

THE RIGHTS OF THE CIVIL POPULATION IN TERRITORY
OCCUPIED BY A BELLIGERENT

THE generally recognized purpose of war is the overmastering of the armed forces of the enemy. The procedure employed to accomplish this result is, however, governed by certain restrictions which are called "the laws of war," for even in the effort to overcome an armed foe the principles of humanity are considered by all civilized peoples to have a binding authority. These principles and the specific application of them in the laws of war — customary or conventional — may not always be actually enforceable, even when solemnly accepted; but they remain the standards by which the conduct of nations is to be judged in the opinion of mankind and the verdict of history.

Civilization does not make war upon individual men, women, and children. Violence against helpless individuals is not war. It is persecution. In moments of calm deliberation all jurists agree in this; and the laws of war, therefore, by common accord, aim to secure the protection of the civil population of a country during military occupation by an enemy force.

The Hague Conventions of 1899 and 1907 respecting the Laws and Customs of War on Land have formulated the conclusions of those conferences on this subject, thereby creating a definite body of law. Exemptions from its operation on the part of the Powers that have ratified these conventions are to be found only in case of definite reservation at the time of signature or ratification, or under the restriction of Article 2, which confines the application of their provisions to the contracting Powers, and makes their obligations binding even upon these only if all the belligerents are parties to the convention.

Several of the belligerents in the present European War have failed to ratify the convention of 1907, which makes some advance upon that of 1899; but all of them ratified the convention of 1899; and it, therefore, expresses the obligations of all these Powers to one another, as well as their deliberately formed decisions as to the principles upon which the conduct of war on land should be based.

In stating the purpose of the convention, these principles are formulated thus:

Animated by the desire to serve . . . the interests of humanity and the ever increasing requirements of civilization;

Thinking it important, with this object, to revise the laws and general customs of war, either with the view of defining them more precisely, or of laying down certain limits for the purpose of modifying their severity as far as possible;

Inspired by these views (the co-signatories)

Have, in this spirit, adopted a number of provisions, the object of which is to define and govern usages of war on land.

The provisions of Section III of the convention of 1899 relate to military authority over hostile territory. Here the primary assumption is that, while the territory is under the authority of the hostile army, this does not entirely supersede the civil authority; but, on the contrary, it "shall take all steps in its power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country" (Article 43).

Expressly prohibited are:

1. Compulsion of the population of occupied territory to take part in military operations against its own country (Article 44).
2. Pressure on the population of occupied territory to take the oath to the hostile Power (Article 45).
3. Disregard of "family honors and rights, individual lives and private property, as well as religious convictions," all of which must be "respected" (Article 46).
4. Pillage (Article 47).
5. The collection of taxes, dues, and tolls beyond the assessments already in force, except "for military necessities or the administration of such territory" (Articles 48 and 49).
6. Requisitions in kind or services from communes or inhabitants except "for the necessities of the army of occupation." "They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their country" (Article 52).

In brief, the evident intention of the regulations is that the order and economy of civil life be disturbed as little as possible by the fact of military occupation; which is not directed against individuals or against society as an institution, but solely against armed resistance.

Into all the details of conduct on the part of an army of occupation it is obviously impossible for such regulations to enter. It would, in fact, be contrary to public morality to specify all the crimes and outrages that could be imagined in a catalogue of acts thus intended to be prohibited. It is, therefore, from the general principle of

respect for the civil rights of persons that the law regarding the treatment of the civil population in matters of detail is to be deduced; and it is with prevision of this necessity that the convention of 1899 says explicitly:

It has not, however, been possible to agree forthwith on provisions embracing all the circumstances which occur in practice.

On the other hand, it could not be intended by the high contracting parties that the cases not provided for should, for want of a written provision, be left to the arbitrary judgment of the military commanders.

Until a more complete code of the laws of war is issued, the high contracting parties think it right to declare that in cases not included in the regulations adopted by them, populations and belligerents remain under the empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.

In seeking for the law regarding the treatment of the civil population in territory occupied by a belligerent, we are not, therefore, confined to the formal regulations adopted in these conventions. Whatever is against the established usage of civilized nations, whatever infringes the laws of humanity, whatever violates the requirements of the public conscience, is as clearly illegal as if it were prohibited by precise definition.

Whatever the possibility of enforcement may be, this is the standard by which the jurist must form his judgment, and it is the standard by which public opinion in general must be governed.

At the present time the deportation of civil populations in great numbers from their homes and their forcible transportation to the country of the enemy, there to be compelled to the performance of servile tasks, furnishes an occasion for serious reflection.

In April, 1916, at Lille, the German military commandant issued a proclamation announcing the intention to transport the inhabitants to the country to perform agricultural labor. Each person was allowed to take 30 kilogrammes of baggage, including utensils and clothing. In one of the proclamations all the inhabitants of the house, with the exception of children under 14 years of age and their mothers and old men, were ordered to prepare for transportation within an hour and a half, with the injunction that "Whoever shall endeavor to avoid transportation will be pitilessly punished."

Against this measure the Mayor of Lille earnestly protested, as did also the Bishop of Lille, on the ground that "to destroy and

break up families, to wrench from their homes by thousands peaceable citizens, to force them to abandon their goods without protection, would be an act of a nature to arouse general reprobation."

On July 25, 1916, the French Government addressed an instruction to its diplomatic representatives in neutral countries directing them to acquaint the governments to which they were accredited with the conduct of the German military authorities at Lille, Turcoing, and Roubaix, and not only to call attention to the violation of the Hague Convention concerning the Laws and Customs of War on Land, but to appeal to the sentiments of justice and humanity of the neutral Powers and to the public opinion of all nations with a view to obtaining a remedy for these wrongs.

So far as is known, no action was taken upon this appeal by any government; but subsequently reported acts of deportation resulting, it is claimed, in the transportation to Germany of some 300,000 Belgians of both sexes and of various ages, not only forcing them from their homes but condemning them to conditions of alleged virtual slavery in a foreign land, have furnished occasion for a still more urgent appeal for friendly intervention by neutral governments.

Without assuming to judge of the accuracy of the complaints made, which touch most profoundly the provision of Article 46 for protecting the "family honors and rights" of the population in an occupied country, and without inquiring here into the reasons which may be given for such deportations, it does not admit of doubt that such acts as are reported are violations not only of the spirit but of the specified immunities of the convention of 1899, which all the belligerents in the present war have duly ratified.

Two practical considerations, therefore, seem to press themselves upon our attention at this time: first, the utter inutility of any international convention unless the co-signatories have the recognized right to inquire whether or not the obligations mutually created between them are in any case violated, and to insist that they be fulfilled; and, second, the evident impossibility of any really useful revision or extension of international law, when the conditions of peace favor such reconsideration, if no provision is made for the enforcement of regulations other than the force of the immediate victim of violation. Until it is recognized that failure to observe an international agreement is an offense against all the co-signatories, and not merely against the immediate sufferer, and also against the

very idea of law itself, and that, therefore, all who make the rule are responsible for its observance, it is a matter of relatively little consequence what the rules may be.

If this be a just conclusion, it remains to be considered on what ground any nation that denies the right of neutral co-signatories to inquire into alleged violations of a convention, or to remonstrate concerning them, protest against them, or insist upon conformity to the rules agreed upon, may, until these rights are conceded, justly claim a part in the formation of any future convention for the establishment of rules of law.

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SUBMARINE REFLECTIONS

Norway alone of neutral Powers, so far as we are informed, has put the submarine in a class by itself in her treatment of both the military and merchant types. The former is debarred the passage of Norwegian waters except in case of necessity; the latter may approach only by day; both are forbidden to submerge within the state's territorial limits. Doubtless the position and character of the Norwegian coast line have exposed Norway to much annoyance in the performance of her neutral duties. Long, intricate, fringed with islands, near the scene of battle, blockade and visitation, sparsely settled, it cannot be adequately guarded or patrolled. That this difficulty should be increased by the approach and passage of U-boats submerged is unendurable; they must seek hospitality openly and undisguised. Granting this, however, is it just or reasonable to treat them differently from other vessels? While viewing Norway's action sympathetically, I would suggest that it lends sanction to the open or covert belligerent contention that the submarine is to be classed apart from other cruisers or other merchantmen and entitled to special treatment. Perhaps this claim is worth a brief examination.

Look first at what appears to be the German claim. Germany's U-boat campaign against Great Britain began with the declaration of a war zone and a so-called blockade. Now the first requisite of a valid blockade under the old system was that it must be effective, *i.e.*, so continuous, so strict, as to make the breach of it highly dangerous. The sporadic appearance of a submarine with an occasional chase or a semi-occasional capture does not answer this requirement. Again as our State Department has said over and over, to constitute