CIHM
Microfiche
Series
(Monographs)

ICMH
Collection de
microfiches
(monographies)

Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

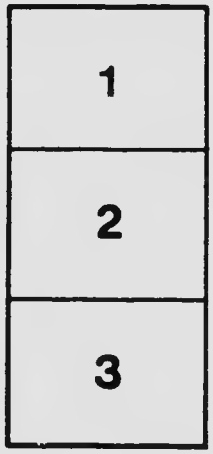
- ☐ Coloured covers / Couverture de couleur
- ☐ Covers damaged / Couverture endommagée
- ☐ Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- ☐ Cover title missing / Le titre de couverture manque
- ☐ Coloured maps / Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- ☑ Bound with other material / Relié avec d'autres documents
- ☐ Only edition available / Seule édition disponible
- ☐ Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- ☐ Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments / Commentaires supplémentaires:

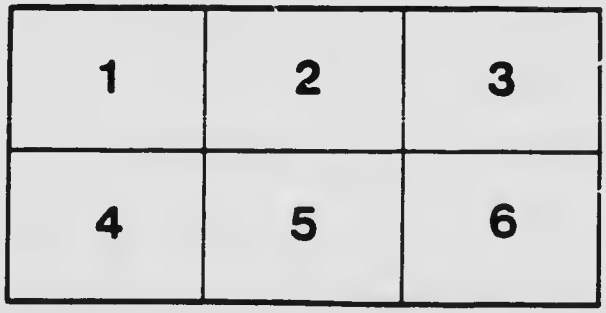
L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages / Pages de couleur
- ☐ Pages damaged / Pages endommagées
- ☐ Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- ☐ Pages detached / Pages détachées
- ☑ Showthrough / Transparence
- ☐ Quality of print varies / Qualité inégale de l'impression
- ☐ Includes supplementary material / Comprend du matériel supplémentaire
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- ☐ Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below / Ce document est filmé au taux de réduction indiqué ci-dessous.

10x	12x	14x	16x	18x	20x	22x	24x	26x	28x	30x	32x
					✓						





OXFORD PAMPHLETS

1914

NON-COMBATANTS AND THE WAR

BY

A. PEARCE HIGGINS, LL.D.

LECTURER ON INTERNATIONAL LAW AT THE LONDON SCHOOL OF ECONOMICS AND THE ROYAL NAVAL WAR COLLEGE

Price Twopence net

OXFORD UNIVERSITY PRESS
HUMPHREY MILFORD
LONDON EDINBURGH GLASGOW
NEW YORK TORONTO MELBOURNE BOMBAY

EDITORIAL NOTE

In 1912 Dr. Pearce Higgins published a book entitled *War and the Priv[illegible]itizen* (London : P. S. King & Son) which has been highly praised by lawyers but is less known to the general public than it should be. By his courtesy and that of Messrs. P. S. King & Son, we are able to reprint from that book some pages which are specially interesting and instructive at the present moment.

C. D.

NON-COMBATANTS AND THE WAR

I

WAR is not a condition of anarchy; contests between States are regulated by the laws of war, and much has been done in recent times to bring about a uniformity in regard to the legitimate practices of war. The Instructions issued to the United States armies in 1863, which were prepared by Dr. Francis Lieber, mark an important stage in the movement towards a more complete statement of these rules. They were issued again without modification for the government of the armies of the United States during the war with Spain in 1898.[1] They were of considerable value to the Conference at Brussels in 1874, when an attempt was made to obtain a declaration of the laws of land warfare acceptable to the Powers of the world. The Brussels Conference did not succeed in this, but the Declaration which it drafted wa in nearly all its essentials accepted by the First Hague Conference in 1899, and is the basis of the 'Regulations' annexed to the Convention on the Laws and Customs of War on land. These Regulations were amended by the Second Hague Conference in 1907, and the Convention to which they are annexed has been signed by nearly all the Powers in the world.[2]

[1] G. B. Davis, *Elements of International Law*, p. 505.

[2] For texts of these Conventions see A. Pearce Higgins, *The Hague Peace Conferences*, pp. 206–72; for the Brussels Draft Declaration (with cross-references to the Hague Regulations) see ibid., p. 273.

The object of these Regulations was strikingly put by the distinguished Russian Plenipotentiary and Publicist, M. de Martens. They are, he said, to provide Statutes for a Mutual Insurance Society against the abuse of force in time of war, with the object of safeguarding the interests of populations against the greatest disasters that could happen to the ordinary populations in time of war. The emphasis laid on their importance in regard to the civilian population is noteworthy. The Powers who are parties to the Convention agree to issue to their armed forces instructions which shall be in conformity with the Regulations (Art. 1), and any belligerent party which violates their provisions is liable to make compensation, and is responsible for all acts committed by persons forming part of its armed forces (Art. 3).

Besides the Regulations annexed to the Hague Conventions, the Geneva Conventions of 1864 and 1906—to which also nearly all States are parties—regulate the treatment of the sick and wounded in land warfare, and a Convention entered into at the Hague Conference of 1907 applies the same principles to naval warfare.

International agreements, however, form only a part of International Law, and the preamble to the Convention on the laws and customs of war on land recognizes the incompleteness of its provisions, and states that until a more complete code of the laws of war can be issued, the High Contracting Parties think it expedient to declare that 'in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and the rule of the principles of the law of nations as they result from the usages established between civilized nations, from the laws of humanity and the dictates of the public conscience'. The

written laws of war must therefore be supplemented by the rules of customary International Law, the evidence of which is to be sought in the works of International lawyers, while the facts on which those rules are based are to be found in historical, judicial, and diplomatic records. All of these rules are to be observed in the spirit of humanity, which prohibits the infliction of needless suffering to individuals and mere wanton destruction of property, and to be enforced with the knowledge that the enlightened conscience of the world demands their observance in a spirit of good faith and honourable adherence to international agreements. Recent wars testify to the restraining force of the rules of International Law.

One fundamental principle on which I wish to lay great emphasis stands out from what has just been said, and it is this, that all is not fair in war. The international conventions I have referred to, and the usages of nations for a century past, prove conclusively the falsity of the popular saying. Great restrictions have been imposed on the unlimited power of a belligerent in regard both to the combatant and non-combatant members of the enemy state. The rule that 'the right of belligerents to adopt means of injuring the enemy is not unlimited'[1] has received almost universal acceptance. The amount of violence which is permitted to a belligerent by the laws of war is that which is necessary to enable him to attain the object desired, and the natural end of the art of war, says Clausewitz, the great master of strategy, is the complete overthrow of the enemy. In other words, a belligerent who wishes to bring his war to a successful termination may bring such pressure to bear on his adversary—that is,

[1] Article 22 of the Hague Regulations for Land Warfare.

primarily on the armed forces of his adversary, but incidentally and often directly also on the civilian population—as will bring about the complete submission of the enemy as quickly as possible, and with the smallest possible expenditure of blood and treasure. 'War means fighting,' said the great Confederate General Stonewall Jackson. 'The business of the soldier is to fight. Armies are not called out to dig trenches, to throw up breastworks, to live in camps, but to find the enemy and to strike him; to invade his country and do all possible damage in the shortest time. This will involve great destruction of life and property while it lasts, but such a war will of necessity be of brief duration, and so would be an economy of life and property in the end. To move swiftly, strike vigorously, and secure all the fruits of victory is the secret of successful war.' [1] And these views were more concisely stated by the American Instructions: 'The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.' But all this must be subject to the qualification that it be done in accordance with the rules of International Law, both customary and conventional, rules which have come into being chiefly under the guidance of military commanders themselves, and have been dictated by the necessity for the due maintenance of discipline, by humanity and regard for the public opinion of the civilized world. 'Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another, and to God.' [2]

[1] G. E. R. Henderson, *Stonewall Jackson and the American Civil War*, vol. i, p. 176.

[2] Article 16 of United States 'Instructions'.

I

It is the modern practice when an army invades the enemy's territory, for the commander to issue a proclamation addressed to the inhabitants announcing that he is making war only against the soldiers and not against private citizens, and that so long as the latter remain neutral, and make no hostile attempts against his troops, he will, as far as pc spare them the horrors of war, and permit ther continue to enjoy security for person and property. It is one of the greatest triumphs of civilization to have brought about the distinction between the treatment of combatants and non-combatants. Private citizens are no longer murdered, enslaved, or carried off to distant parts, nor exposed to every kind of disturbance of private relations. The credit for this alteration of treatment is due in the first place to belligerent commanders themselves, for they alone had and have the power to enforce the rules which have grown up ameliorating the condition of the pe ful citizen. Self-interest has played a by no means u nportant part in bringing about this change; commanders discovered that by giving protection to the civilian population, by buying their pro- ons instead of plundering them wholesale, better discipline was preserved among their own troops, and greater freedom for their operations was ensured. Yet even now the lot of the private citizen in an invaded territory is far from being a happy one.

In order that the civilian population may receive such improved treatment it must remain strictly non-combatant and refrain from all intermeddling in hostilities. Full belligerent rights are accorded (1) to the armed forces of the belligerent State, including under

this designation those in the regular army, volunteers, territorial troops, and such irregular troops as comply with the requirements of the first Article of the Hague Regulations. These conditions are that such forces (*a*) must have at their head a person responsible for his subordinates; (*b*) they must have a fixed, distinctive sign recognizable at a distance; (*c*) must carry arms openly; and (*d*) conform in their operations to the laws and customs of war. The armed forces complying with these requirements (some of which, especially the use of a distinctive sign, are equivocal) always have attached to them a certain number of non-combatants to whom also belligerent rights are granted, such as telegraphists, veterinary surgeons, canteen-contractors, and others. They fight if necessary, and should be included under the term combatants, though Article 3 of the Hague Regulations designates them as non-combatants.

Belligerent rights are also granted (2) to the population which rises in arms at the approach of an invading army in an unoccupied territory; such persons if they take up arms spontaneously in order to resist the invading troops, without having had time to organize in conformity with the first Article of the Regulations, are to be considered as lawful belligerents if (*a*) they carry arms openly and (*b*) observe the laws and customs of war. This recognition of the right of a whole population to rise *en masse* and defend itself against an approaching invader was obtained only after strenuous contention on the part of Great Britain and some of the smaller States of Europe. For the great military Powers which have adopted universal military service in some form or another, the question of granting this recognition had not the importance that it possesses for other States such as our own, where the great mass of the

manhood of the nation has received no military training. As it is, the Article still seems defective. There will remain the difficulty of distinguishing between such levies *en masse* and sporadic outbreaks in unoccupied districts in the absence of a commander responsible for the acts of his subordinates. The German General Staff, in its official work on the laws of land warfare, states that the demand for subordination to responsible heads, for a military organization, and for distinctive marks, cannot be given up without engendering a strife of individual against individual which would be a far worse calamity than anything likely to result from the restriction of combatant privileges.[1] This question is by no means settled. One fact, however, is clear: the belligerent character only attaches where the rising is one of considerable dimensions. Cases of isolated defence by individuals of their homes are left outside these regulations. The citizen who committed acts of hostility without belonging to a force complying with the requirements of the Hague Regulations would find himself dealt with as severely as was Mr. Browne in *An Englishman's Home*, who for defending his house against the invaders of the 'Nearland' Army, was taken and put to death before it. Men and squads of men not under strict discipline, not forming part of the army or of a levy *en masse*, at the approach of the invaders, who commit hostile acts with intermitting returns to their homes and vocations, divesting themselves of the character or appearance of soldiers, have no cause for complaint of an infringement of the laws of war if when they are caught they are denied belligerent rights, and put to death.

[1] *Kriegsbrauch im Landkriege*, pp. 7–8: J. M. Spaight, *War Rights on Land*, p. 55.

None of the Regulations referred to affect the treatment of risings by the inhabitants in territories occupied by the invading army. The customary rule of International Law is that all such persons are liable to the severest penalties. 'War rebels,' says Article 85 of the American Instructions, 'are persons within an occupied territory who rise in arms against the occupying or conquering army or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in small or large bands, or whether called upon to do so by their own, but expelled, Government or not.' [1]

There is, however, another case in which private citizens have often been granted the rights of belligerents. (3) namely, where they have assisted the army of defence of a besieged town. The historic defence of Saragossa, in which even the women assisted the gunners. and the more recent defence of Plevna, afford examples of such treatment.

So long therefore as non-combatants refrain from direct participation in the war they are immune from direct violence, but they are liable to personal injuries which may result from the military operations of the armed forces of the belligerents. Among such operations are bombardments which accompany the sieges of defended towns. The Hague Regulations lay down certain rules for the general guidance of officers in conducting sieges. The attack or bombardment by any means whatever—this includes dropping shells from

[1] Of the treatment by the Italians of the Arabs in the Oasis of Tripoli in October, 1911, I say nothing, as there appears at present to be a hopeless contradiction in the reports in the press. There seems, however, to have been a rising in occupied territory, which is always severely dealt with.

balloons and airships—of *undefended* towns, villages, dwellings or buildings is forbidden (Art. 25). The commander of the troops attacking a defended town before commencing a bombardment, except in the case of assault, must do all that lies in his power to give warning to the authorities (Art. 26). In sieges and bombardments, every precaution is to be taken to spare, as much as possible, buildings devoted to religion, art, science, and charity, historic monuments, and hospitals and places where the sick and wounded are collected, provided that they are not used at the same time for military purposes. The besieged is to indicate these buildings or places by some special visible sign, which is to be previously notified to the assailants (Art. 27).[1] The pillage of a town or place, even when taken by assault, is prohibited (Art. 28). This last prohibition marks a great advance in the customs of war, and with one or two exceptions due to special circumstances has been well observed in modern times.

The siege and bombardment of a town is an operation of war which bears most cruelly on the ordinary civilian population ; the private citizens who are living in their own homes and who generally are not allowed to leave, even if they should wish to do so, are subject to all the dangers of falling shot and shell, and not infrequently their houses are directly bombarded by the assailant in order to bring pressure to bear on the commander of the besieged town so that he may be induced, by the

[1] In case of bombardment by naval forces there is a similar injunction to the commandant to spare such places. The duty of the inhabitants is to indicate these buildings by special signs consisting of large, rectangular rigid panels, divided along one of their diagonals into two coloured triangles, black above and white below. 9 H. C., 1907, Art. 5. (See *Hague Peace Conferences*, p. 356.)

sufferings of the inhabitants, to surrender. It must be noticed that it is only *undefended* towns which may not be bombarded. The distinction is not between fortified and unfortified places. Modern engineering skill has shown the futility of endeavouring to draw such a distinction. Plevna, till Osman Pacha threw himself into it with his army, was as open a town as any English country-town to-day. Ladysmith, Mafeking, and Kimberley were all unfortified till the British troops took in hand their defences.

The injury which may be inflicted on private citizens by bombardments may be illustrated by the bombardment of Strasburg by the Germans in 1870, when 448 private houses were utterly destroyed, nearly 3,000 out of a total of 5,150 were more or less injured, 1,700 civilians were killed or wounded, and 10,000 persons rendered homeless; the total damage to the city was estimated at nearly £8,000,000.[1] The great damage done to Strasburg was chiefly due to the fact that the forts and ramparts were so close to the town that they could not be shelled without damaging the houses, but there appears to be little doubt that the bombardment was, at times, intentionally directed against the private houses with a view of bringing pressure to bear on the civilian population. Such a practice—attacking those who cannot defend themselves—certainly appears to be contrary to the principle of modern warfare, and bombardments to produce psychological pressure cannot be excused, says Hall, and can only be accounted for as a survival from the practices which were formerly regarded as permissible, and which to a certain extent lasted till the beginning of the nineteenth century.

[1] J. M. Spaight, op. cit., p. 162; H. M. Hozier, *Franco-Prussian War*, vol. ii, p. 71.

'For the present', he adds, 'it is sanctioned by usage',[1] and in every war since 1870, whether by inevitable accident or design, considerable damage has been done to the persons and property of ordinary peaceful citizens.

With the progress of aeronautics we shall probably see a further terror added to war, as it seems that in the future Tennyson's prophecy will be fulfilled in which the Poet:

Heard the heavens fill with shouting, and there rained a ghastly dew
From the nation's airy navies grappling in the central blue.

With the exception of Great Britain, no great European Power has ratified the Declaration agreed to at the Hague Conference in 1907, which prohibits, till the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons and airships.[2] It is, in my opinion, a lamentable commentary on the humanitarian sentiments so freely expressed by the delegates at this Conference, that this splendid opportunity of making a beginning in the limitation of military budgets, the increase of which they all so loudly deplored, was thus lost.

Before leaving the subject of bombardments, a few words are necessary in regard to the question of allowing

[1] op. cit., p. 537.

[2] See *Hague Peace Conferences*, pp. 4[illegible]1. All the Powers have agreed that undefended towns, &c., free from bombardments 'by any means whatsoever', which words were inserted to include the discharge of projectiles from airships (see *Hague Peace Conferences*, p. 490, and Note 4 on the same page as regards bombardments by naval forces). Though Great Britain has ratified the Declaration against discharging projectiles from balloons, this is only binding in case of war with other Powers signatory of the same Declaration.

what are called 'useless mouths' (*les bouches inutiles*)—that is, old men, women, and children—to leave a besieged town. The Hague Regulations are silent on the point. The notice which a commander is required to give before bombardment—though no period of delay is fixed—is some protection for the non-combatants, and such notice is clearly demanded by every requirement of humanity so as to enable some measures to be taken for the protection of the civilian population, especially women and children; but beyond this the Regulations are silent. There is no obligation imposed on the besieger, either by the written or unwritten laws of war, to allow any portion of the population to leave a besieged place even when a bombardment is about to commence. 'When the commander of a besieged place expels the non-combatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender,' [1] and instances of this have occurred in modern times. The whole matter is solely one for the commander of the besieging force, though when the intention is to take the town by assault, not to reduce it by famine, the retention of the civil population within the town means the infliction of much unnecessary suffering. The Japanese gave permission to the civilian population to leave Port Arthur before the bombardment, but throughout the Franco-German War, except when General von Werder granted a short armistice for some Swiss delegates to remove 2,000 homeless women and children from Strasburg, the Germans observed the full rigour of their war rights. The Americans before bombarding Santiago de Cuba in June 1898, gave forty-eight hours' notice and allowed the

[1] United States 'Instructions', Article 18.

exit of non-combatants. In the siege of Ladysmith, although non-combatants were not allowed to leave, an arrangement was made whereby they were placed in a camp outside the zone of fire, but they remained dependent for their supplies on the defenders of the besieged town. This subject, like so many connected with war, is one in which it is most difficult to harmonize military necessities and the dictates of humanity.

It is, however, as a rule, only a small proportion of the civilian population that is thus exposed to the danger of death or injury by direct military operations, but when a district is occupied by the invading army every inhabitant feels the pressure of war. The object of the invader, apart from winning victories over his adversary's troops, is to make his superiority felt by the whole population of the enemy State, and when the troops of the defenders have been expelled from a given area, and the territory is actually placed under the authority of the hostile army, an important legal change in the relation between the invader and the invaded takes place, as such territory is then said to be in the enemy's military occupation.

Until the middle of the eighteenth century, the invader treated the territory of his enemy as his own, but gradually the distinction between conquest and military occupancy was worked out, and by the end of the nineteenth century a series of rules was accepted and embodied in the Hague Regulations of 1899 and 1907. 'Territory is considered to be occupied when it is actually placed under the authority of the hostile army. The occupation applies only to the territories where such authority is established and can be exercised' (Art. 42). It appears certain that under the Hague

Regulations the practice pursued by the Germans in 1870 of deeming a whole canton of seventy-two square miles to be occupied if a patrol or small detachment passed through without resistance, can no longer be justified. 'Occupation on land is strictly analogous to blockade at sea; and as blockades are not recognized unless they are effective, so occupation must rest on the effective control.'[1] Practically occupation amounts to this, that the territorial Government can no longer exercise its authority within the area of invasion, and the invader can set up his own governmental organization, or continue in office those of the expelled Government who are willing to serve. Recent wars provide us with examples of the working of the modern rules governing belligerent occupation which are contained in Articles 42–56 of the Hague Regulations.

The authority of the legitimate sovereign having been displaced, the occupant must take all steps in his power to re-establish and ensure public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. A combination of severity and conciliation is required which will at the same time allow the peaceful citizen to continue the pursuit of his ordinary avocation, so far as possible, while the occupant's position is not endangered. Order is to be maintained, and existing laws enforced as far as circumstances permit. A military administration is in practice at once set up. The occupant issues notices prohibiting and punishing with severity all offences against the army of occupation, and every act which may endanger the security of his troops. (I have already referred to the severity with which risings in occupied districts are always dealt.) The commander

[1] T. J. Lawrence, *International Law*, p. 433.

orders all arms and ammunition of every description to be given up, closes the public-houses either wholly or partially, forbids the assembly of groups of men in the street, requires all shutters to be removed from shops, orders all lights to be put out by a certain time, establishes a censorship on all letters, suppresses or restricts the publication of newspapers, restricts individuals in their freedom of movement, deports any whose presence he may consider dangerous to his army, and in a thousand different ways makes the ordinary citizen feel that the enemy is within his gates. The following Proclamation issued by General von Kummer at Metz on October 30, 1870, gives in a few sentences an example of the powers of an occupant :

'If I encounter disobedience or resistance, I shall act with all severity and according to the laws of war. Whoever shall place in danger the German troops, or shall cause prejudice by perfidy, will be brought before a council of war ; whoever shall act as a spy to the French troops or shall lodge or give them assistance ; whoever shows the road to the French troops voluntarily : whoever shall kill or wound the German troops or the persons belonging to their suite ; whoever shall destroy the canals, railways, or telegraph wires ; whoever shall render the roads impracticable ; whoever shall burn munitions and provisions of war ; and lastly, whoever shall take up arms against the German troops, will be punished by death. It is also declared that (1) all houses in which or from out of which any one commits acts of hostilities towards the German troops will be used as barracks ; (2) not more than ten persons shall be allowed to assemble in the streets or public houses ; (3) the inhabitants must deliver up all arms by 4 o'clock on Monday, October 31, at the Palais, rue

de la Princesse ; (4) all windows are to be lighted up during the night in case of alarm.'[1]

The conversion into barracks of houses in which or out of which acts of hostilities had been committed was less severe than the treatment authorized by the British generals during the Boer War. Lord Roberts ordered the burning of farms for acts of treachery or when troops had been fired on from farm premises, and as a punishment for breaking up telegraph or railway lines or when they had been used as bases of operations for raids.[2]

The rules issued by the occupant are rules of Martial Law, and proceedings to enforce them are generally taken before a military tribunal. There is, I believe, a considerable misapprehension as to the meaning of Martial Law, not only among military officers but also among civilians. Martial Law might perhaps be more accurately called 'Military rule', or the 'Law of hostile occupation', as General Davis suggests.[3] It was described by the Duke of Wellington as 'neither more nor less than the will of the general who commands the army. In fact, Martial Law means no law at all. Therefore the general who declares Martial Law, and commands that it shall be carried into execution, is bound to lay down distinctly the rules, and regulations, and limits according to which his will is to be carried out.' It is not, therefore, a secret written code of law which a commander produces from his pocket and declares to be the laws under which an occupied terri-

[1] H. M. Hozier, *Franco-Prussian War*, vol. ii, p. 124, cited by J. M. Spaight, op. cit., p. 338.

[2] *Parliamentary Papers*, 1900. Proclamations of F.-M. Lord Roberts (Cd. 426), p. 23.

[3] *Elements of International Law* (3rd ed.), p. 333.

tory is to be governed. Martial Law in a hostile country consists of the suspension of the ordinary rules of law in so far as such suspension is called for by military necessities, and the substitution of military rule and force for the ordinary laws either in whole or in part.[1]

The occupant is forbidden to place any compulsion on the inhabitants of occupied territory to take the oath of allegiance to him (H. R. Art. 45), but he may compel them to take an oath of neutrality, though even without this the inhabitants are under a duty of remaining neutral, and they forfeit their rights as non-combatants by any intermeddling in the war. The occupant must see that the family honour and rights, the lives of individuals and private property, as well as religious conviction and liberty of worship, are respected; but liberty of worship does not mean liberty to preach sermons inciting to continued warfare or hostility to the occupant. Many churches were closed by British officers during the Boer War in consequence of the political character of the sermons preached therein. Private property cannot be confiscated (Art. 46). The occupant may, however, find it necessary to make use of churches or schools as hospitals, and we shall shortly see that, though private property must not be confiscated, the occupant has a large licence in the matters of supplying his troops with all things needful for them. He may not confiscate, but he may commandeer. The occupant is also forbidden to interfere with the existing private rights of citizens of the occupied territory, for

[1] For examples of Proclamations of Martial Law during the Boer War see *Parliamentary Papers*, 1900 (Cd. 426), also chap. xi of Dr. Spaight's *War Rights on Land*. For a fuller treatment of Martial Law in relation to English law see A. V. Dicey, *The Law of the Constitution*, chap. viii.

he must not declare to be extinguished, suspended, or unenforceable in a court of law the rights and rights of action of the subject of the enemy State (Art. 23 (*h*)). There is some doubt as to the meaning of this prohibition, but this is the view which it is understood that the British Government takes as to its interpretation.[1]

The services of the inhabitants of the occupied territories may be requisitioned by the occupant, if they are of such a nature as not to involve them directly in taking part in military operations against their own country (Art. 52). The interpretation which commanders put on this limiting clause is a lax one, but professional men, tradesmen, and artisans, for example medical men, chemists, engineers, electricians, butchers, bakers, smiths, &c., &c., may find that their services are demanded by the commanding officer in the locality. Some authorities hold that the occupant may resort to forced labour for the repair of roads, railways, and bridges, as such are required to restore the general condition of the country, even though their repair should mean a considerable strategic advantage to the troops of the occupying army. The belligerent is also forbidden, both in unoccupied and occupied districts, to compel the subjects of the other belligerent to take part in operations of war directed against their own country (Art. 23, last paragraph), and an occupant is also forbidden to compel the population of occupied territory to furnish information about his own country's army, or about its means of defence (Art. 44). The discussions on these articles at the Hague in 1907 make it clear in my opinion that these provisions forbid the

[1] On the meaning of this Article see *Hague Peace Conferences*, pp. 263–5; T. J. Lawrence, op. cit., pp. 358–60; T. E. Holland, *Law Quarterly Review*, vol. xxviii (Jan., 1912), pp. 94–8.

impressment of persons to act as guides for the invading troops, and this view is supported by the Report made by the French Delegation to their Government. But all the Powers do not accept this latter Article. Austria, Germany, Japan, and Russia excluded it, on signing the Convention, but even so I think the practice is condemned in Article 23. However, it is by no means improbable that some of these Powers, by making a reservation of Article 44, did so in order to adhere to the practice, which has long obtained, of compelling inhabitants to act as guides to the invader's troops. This practice, and that of compelling men under pain of death to give information of military value, appear to me contrary to the whole spirit of the modern development of the laws of war; they are odious, and should disappear from all the military manuals of civilized States.[1]

We thus see that there are many cases in which the personal services of ordinary private citizens may be requisitioned in occupied territory; their property is also liable to be requisitioned for the use of the occupying army. In addition to the payment of the ordinary taxes which the invader may levy for the benefit of the occupied district, the inhabitants may also be called upon to pay contributions in money in lieu of requisitions in kind. There are no less than three different Articles in the Hague Regulations which either prohibit pillage or forbid the confiscation of private property, but military necessities, though not over-ruling the strict letter of the prohibition, often bring about situations which make these prohibitions sound unreal. Still they are exceptions, and the rule holds good. We have

[1] For discussions of these Articles see *Hague Peace Conferences*, pp. 265–8.

already seen that the actual destruction of private dwelling-houses and other buildings in private ownership may be occasioned by bombardment or other operations of war. But, in addition to destruction or damage caused by these means, the landowner may be deprived of the use of his land for camps, for fortifications, for entrenchments, or for the burial of the dead. Commanding officers in actual warfare do not ask permission of landowners to make use of the land as battlefields, and promise not to damage the crops or disturb the game: nor will the objection by fashionable watering-places, that military manœuvres interfere with summer visitors, receive any attention from the commander of an invading army. Houses, fences, woods are all liable to be demolished to provide materials for fortifications or to prevent the enemy from making use of them as cover, and landowners may never get any compensation where such destruction takes place as an operation of war. Further, private citizens are liable to have troops billeted on them or sick or wounded placed in their houses. In connexion with the requisitioning of the services of inhabitants to assist in the care of the sick and wounded, I may draw attention to the fact that the Geneva Conventions make no provision for the non-combatant inhabitants in districts where hostilities are in progress. 'These unfortunates frequently suffer severely from sickness and wounds in consequence of the military operations, and their case is then particularly distressing because they are generally without medical personnel or material for their proper treatment.' [1]

Then as regards the personal property of the ordinary

[1] W. G. Macpherson, 'The Geneva Convention', *Zeitschrift für Völkerrecht und Bundesstaatsrecht*, vol. v. p. 260.

citizens, everything belonging to them which may be of direct use in war, such as guns, ammunition and all kinds of war-material, are always taken from the inhabitants, and particularly heavy penalties are always inflicted for the concealment of arms. All appliances, whether on land, at sea, or in the air, adapted for the transmission of news or for the transport of persons or goods, apart from cases governed by maritime law, may be seized even though belonging to private persons, but they are to be restored and indemnities regulated at the peace (Art. 53). Restoration will in a vast number of cases be an impossibility, and the compensation may be but a poor substitute for the thing taken. Money is but a poor compensation to a farmer if all his horses are requisitioned. This article therefore authorizes the seizure of all kinds of transport: horses, motor-cars, motor-boats, carts, bicycles, carriages, tram-cars, balloons, aeroplanes, river pleasure-steamers, canal-barges, and so forth—all may be seized by the occupant, as well as dépôts of arms and all kinds of war material, from the farmer's sporting rifle to the contents of the Elswick, Krupp or Creusot armament works. In all these cases the persons from whom articles are taken should obtain receipts, so that they may have evidence on which to base their claims for compensation when the war is over. But besides all these articles, which are from their nature of direct use in war, the commander of an occupied locality can order the inhabitants to provide everything necessary for the needs of his army, such as food, wines, tobacco, fuel, cloth, leather, stirrups, chains for horses and artillery and transport-wagons, &c., &c. Such requisitions are to be paid for as far as possible in ready money, and the price may be fixed by the commander, or if payment is not made he must give

receipts for whatever he takes (Art. 52). In this way the occupant may make the inhabitants of the occupied district contribute to the maintenance and upkeep of his army. The requisitions must be proportionate to the resources of the country, which means that the inhabitants are not to be left in a starving condition. In practice such requisitions are levied through the civil authorities, who will make representations if they consider the demands exorbitant; usually in modern warfare the attitude of commanders has been commendably reasonable. It is good policy.[1]

It may often happen that a particular district does not possess the actual requirement of the army, whereas another does. In such cases the Commander-in-Chief levies contributions in money as far as possible in accordance with the assessments for ordinary taxes; the money thus raised from the whole district can be spent in that part which possesses the required article, and in this way the expense is spread over a wider area. Such contributions can only be levied for military necessities or for the administration of the territory (Art. 49): the occupant is therefore forbidden to exact money payments for the purpose of enriching his own treasury, but he is not forbidden to levy money payments by way of punishment of breaches of the laws of war.

It is impossible in the space of a single lecture to show in further detail the various ways in which pressure may be brought to bear in almost every direction on the ordinary civil population of an occupied or invaded district. I can say nothing of the hostages the invader may take to ensure the observance of the laws he has enacted, or of the fines he may impose, the destruction

[1] See J. M. Spaight, op. cit., 405.

of buildings he may order, or the other punishments he may inflict for the infringement of his regulations or by way of reprisals; all these matters are writ large on the pages of the histories of recent wars.

Neither can I speak of the treatment which public property will receive at the hands of the invader, except to lay down the general principle that as regards the State property in land and buildings of a non-military character, the occupant must regard himself as being an administrator and usufructuary; that is, the property must be used with care so that its substance remains uninjured. Similarly, property belonging to municipal bodies and all public buildings devoted to religion, education, charity, art, science, and the like are to be treated as private property, and so must the movcable property of the State and provincial and municipal corporations except where it is of a character to be of use in war. Royal palaces, picture galleries, public libraries, museums and their contents would therefore be exempt from confiscation or injury. These subjects are, however, outside the scope of our inquiry. We are concerned with the private citizen.

I have now endeavoured to give some idea of the manner in which war affects the private citizen both as regards his person and property, and we are led to the conclusion that Lord Brougham's dictum that 'in the enlightened policy of modern times, war is not the concern of individuals but of governments' is very far from representing the whole truth. Much has been done during the past century to mitigate the horrors of war, particularly as regards the treatment of sick and wounded belonging to the belligerent forces, especially by the Geneva Convention of 1906, which for the first time gives an international recognition to the work

of Red Cross Societies, provided they are under due control: the lot of the private citizen has also been ameliorated by the acceptance of a code of laws for land warfare, by the introduction of the practice of payment for goods requisitioned for the hostile army, the prohibition of pillage and the definite recognition by States of the duty to provide for the protection of family life and honour and by the increasing influence of the public opinion of neutral States. But when all these ameliorations are taken into consideration, it remains evident that both in naval and land warfare the private citizen is still subject to great dangers and losses. Forced labour may be requisitioned, private property of every description can be commandeered for the use of the invading army, foodstuffs of all sorts compulsorily purchased, and several of the most powerful military States still insist on retaining the right—one of the most objectionable of the usages of war—of forcing non-combatant individuals to act as guides to the army of invasion.

We may speak of the ameliorations of the lot of the private citizen which have resulted from the growing sentiment of humanity, we may congratulate ourselves on the legal limitations imposed on commanders by International Law, but when all is said, and every legal rule obeyed, can a stern and successful commander be prevented from bringing psychological pressure to bear on the civil population by carrying out the war-policy advocated by General Sherman in the following passage?—'The proper strategy consists in the first place in inflicting as telling blows as possible on the enemy's army, and then in causing the inhabitants so much suffering that they must long for peace and force their governors to demand it. The people must be left

nothing but their eyes to weep with over the war.' 'War means fighting'—but it means much more. It involves starvation and untold miseries to men, women, and children who take no part in battles.

OXFORD: HORACE HART
PRINTER TO THE UNIVERSITY

OXFORD PAMPHLETS
1914

Crown 8vo. Separately, in paper covers. Also in series as numbered (I–VII), stiff covers, One Shilling net each series. 35 Pamphlets have now (25 November) been issued and others are in preparation. The historical pieces are illustrated by sketch-maps

I

1. **The Deeper Causes of the War.**
By W. Sanday. 3d. net. *Fifth Impression.*
The psychology of Prussian militarism; German public opinion and Germany's aggressive ambitions.

2. **To the Christian Scholars of Europe and America: A Reply from Oxford to the German 'Address to Evangelical Christians'.** 2d. net. *Fourth Impression.*
The answer of Oxford theologians to a recent manifesto of the German evangelical theologians. This manifesto, which is reproduced in the present pamphlet, argues that Germany is in no sense responsible for the present war. The Oxford reply states that the German theologians cannot have studied either the events which led up to the war or the political utterances of their own countrymen.

3. **The Responsibility for the War.**
By W. G. S. Adams. 2d. net. *Second Impression.*
A brief discussion of the question of responsibility: 1. Austria and Serbia; 2. The responsibility of Russia; 3. The intervention of England.

4. **Great Britain and Germany.**
By Spenser Wilkinson. 2d. net. *Third Impression.*
Three letters to the *Springfield Republican*: 1. By Prof. Spenser Wilkinson, stating Great Britain's case; 2. By Prof. John W. Burgess of the University of Columbia, stating Germany's case; 3. By Prof. Wilkinson, in reply to Prof. Burgess.

5. **'Just for a Scrap of Paper.'**
By Arthur Hassall. 1d. net. *Fourth Impression.*
Explains why England stands for the sanctity of European treaty-law.

II

6. The Germans, their Empire, and how they have made it. By C. R. L. Fletcher. 2d. net. *Fourth Impression.*
A historical account of Prussian policy from the seventeenth century.

7. The Germans, their Empire, and what they covet.
By C. R. L. Fletcher. 2d. net. *Fourth Impression.*
An account of the ambitions avowed by the Pan-German school.

8. Might is Right.
By Sir Walter Raleigh. 2d. net. *Second Impression.*
Why Germany may win; what will happen if she wins; why we believe she will not win.

9. Austrian Policy since 1867.
By Murray Beaven. 3d. net. *Second Impression.*
Austrian policy in the Balkans has been of the 'offensive-defensive' order. The Archduke Francis Ferdinand might have saved Austria from rushing to destruction; but 1912 was the beginning of the end.

10. Italian Policy since 1870.
By Keith Feiling. 2d. net. *Second Impression.*
Italian policy has been and must be guided by her own interests. The results of her colonial policy have not yet been satisfactory enough to tempt her into adventures.

III

11. French Policy since 1871.
By F. Morgan and H. W. C. Davis. 2d. net. *Fourth Impression.*
A historical sketch, discussing the question whether French policy has been aggressive.

12. Russia: The Psychology of a Nation.
By Paul Vinogradoff. 1d. net. *Fourth Impression.*
A reply to the German taunt that Russia is still in a state of barbarism, and is the enemy of European civilization.

13. Serbia and the Serbs.
By Sir Valentine Chirol. 2d. net. *Third Impression.*
A sketch of Serbian history, which is incidentally an indictment of the policy pursued by Austria-Hungary towards the Serbian kingdom.

14. Germany and 'The Fear of Russia'.
By Sir Valentine Chirol. 2d. net. *Third Impression.*
Shows that before 1879 Germany preferred Russia as an ally to Austria. The ambition of Germany to establish a protectorate over Turkey has led her to assist Austria in the Balkans and so to challenge Russia.

15. The Eastern Question.
By F. F. Urquhart. 3d. net. *Third Impression.*
The history of the Balkan nations; their future.

IV

16. War against War.

By A. D. Lindsay. 2d. net. *Third Impression.*

Denies that war is good in itself, or a necessary evil. Power is not the sole or chief end for which the State exists. National greatness, if founded on brute force, cannot endure. International law represents an ideal, but an ideal that may be realized.

17. The Value of Small States.

By H. A. L. Fisher. 2d. net. *Third Impression.*

The author argues that the debt of civilization to small states is incalculable. They are useful, at the present time, as laboratories of political experiments and as buffer-states between the greater powers.

18. How can War ever be Right?

By Gilbert Murray. 2d. net. *Fourth Impression.*

A well-known lover of peace and advocate of pacific policies argues against the Tolstoyan position. Right and honour compelled Britain to make war; and war—like tragedy—is not pure evil.

19. The National Principle and the War.

By Ramsay Muir. 3d. net. *Second Impression.*

Considers the principle of nationality and its application to the settlement of Europe—particularly of S.E. Europe—after the War.

20. Nietzsche and Treitschke: The Worship of Power in Modern Germany.

By E. Barker. 2d. net. *Fourth Impression.*

An explanation of the main points of interest in the ethical and political doctrines of the German ruling classes.

V

21. The British Dominions and the War.

By H. E. Egerton. 2d. net. *Second Impression.*

Explains the ideas for which the British Empire stands, and the political and moral issues of the war affecting the Dominions.

22. India and the War.

By Sir Ernest Trevelyan. 1d. net. *Third Impression.*

Discusses the reasons which account for the striking manifestations of Indian loyalty.

23. Is the British Empire the Result of Wholesale Robbery? By H. E. Egerton. 2d. net.

A historical sketch in answer to a common taunt.

24. The Law of Nations and the War.

By A. Pearce Higgins. 2d. net. *Second Impression.*

The violation of Belgian neutrality and the conduct of England to Denmark in 1807; the doctrine of German lawyers that military necessity overrides the laws of war; the balance of power and the sanctity of treaties.

25. England's Mission. By W. Benett. 2d. net.

Answers the question, In what cause are we fighting?

VI

26. August, 1914: The Coming of the War.
By Spenser Wilkinson. Stiff covers. 1s. net.

VII

27. The Retreat from Mons.
By H. W. C. Davis. 3d. net. *Third Impression.*

28. The Battles of the Marne and Aisne.
By H. W. C. Davis. 4d. net.
The Dispatches, with commentary, maps, &c.

29. The Navy and the War.
By J. R. Thursfield. 3d. net. *Second Impression.*
Estimates the military and economic value of the silent pressure exercised by our fleet, and warns the faint-hearted and the captious of the perils of lack of faith.

30. Bacilli and Bullets.
By Sir William Osler. 1d. net. *Fourth Impression.*
Calls attention to the fact that disease kills more men than the bullet. The most dangerous diseases are preventable by inoculation.

Published separately and will also appear shortly in series.

The Double Alliance *versus* The Triple Entente.
By James M. Beck. 3d. net.
The judgement of a well-known American lawyer.

Thoughts on the War. By Gilbert Murray. 2d. net.
An article written in August and now reprinted.

The Leading Ideas of British Policy.
By Gerard Collier. 2d. net.
Examines the political genius of England.

Greek Policy since 1882. By A. J. Toynbee. 4d. net.

Poland, Prussia, and Culture.
By Ludwik Ehrlich. 3d. net.
The author is a Doctor of the University of Lwow (Lemberg) in Galicia.

The Germans in Africa. By Evans Lewin. 3d. net.

What Europe owes to Belgium.
By H. W. C. Davis. *In the press.*

Spectator:—'These little books are easily the best books of the war—accurate, quietly written, full of knowledge, and quite unspoiled by vainglory or bitterness.'

Others in preparation.

HUMPHREY MILFORD
OXFORD UNIVERSITY PRESS, AMEN CORNER, LONDON, E.C.