has a right to take all the necessary steps to prevent the presence of the enemy within his lines from being prejudicial to him.

' The parlementaire and those who accompany him should behave fairly towards the enemy receiving them (Article 4). '

Art. 31. If a parlementaire abuse the trust reposed in him he may be temporarily detained, and, if it be proved that he has taken advantage of his privileged position to abet a treasonable act, he forfeits his right to inviolability.

B. Rules of conduct with regard to things

(a) Means of injuring -- Bombardment

' Certain precautions are made necessary by the rule that a belligerent must abstain from useless severity (Article 4). In accordance with this principle '

Art. 32. It is forbidden:

- (a) To pillage, even towns taken by assault;
- (b) To destroy public or private property, if this destruction is not demanded by an imperative necessity of war;
- (c) To attack and to bombard undefended places.

' If it is incontestable that belligerents have the right to resort to bombardment against fortresses and other places in which the enemy is intrenched, considerations of humanity require that this means of coercion be surrounded with certain modifying influences which will restrict as far as possible the effects to the hostile armed force and its means of defense. This is why '

Art. 33. The commander of an attacking force, save in cases of open assault, shall, before undertaking a bombardment, make every due effort to give notice thereof to the local authorities.

Art. 34. In case of bombardment all necessary steps must be taken to spare, if it can be done, buildings dedicated to religion, art, science and charitable purposes, hospitals and places where the sick and wounded are gathered on the condition that they are not being utilized at the time, directly or indirectly, for defense.

It is the duty of the besieged to indicate the presence of such buildings by visible signs notified to the assailant beforehand.

(b) Sanitary material

' The arrangements for the relief of the wounded, which are made the subject of Articles 10 let seq., would be inadequate were not sanitary establishments also granted special protection. Hence, in accordance with the ' Geneva Convention, '

Art. 35. Ambulances and hospitals for the use of armies are recognized as neutral and should, as such, be protected and respected by belligerents, so long as any sick or wounded are therein.

Art. 36. The same rule applies to private buildings, or parts of buildings, in which sick or wounded are gathered and cared for.

' Nevertheless, '

Art. 37. The neutrality of hospitals and ambulances ceases if they are guarded by a military force; this does not preclude the presence of police guard.

Art. 38. As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals cannot, in withdrawing, carry away any articles but such as are their private property. Ambulances, on the contrary, retain all their equipment.

Art. 39. In the circumstances referred to in the above paragraph, the term "ambulance" is applied to field hospitals and other temporary establishments which follow the troops on the field of battle to receive the sick and wounded.

Art. 40. A distinctive and uniform flag is adopted for ambulances, hospitals, and evacuations. It bears a red cross on a white ground. It must always be accompanied by the national flag.

II. OCCUPIED TERRITORY

A. Definition

Art. 41. Territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there. The limits within which this state of affairs exists determine the extent and duration of the occupation.

B. Rules of conduct with respect to persons

' In consideration of the new relations which arise from the provisional change of government (Article 6), '

Art. 42. It is the duty of the occupying military authority to inform the inhabitants at the earliest practicable moment, of the powers that it exercises, as well as of the local extent of the occupation.

Art. 43. The occupant should take all due and needful measures to restore and ensure public order and public safety.

' To that end '

Art. 44. The occupant should maintain the laws which were in force in the country in time of peace, and should not modify, suspend, or replace them, unless necessary.

Art. 45. The civil functionaries and employees of every class who consent to continue to perform their duties are under the protection of the occupant.

They may always be dismissed, and they always have the right to resign their places.

They should not be summarily punished unless they fail to fulfil obligations accepted by them, and should be handed over to justice only if they violate these obligations.

Art. 46. In case of urgency, the occupant may demand the cooperation of the inhabitants, in order to provide for the necessities of local administration.

' As occupation does not entail upon the inhabitants a change of nationality, '

Art. 47. The population of the invaded district cannot be compelled to swear allegiance to the hostile Power; but inhabitants who commit acts of hostility against the occupant are punishable (Article 1).

Art. 48. The inhabitants of an occupied territory who do not submit to the orders of the occupant may be compelled to do so.

The occupant, however, cannot compel the inhabitants to assist him in his works of attack or defense, or to take part in military operations against their own country (Article 4).

' Besides, '

Art. 49. Family honour and rights, the lives of individuals, as well as their religious convictions and practice, must be respected (Article 4).

C. Rules of conduct with regard to property

(a) Public property

' Although the occupant replaces the enemy State in the government of the invaded territory, his power is not absolute. So long as the fate of this territory remains in suspense -- that is, until peace -- the occupant is not free to dispose of what still belongs to the enemy and is not of use in military operation. Hence the following rules'

Art. 50. The occupant can only take possession of cash, funds and realizable or negotiable securities which are strictly the property of the State, depots of arms, supplies, and, in general, movable property of the State of such character as to be useful in military operations.

Art. 51. Means of transportation (railways, boats, & c.), as well as land telegraphs and landing-cables, can only be appropriated to the use of the occupant. Their destruction is forbidden, unless it be demanded by military necessity. They are restored when peace is made in the condition in which they then are.

Art. 52. The occupant can only act in the capacity of provisional administrator in respect to real property, such as buildings, forests, agricultural establishments, belonging to the enemy State (Article 6).

It must safeguard the capital of these properties and see to their maintenance.

Art. 53. The property of municipalities, and that of institutions devoted to religion, charity, education, art and science, cannot be seized.

All destruction or wilful damage to institutions of this character, historic monuments, archives, Works of art, or science, is formally forbidden, save when urgently demanded by military necessity.

(b) Private property

' If the powers of the occupant are limited with respect to the property of the enemy State, with greater reason are they limited with respect to the property of individuals. '

Art. 54. Private property, whether belonging to individuals or corporations, must be respected, and can be confiscated only under the limitations contained in the following articles.

Art. 55. Means of transportation (railways, boats, & c.), telegraphs, depots of arms and munitions of war, although belonging to companies or to individuals, may be seized by the occupant, but must be restored, if possible, and compensation fixed when peace is made.

Art. 56. Impositions in kind (requisitions) demanded from communes or inhabitants should be in proportion to the necessities of war as generally recognized, and in proportion to the resources of the country.

Requisitions can only be made on the authority of the commander in the locality occupied.

Art. 57. The occupant may collect, in the way of dues and taxes, only those already established for the benefit of the State. He employs them to defray the expenses of administration of the country, to the extent in which the legitimate government was bound.

Art. 58. The occupant cannot collect extraordinary contributions of money, save as an equivalent for fines, or imposts not paid, or for payments not made in kind.

Contributions in money can be imposed only on the order and responsibility of the general in chief, or of the superior civil authority established in the occupied territory, as far as possible, in accordance with the rules of assessment and incidence of the taxes in force.

Art. 59. In the apportionment of burdens relating to the quartering of troops and war contributions, account is taken of the charitable zeal displayed by the inhabitants in behalf of the wounded.

Art. 60. Requisitioned articles, when they are not paid for in cash, and war contributions are evidenced by receipts. Measures should be taken to assure the ' bona fide ' character and regularity of these receipts.

III. Prisoners of war

A. Rules for captivity

' The confinement of prisoners of war is not in the nature of a penalty for crime (Article 21): neither is it an act of vengeance. It is a temporary detention only, entirely without penal character.

In the following provisions, therefore, regard has been had to the consideration due them as prisoners, and to the necessity of their secure detention. '

Art. 61. Prisoners of war are in the power of the hostile government, but not in that of the individuals or corps who captured them.

Art. 62. They are subject to the laws and regulations in force in the army of the enemy.

Art. 63. They must be humanely treated.

Art. 64. All their personal belongings, except arms, remain their property.

Art. 65. Every prisoner is bound to give, if questioned on the subject, his true name and rank. Should he fail to do so, he may be deprived of all, or a part, of the advantages accorded to prisoners of his class.

Art. 66. Prisoners may be interned in a town, a fortress, a camp, or other place, under obligation not to go beyond certain fixed limits; but they may only be placed in confinement as an indispensable measure of safety.

Art. 67. Any act of insubordination justifies the adoption towards them of such measure of severity as may be necessary.

Art. 68. Arms may be used, after summoning, against a prisoner attempting to escape. If he is recaptured before being able to rejoin his own army or to quit the territory of his captor, he is only liable to disciplinary punishment, or subject to a stricter surveillance. But if, after succeeding in escaping, he is again captured, he is not liable to punishment for his previous flight. If, however, the fugitive so recaptured or retaken has given his parole not to escape, he may be deprived of the rights of a prisoner of war.

Art. 69. The government into whose hands prisoners have fallen is charged with their maintenance. In the absence of an agreement on this point between the belligerent parties, prisoners are treated, as regards food and clothing, on the same peace footing as the troops of the government which captured them.

Art. 70. Prisoners cannot be compelled in any manner to take any part whatever in the operations of war, nor compelled to give information about their country or their army.

Art. 71. They may be employed on public works which have no direct connection with the operations in the theatre of war, which are not excessive and are not humiliating either to their military rank, if they belong to the army, or to their official or social position, if they do not form part thereof.

Art. 72. In case of their being authorized to engage in private industries, their pay for such services may be collected by the authority in charge of them. The sums so received may be employed in bettering their condition, or may be paid to them on their release, subject to deduction, if that course be deemed expedient, of the expense of their maintenance.

B. Termination of captivity

' The reasons justifying detention of the captured enemy exist only during the continuance of the war. '

Art. 73. The captivity of prisoners of war ceases, as a matter of right, at the conclusion of peace; but their liberation is then regulated by agreement between the belligerents.

' Before that time, and by virtue of the ' Geneva Convention, ' '

Art. 74. It also ceases as of right for wounded or sick prisoners who, after being cured, are found to be unfit for further military service. The captor should then send them back to their

country.

' During the war '

Art. 75. Prisoners of war may be released in accordance with a cartel of exchange, agreed upon by the belligerent parties.

' Even without exchange '

Art. 76. Prisoners may be set at liberty on parole, if the laws of their country do not forbid it.

In this case they are bound, on their personal honour, scrupulously to fulfil the engagements which they have freely contracted, and which should be clearly specified. On its part, their own government should not demand or accept from them any service incompatible with the parole given.

Art. 77. A prisoner cannot be compelled to accept his liberty on parole. Similarly, the hostile government is not obliged to accede to the request of a prisoner to be set at liberty on parole.

Art. 78. Any prisoner liberated on parole and recaptured bearing arms against the government to which he had given such parole may be deprived of his rights as a prisoner of war, unless since his liberation he has been included in an unconditional exchange of prisoners.

IV. PERSONS INTERNED IN NEUTRAL TERRITORY

' It is universally admitted that a neutral State cannot, without compromising its neutrality, lend aid to either belligerent, or permit them to make use of its territory. On the other hand, considerations of humanity dictate that asylum should not be refused to individuals who take refuge in neutral territory to escape death or captivity. Hence the following provisions, calculated to reconcile the opposing interests involved. '

Art. 79. A neutral State on whose territory troops or individuals belonging to the armed forces of the belligerents take refuge should intern them, as far as possible, at a distance from the theatre of war.

It should do the same towards those who make use of its territory for military operations or services.

Art. 80. The interned may be kept in camps or even confined in fortresses or other places.

The neutral State decides whether officers can be left at liberty on parole by taking an engagement not to leave the neutral territory without permission.

Art. 81. In the absence of a special convention concerning the maintenance of the interned, the neutral State supplies them with the food, clothing, and relief required by humanity.

It also takes care of the ' matériel ' brought in by the interned.

When peace has been concluded, or sooner if possible, the expenses caused by the internment are repaid to the neutral State by the belligerent State to which the interned belong.

Art. 82. The provisions of the ' Geneva Convention ' of 22 August 1864 (Articles 10-18, 35-40, 59 and 74 above given), are applicable to the sanitary staff, as well as to the sick and wounded, who take refuge in, or are conveyed to, neutral territory.

' In particular, '

Art. 83. Evacuations of wounded and sick not prisoners may pass through neutral territory, provided the personnel and material accompanying them are exclusively sanitary. The neutral State through whose territory these evacuations are made is bound to take whatever measures of safety and control are necessary to secure the strict observance of the above conditions.

PART III : PENAL SANCTION

' If any of the foregoing rules be violated, the offending parties should be punished, after a judicial hearing, by the belligerent in whose hands they are. Therefore '

Art. 84. Offenders against the laws of war are liable to the punishments specified in the penal law.

' This mode of repression, however, is only applicable when the person of the offender can be secured. In the contrary case, the criminal law is powerless, and, if the injured party deem the misdeed so serious in character as to make it necessary to recall the enemy to a respect for law, no other recourse than a resort to reprisals remains.

Reprisals are an exception to the general rule of equity, that an innocent person ought not to suffer for the guilty. They are also at variance with the rule that each belligerent should conform to the rules of war, without reciprocity on the part of the enemy. This necessary rigour, however, is modified to some extent by the following restrictions: '

Art. 85. Reprisals are formally prohibited in case the injury complained of has been repaired.

Art. 86. In grave cases in which reprisals appear to be absolutely necessary, their nature and scope shall never exceed the measure of the infraction of the laws of war committed by the enemy.

They can only be resorted to with the authorization of the commander in chief.

They must conform in all cases to the laws of humanity and morality.