A Comparative Study of the
German War Book

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CONTENTS

Chapter                                                                 Page

Introduction                                                        1

I. Comparison between the views of Germans and General Jurists respecting Armed Forces.
   1. The Qualification of Belligerents.                            5
   2. Levies en Masse.                                             6
   3. Francs-tireurs.                                              9

II. Comparison between the views of Germans and General Jurists respecting the means of Conducting War.
   1. General Remarks                                               10
      (a) Permissible Means                                         10
      (b) Military Necessity                                        12
   2. Means of War Depending on Force                               14
      (a) Anihilation and Slaughter                                 14
      (b) Devastation and Bombardment                               17
   3. Means of war not involving the use of force.
      Cunning and Deception                                         24

III. Comparison between the views of Germans and General Jurists respecting Military Occupation.
   1. Military Authority                                           27
   2. Position of an Occupant                                      30
   3. Rights over Persons                                          32
      (a) Hostages                                                   36
      (b) Compulsory Service                                        37
## CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Rights over Properties</td>
<td>41</td>
</tr>
<tr>
<td>(a) Public Property</td>
<td>42</td>
</tr>
<tr>
<td>(b) Private Property</td>
<td>43</td>
</tr>
<tr>
<td>IV. Comparison between the views of Germans and General</td>
<td></td>
</tr>
<tr>
<td>Jurists respecting Neutrality.</td>
<td>52</td>
</tr>
<tr>
<td>1. Idea of Neutrality</td>
<td>52</td>
</tr>
<tr>
<td>2. Violation of Neutrality</td>
<td>52</td>
</tr>
<tr>
<td>3. Contraband of War</td>
<td>54</td>
</tr>
</tbody>
</table>
A Comparative Study of
the German War Book

Introduction

War is the greatest of human evils. The means of conducting it
should be regulated by law in the "interests of humanity and the ever
progressive needs of civilization," which was the principal purpose
which avowedly animated the Hague Conferences. By the first Hague
Conference of 1899 an obligation was laid upon the contracting parties
to issue manuals of instructions for the guidance of their military
commanders and it was expressly stated that these instructions should
be in conformity with the regulations respecting land warfare which
were annexed to the convention. This obligation was reaffirmed by the
same convention of 1907.

The signatory Powers at the Hague placed full confidence in their
agreements and had fully recorded their mutual understanding to do and
not to do certain things. In pursuance of the obligation thus imposed
the American, British and French governments had their manuals to con-
form in every respect to the spirit of the international conventions
and the rules they adopted are frequently quoted by modern writers on
international law as evidence of the best usage to-day.

1. The Preamble to the Convention respecting the Laws and Customs of
War on Land.
The German manual, however, forms a remarkable contrast to those of the great international conventions in which Germany had taken a prominent part with the other nations. This Manual entitled "Kriegsbranch in Landkriege" was prepared by the German General Staff and promulgated in 1902. It has been translated into French by M. Paul Carpentier under the title "Les Lois de la Guerre Continentale" and an English translation has also been made by Professor J. H. Morgan with a critical introduction and published under the title "The War Book of the German General Staff. In presenting this subject the writer has used these two translations carefully comparing them on all points discussed.

As this authoritative book was formed by a body of high military officers rather than by civilian jurists or academic writers on international law, the principles which they laid down were filled with ideas wholly different from those of the American and British Manuals. A good many of its rules are contrary to the Hague Convention and various regulations annexed to the Convention are dismissed with the statement that they are excessively humane or that they are good in theory but will never be observed in practice. Their teachings are chiefly based on the doctrine long maintained by the militaristic writers such as Von Moltke, Von Clausewitz and Von Hartmann whose views for the most part were in accord with those of the General Staff. The practice during the Great War had been fully brought up by generals Hindenburg and Von Bissing. They considered that humanitarian tendencies are inconsistent with the true nature and ends of war. Certain securities are indispensable to war. The only true humanity very often lies in a ruthless application of them. To introduce into
the philosophy of war itself a principle of moderation would be an absurdity.

Throughout this manual there is a clear distinction between Kriegsmanier and Kriegsraison, between theory and practice, between rule and exception. By the former they mean the fashion of war, i.e. the customary rules of which Kriegsraison makes havoc by exceptions. By the latter they mean the argument of war, i.e. whatever means may be if successful disregard any rule. Kriegsraison geht Von Kriegsmanier is a well-known maxim. The duty to achieve military success takes precedence over the obligation to observe the law. Military necessity is an excuse for any excesses. The more pitiless the conduct of war the more humane it is in reality for it serves to shorten the duration of war and to bring it to a speedy termination. Frightfulness, violence, terrorism, the destruction of intellectual power, the appropriation of private property, even war against non-combatants, - all are legitimate, provided they contribute to the attainment of the object of war.

Such is the philosophy of the German War Book. During the Great War practices had been entirely with this philosophy. The invasion of Belgium and Luxemburg; the destruction of cathedrals, universities and libraries without military purpose; the deportation of peaceful inhabitants to Germany for forced labor; the use of dum-dum and explosive bullets, the use of asphyxiating gases; the abuse of the Red

Cross; the refusal to recognize certain legitimately organized combatants, are but few examples of violation of international rules by Germany. The war between Germany and the Allies was a war between Barbarism and Civilization, between brutality and humanity. The savage conduct of Germany and her persistent breach of conventions are not the result of undisciplined individuals but of a state-ordered policy and a political code deliberately adopted.

The German War Book therefore must be studied not only as a document but in the light of German practice in order to reach a just conception of the real German philosophy of the nature and objects of war and the means and implements that may be used in prosecuting it to a final success. International law had suffered a great deal; civilization had seriously been bruised until all civilized nations united in stern condemnation of the German militarism and the Kaiser's final defeat. With the conclusion of peace a brighter day has surely dawned. The world has been convinced that force is after all weaker than ideals and the ultimate effect of this war is to strengthen international law far from destroying it.

This monograph is intended to show an acute analysis of the German Manual. The writer has carefully considered its constituent elements in relation to those existing rules in general and has indicated wherein the established law was observed or violated. He is confident that every infringement of it that is recognized as such proves its existence and its applicability.

4. See Bland, Germany's Violations of the Laws of War.
Chapter I

Comparison between the views of Germans and General Jurists respecting Armed Forces.

1. The Qualification of Belligerents.

War is a sort of athletic contest in which none but the authorized teams must play. According to the modern view, the peaceful inhabitants of an invaded country whether they are theoretically "enemies" of the invading enemy or not, are in practice never treated as such. Hence an enemy should be able to distinguish between the armed forces and the peaceful inhabitants of the country in order that he may spare the latter. It is the solution of the question - who has the right to fight in a war between civilized armies. The status of such people is to be determined by their conduct usually as combatants and non-combatants. The combatant status as said by Professor Wilson "is extended to those who under Government sanction engaged either directly or indirectly in the operation of war and under exceptional cases to those who without government authorization defend themselves from belligerent attack."

The German War Book regards combatants as occupying an active position or belonging to the hostile army. They are (1) the regular army, militia, reserve, national guard and landsturm, (2) irregular combatants having taken up arms for the length of the war or for a particular task of the war. The Hague Regulations of 1907 laid down the definite rules relating to combatants. They apply not only to

1. Wilson, International Law, 274.
armies but also to corps of volunteers who satisfy the following requirements:— (1) "To be commanded by a person responsible for his subordinates. (2) to have a distinctive emblem fixed and recognizable at a distance. (3) To carry arms openly; and (4) To conduct their operations in accordance with the laws and customs of war." Ballonists and aeronauts fall under the same rule.

Combatants may be killed and made prisoners, but when captured they must be treated in a specified way for the reason that they hold themselves out as open enemies; while non-combatants are not proper objects of violence because they are harmless. Dr. Lieber, in the Instructions for the Government of Armies of the United States in the Field, says in Art. 22: "The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property and honor as much as the exigencies of war will admit." But since the almost universal introduction of conscription, before the Great War, the rule varied to some extent. Professor Setzleacher, Rector of the Commercial University of Berlin, agreed that the international law which applied when army fought against army has become a dead letter; now that nation fights nation, therefore that war is now waged against a whole enemy people.

2. Levies en masse.

According to the Hague Regulation Art. 2 combatant privileges are given not only to the regular forces of a nation but to irregulars as well. When "the population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up
arms to resist the invading troops without having had time to organize themselves shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war. "The same thing is true in the American Instructions 52." No belligerent has the right to declare that he will treat every captured man in arms of a levy en masse as a brigand or bandit."

It should be noticed that "those persons only can properly do belligerent acts and claim belligerent privileges on being captured who openly manifest their intention to be combatants; and a belligerent before granting such privileges has obviously the right to exact evidence of intention which generally falls under the head of

(1) The possession of an authorization given by the sovereign.
(2) The possession of a certain number of external characteristics of regular soldiers."

Kluber recognized levies on masse and thought besides that inhabitants of a fortress assisting in its defence act under an implied authorization. Spaight assumed from the above test that a levy en masse must wait within its own borders and could not retain its combatant status, if it acts on the offensive though to do so may be its only possible effective mode of defence.

The delegates of Germany once at the Brussels Conference pointed out that in their own country there was a Landstrum numbering nearly three million men who would form the levy en masse in case of necessity.

But a different question arises as to when the ordinary untrained inhabitants taking arms openly and respect laws even though they have not had time to organize themselves or when the rising takes place in a limited area, it may be hard to tell whether those who rise are to be regarded as a guerrilla band or as a levy en masse.

The German War Book considers that the organization of irregulars in military bands and their subjection to a responsible leader are not by themselves sufficient to grant them the status of belligerents. In the Franco-German War of 1870-1871 the Germans required that every person in order to be treated as a prisoner of war shall produce a certificate emanating from the legal authority and addressed to him personally. They considered the public authorization as a necessary condition of any recognition of combatant right. They also required an emblem or a distinctive mark clearly distinguishable at a rifle distance. The same requirements were demanded by Germans in the case of the Belgian People's War in 1914.

In fact, the first condition seems to be impossible and unnecessary as in case of sudden movement of emergency and the second is an absurd one in these days of long-distance firing. As Hall says, with our modern guns it would require not only a uniform but a conspicuous one. The whole question was discussed at great length at Brussels, finally the levie en masse was admitted and the doctrine of State authorization, the necessity of a responsible commander, and the pos-

4. Stowell and Munro, International cases, Vol.II, 121-123.
Phillipson, International Law and the Great War. 116-123.
session by the combatants of any distance mark were totally dispensed with.

By the American Instruction 51 the levie en masse of unoccupied territory are to be treated as public enemies, and if captured are prisoners of war. It is true that Germany did not expressly prohibit the levie en masse but the conditions which they imposed made it impossible. The adoption of this principle was purely for her own advantage because in Germany ever since the universal enforcement of conscription every body was capable of fighting, there could be no possibility of any levie en masse and therefore no difficulty on her part.

Section II

Francs-tireurs

Of the irregular forces there are two different kinds to be distinguished - first, such as are authorized by the belligerents; and secondly, such as are acting on their own initiative and their own account without special authorization. The former generally wear uniforms - for example, the companies of volunteers, engineers, and the latter distinguishable only by a badge which is invisible at a distance and easily removable. These two kinds are called France-tireurs in French, Free-lancers in old English, Free-Shoters in German, and Guerilla in Spanish. All these names indicate their character, because they made

themselves indistinguishable from peaceful population either by remov-
ing their badge or by changing into civilian garb after committing acts of aggression.

In contradistinction to the partisans, who are soldiers and raiders, armed and wearing uniform of their army but belonging to a corps which acts detached from the main body, they are only licensees without being part of the organized hostile army or sharing continuously in the war but they fight with intermitting returns to their homes. Such persons are not public enemies and if captured are treated summarily as highway robbers instead of prisoners of war, inasmuch as they are neither under discipline nor in uniform to be privileged to fight and to die for the fortune of war. They are but marauders and armed prowlers.

The German General Staff adopted a severe treatment toward such bodies on the ground that the want of military education easily leads to transgression of the usages of war and that the minor skirmishes and guerilla war which they prefer to indulge in lead to individual enterprise, open the door to irregularity and deteriorate into robbery.

Guerilla war is a war of "fighting and running away", of pin-pricks. It is a system of surprise marches, of attacking the enemy's weak points, of destroying railways and of doing serious damages without being known before. Really they demoralize the organization of the army since they pursue no regular fight.

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6. Schiebert, Franco-German War, 155.
7. American Instructions 61-82, 84.
9. German War Book, 58.
Chapter II

Comparison between the Views of Germans and General Jurists respecting the means of conducting war.


a. Permissible Means.

Prima facie a belligerent is permissible to use all kinds of violence against the person and property of his enemy. But the violence used shall be necessary one so that acts not only cease to be permitted so soon as it is shown that they are wanton but when they are grossly disproportioned to the object to be attained. The civilized world has given its approval to two great principles; the first that the sole end of war is to overcome the military forces of the enemy; the second, that the means which may be adopted to secure this end, certain restrictive laws apply. These two principles result from a compromise of humanitarian and military interests. Hence the Hague Reglement, Art. XII expressly provides that the right of belligerents to adopt means of injuring the enemy is not unlimited.

Germany, with all the other Powers, did practically sign this convention of the Hague, yet, as soon as the ink was dry, it was treated as little more than "a scrap of paper". Professor Eltzrocher argued that the justified aim of war is to break the strength of the enemy people, this strength being the last foundation of military resistance, therefore, any means that promises to be efficient may be employed for the purpose of breaking that strength. German militarism means a masterly efficiency in the aim of crushing the foe by overwhelming force combined with panic-striking frightfulness." The horror which the "frightfulness" is from the German point of war a tribute of
homage. Following up this principle the German General Staff embodied
the proposition as below: What is permissible includes every means of
war without which the object of war can not be obtained. It follows
that all means which modern inventions afford, including the fullest,
most dangerous and most massive means of destruction may be utilized;
these last, just because they attain the object of war as quickly as
possible, are on that account to be regarded as indispensable.

b. Military Necessity.

Military necessity justifies a resort to all measures which are
indispensable for securing this object; provided that they are not in-
consistent with the modern laws and usages of warfare. So it admits
of all direct destruction of life incidentally unavoidable in the armed
contests of the war; it allows of all destruction of property and destruc-
tion of the ways and of all withholding of sustenance of life from
enemy. However, it does not admit of cruelty nor of torture, of the
use of poison and of the wanton devastation of a district.

"My great maxim" said Napoleon, "has always been in war as well
as in politics, that every evil action, even if legal, can only be ex-
cused in case of absolute necessity; whatever goes beyond that is cri-
minal."

1. German War Book, 64.


The meaning "necessity" should be strictly construed. It means neither advantage nor convenience. Its application could not be abused. It is a doctrine like that of self-preservation of which Hall says: "Where law affords inadequate protection to the individual, he must be permitted, if his existence is in question, to protect himself by whatever means may be necessary; and it would be difficult to say that any act not inconsistent with the nature of a moral being is forbidden. So soon as it can be proved that by it, and it only, self-preservation can be secured." Rivier says: "When a conflict arises between the right of self-preservation of a state and the duty of that state to respect the rights of another, the right of self-preservation overrides the duty. A government is bound to violate the rights of another country for the safety of its own. That is excuse of necessity and it is a legitimate excuse only when the violation is necessary and not merely a simple utility." Westlake has pointed out in the Preamble of the Hague Conventions that "military necessity has been taken into account in framing the Regulations and has not been left outside to control and limit their application."

The German writers, however, go further than this with the doctrine of necessity, and apply it, not only where self-preservation is at stake, but in all cases of extreme need when the object of the war

cannot be obtained otherwise. In other words, the observance of the laws of war is subject to the condition that it is consistent with the attainment of the object of war. If it is not, it is the less important and must give way. According to this theory, since given a liberal interpretation the laws of war cease to be obligatory, when the circumstances are such that the military end would be hindered by their observance or to quote the German maxim Kriegsraison geht Von Kriegsrecht and Kreisraison geht Von Kriegsanlier. Kriegsraison permits resort to extreme methods, including pillage, incendiaryism, terrorism, systematic devastation and even the putting to death of inoffensive citizens as a recognition of the arbitrary supremacy of military commanders and the Sanction of the maxim that in war the end justifies the means.


a. Annihilation and Slaughter.

War is not a relation of man to man but of State to State and of itself implies no private hostility between the individuals by whom they are carried on; they are enemies only in their character of soldiers and not as men. It is said therefore that peaceful inhabitants are to be spared in person and property during hostilities except in case of concentration camps where civilians being in hostile condition are detained in order to prevent guerilla warfare or to starve the hostile belligerents, armed or unarmed, so as to lead to the speedier subjection of the enemy.

5. Bordewell, Law of War, 5
7. Codex of International Institute, 4.
Really, there is a morality of war and the majority of civilized people have more or less in common a certain conventional code concerning the things which may or may not be done in war. The general feeling about certain methods which shock popular morality even when involving scientific skill is that they are "barbarous"; consequently, the laws of war do not recognize in belligerent an unlimited liberty as to the means of injuring the enemy. That the object of war is exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men or render their death inevitable. What a belligerent should do is to abstain from all needless severity as well as from peridious, unjust or tyrannical acts. Any misuse of old weapons or any use of new weapons which is unknown to the ordinary practice or revolting to the human imagination must be given up. They are means of punishment or revenge and not of war fare.

The French Vice-Admiral Marshal Conflans once issued an order of the day forbidding the use of hollow shot against the enemy on the ground that they were not generally employed by public nations and that the French ought to fight according to the rules of honor. The same rule applied to the use of hot-shot and dum-dum bullet which constitute hidden peril. The same provisions we found in the Hague Reglement, the Code of International Institute and even in the German War Book against the use of poison or explosive projectiles to cause superfluous injury, because they do not serve the immediate purpose of war but cause too much hatred and anger which tend to increase hostile feeling, prolong strife and delay peace. For this reason, not only
the moral rule but also the good policy demands a belligerent not to do so even military necessity justifies.

The American view is to make excessive sufferings as least as possible and to maintain that the conventional rules must be followed; unnecessary or revengeful destruction of life is not lawful. "The German view, on the contrary, is to sacrifice everything for necessity irrespective of the rule. That 'all things are lawful but all are not expedient' is the conclusion of the German War Book though it is said that the usages of war recognize the desirability of not employing severe forms of violence, if and when the object of the war may be attained by milder means. Professor Elitzbacher recommends particularly that measures calculated to paralyze the psychic forces of the enemy nation may be employed and he asserts that bombs may be dropped out of the air even when no military purpose served thereby, the justification being that fear and disinclination to war are thereby engendered and the psychic foundations of the conduct of war thus destroyed.

The poisoning of water or food, as a rule, is absolutely forbidden except in Africa where it is a kind of fight, but the turning off the water supply or stopping convoys of food to the enemy is one of the usual methods of reducing him to submission. On the occupation of Swakopmund by the Union troops in the Great War it was discovered that six wells had been poisoned by the Germans who claimed that instructions were given to have the wells been marked by warning notice.

general Botha pointed out that the offence against customs of civi-
8
lized warfare was in no degree lessened by the exhibition of such
notices.

With regard to the use of poisonous gas we also found many cases. On April 22, 1915, the Germans made an attack against the division of General Putz upon Landemarck, Belgium, by means of Asphyxiative gases coming from the German trenches occupied by the Allied troops. Again, in some other incidents over the cities of Antwerp, Paris, Warsaw, and Louvain, the German zeppelins often appeared and dropped bombs. Such acts were condemned as not only against humanity but also an absolute violation of the Hague Convention signed by Germany herself. Never-
theless Great Britain did the same.

b. Devastation and Bombardment.

Devastation was formally considered a legitimate means of bring-
ing an enemy to terms but it is no longer considered proper as an in-
dependent military operation and it is allowed only as incidental to
9
other military measures. It is permitted that destruction is a neces-
sary concomitant of ordinary military action as when houses are razed
or trees cut down to strengthen a defensive position, when the suburbs
of a fortified town are demolished to facilitate the attack or defence
of the place or when a village is fired to cover the retreat of an
enemy. But it is illegimate when no military end is served as in the
case when churches or public buildings not militarily used and so sit-
uated or marked that they can be distinguished are subjected to bom-

8. Stowell and Munro, International Cases II, 117.
berdment in common with the houses of a besieged town. Finally all devastation is permissible when really necessary for the preservation of the force committing it from destruction of any property or surrender.

The Hague Reglement, Art. XXIII, provides that destruction of any property is forbidden unless imperatively demanded by the necessities of war. It is clear that the necessities must be fairly direct and immediate. There must be some reasonably close connection between the destruction of property and the overcoming of the enemy's army. This includes war material and army supplies generally; property situated on the anticipated field of battle or in the zone of actual fighting; railways, telegraphs, etc., which are used by the enemy for his operations;------barracks, military storehouses, factories and depots which may be used to supply the enemy's army. The general devastation of a particular district or the destruction of a whole town is only permissible in extreme cases, as for instance, if self-preservation should compel a belligerent to resort to severe measures in face of threatened levy en masse, or when after the defeat of his main forces and occupation of his territory, an enemy dispenses his remaining forces into small bands which carry on guerilla tactics and receive food and information so that there is no hope of ending the war except by a general devastation which cuts off supplies of every

10. Lawrance, International Law, 549.
11. Hershey, Essential of International Public Law 394, foot note.
kind from the guerilla bands. To destroy with the intention of damaging the hostile government's pocket is unlawful. Again, devastation, pure and simple, as an end in itself, or as a self-contained measure of war is not sanctioned by law.

The Germans considered that war is being waged not merely with the hostile combatants but also with the inanimate military resources of the enemy. This included the fortresses, towns and villages which are obstacles to military progress and can be besieged, bombarded, stormed and destroyed, if they are defended or occupied by the enemy as they furnish a principal resource and can therefore be treated just like the hostile army itself. It had been proved that looting, house-burning and the wanton destruction of property were ordered and countenanced by the officers of the German army that elaborate provision had been made for systematic incendiarism at the very outbreak of the war and that the burnings and destructions, even frequent where no military necessity could be alleged, being indeed part of a system of general terrorism.

The Hague Convention forbids the bombardment by any means whatever of undefended towns, villages or buildings. And in doing so all necessary steps should be taken to spare those buildings devoted to religion, art, science, charity, historic monuments and places where the sick and wounded are collected, if they are not used at the same time for military purposes and they are designated by special marks.

13. German War Book 78.
visible to the besiegers. The phrase "by any means whatever" was inserted in 1907 in order to cover the bombardment of undefended towns, etc., by projectiles from ballons or airships. Unfortunately the article contains no definition of the terms "defended" and "undefended". Mr. Garner says that the terms "undefended" and "unfortified" are not synonymous and that a place may be unfortified and yet be defended, in which case, it may be bombarded. Nor are the terms "open" and "undefended" synonymous, for the town may be open and yet defended, in which case, it is liable to bombardment. What is "defended" meant that it had the means and the determination to exist. "A place cannot be said to be undefended" says Westlake, when means are taken to prevent an enemy from occupying it. The price of immunity from bombardment is that the place shall be left open for the enemy to enter.

"Every town or city, although it may be open and unfortified, may be attacked" says Bonfils, "as if it were fortified, the legitimacy of the aggression does not depend upon the fact of fortification but upon the fact that it is occupied by armed forces." Both the British and the German Manuals acknowledged this principle, for the occupation is part of a system of defence and it is justified and demanded by military necessity even when the occupation of the locality has not been designed for defensive purposes but only to guard a passage, to defend approaches, to protect retreat, to prepare or to cover a tactical movement and to procure provisions. The only criterion, as the German War

15. Holland, Letters on War and Neutrality, 103-104.
Book says, is the value which the place possesses for the enemy in the existing situation. Therefore the bombardment of Chateaudun by the Germans in 1870 was justified, because, although an open city, it was defended by Franc-tireurs.

In general, an undefended city, unoccupied by troops and not situated within the perimeter of defence of a neighbouring fort or forts may be bombarded only in three cases and in those three cases only if it is absolutely impossible to obtain the end in view by milder means: The three cases being (1) the destruction of military stores, factories, etc.; (2) to secure compliance with legitimate requisitions; (3) a very doubtful case — to inflict punishment by way of uprisings, for infractions of the laws of war on the part of the enemy. Referring to the last one the Institute did not approve to be justifiable. Bordwell remarks that its use even in these cases would be extreme and only justifiable by imperative necessity. But the necessity of the defence of a position may justify the destruction of a house, a street, a village in its vicinity and the Hague Reglement, Art. XXV does not apply.

Professor Holland lays down the rule that a place must not be bombarded with a view merely to the extraction from it of a ransom. In all cases of bombardment, says Wilson, "due care should be taken to restrict the action to military ends." The German War Book regards the

17. German War Book 81-82.
town and fortifications forming an inseparable unity not merely in a
military sense but also in a political and economic sense, the bombard-
ment will not limit itself to the actual fortification but it will and
must extend over the whole town owing to the fact that a restriction of
the bombardment to the fortification is impracticable. The exemption
of hospital and convalescent establishment is left to the discretion of
the besieger.

We should also notice that the besieger before commencing a bom-
bardment except in case of a surprise attack should do all in his power
to warn the authorities in order that the non-combatants and especially
the women and children may be removed, though he is under no absolute
obligation to allow them to leave. The German General Staff does not
take the notification of bombardment to be necessary but considers that
it is just as little to be required as in the case of a sudden assault.
Whether it will be given let the besieger consider himself. In 1870
Bismarck refused to give notice of the bombardment of Paris. The French
foreign Minister protested against the German Authorities action. Bism-
mark maintained that a fortified and beleaguered city ought to be pre-
pared for bombardment and that neither law nor custom required a warn-
ing to be given. In other words, a bombardment of forts or strongholds

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20. German War Book 79.
there are no non-combatants present. As to the civil population of a fortified place all the inhabitants, whether natives or foreigners, whether permanent or temporary residents, are to be treated alike, and permission to send out couriers with diplomatic despatches depends entirely upon the discretion of the besieger.

Professor Holland, in his note to the article of the British Manual, says that the besieger is under no absolute obligation to allow any portion of the population of a place to leave it. The French Manual states that the besieger "will do well" to consent to the non-combatants leaving, if his siege operations allow of it. Spaight holds, "bombs may lawfully be dropped upon military stores in undefended as well as defended towns and for practical reasons peculiar to aerial warfare the warning required by the naval convention may not be given. During the Great War Belgians complained against Antwerp having been bombarded by the German zeppelins without previous notice. But remember that neither the Article 3 of Naval Convention nor Article 26 of the Hague Convention was intended to apply to aerial bombardment. Moreover, Antwerp was actually defended and fortified.

In the Franco-German war of 1870-1871 many French towns were dealt with in the same manner by the Germans as the Belgian and French towns were in the Great War. The library of the University of Strasbourg and an art gallery were destroyed; the tower of a Cathedral was

burnt. The German justification for the act was that the French had installed on the tower an observatory for the artillery officers. However, no acts had provoked more criticism than the burning of Louvain with its university, its cathedral, its library and the partial destruction of cathedrals of Rheims and Soissons in 1914. The British primer characterized the burning of Louvain as "the greatest crime committed against civilization and culture since the Thirty Years' War." The London Times denounced it as an atrocious act without a parallel even in the Dark Ages and one which would turn the hands of every civilized nation against the Germans.


Cunning and Deception.

Ruses of war or strategems are means which the astute commander adopted to maximize the tactical advantages or minimize the disadvantages which fortune has provided. They are war rights, provided they conform to traditional honor as well as public sanction not involving treachery or a breach of an express or a tacit convention. Indeed, to take a town by surprise or to turn a position by a strategem is more glorious to a general than to effect the object by war. It is lawful and permitted against the enemy either to prepare the means of doing violent acts under favourable conditions by misleading him before an attack or to render an attack unnecessary by inducing him to surrender, therefore the employment of methods necessary to obtain information about the

enemy is approved by the Hague Convention and the use of distinctive emblems of an enemy in order to escape from him is considered as a just and necessary means of hostility as is consistent with honourable warfare.

However, good faith must always be observed. Methods of injuring the enemy include acts of perfidy or treachery more than deceit are in general forbidden. Treachery must not be confounded with stratagem which is permissible. The essence of treachery is that the offender assumes a false character by which he deceives his enemy and thereby is able to effect a hostile act which had he come under his true colors, he could not have done. He takes advantage of his enemy’s reliance on his honor. In other words, an enemy must not be placed at a disadvantage by reason of his reliance on the bona fides of the assumption of the symbol of the performance of the act.

It is understood that stratagem does not embrace the abuse of signs which are employed in special cases where an express or implied engagement exists that the truth should be acted or spoken in order to prevent the exercise of force, to secure immunity and to carry on certain necessary intercourse between belligerents. There is an evident understanding of military honor that particular acts shall be done, or characters assumed for the appropriate purpose only. So the Hague Reglement forbids to make improper use of a flag of truce, the national flag or the military distinguishing marks, the uniform of the enemy as well as the distinctive sign of the Geneva Convention, disobedience to which would be dishonourable and the result would lose the rights upon

which the belligerents themselves depend. The American Common Law allows even capital punishment for clandestine or treacherous attempts to injure an enemy, because they are so dangerous and so difficult to guard against them.

Frederick the Great in the 13th article of his General Principle of War enlarges on the utility of "uses de guerre" and maintains that cunning often succeeds where force would fail, it is necessary to make use of both. The German officers are instructed that there is nothing in international law against "to the exploitation of the crimes of third parties, such as assassination, incendiarism, robbery and the like, to the prejudice of the enemy by the bribery of the enemy's subjects with the object of obtaining military advantages, acceptance of offers of treachery, reception of deserters, utilization of the discontented elements in the population, support of pretenders and the like." This is really a cynical maxim as the Americans condemned and it represents the German War Book in its most disagreeable light. In following this principle the misuse of Red Cross flag, the firing upon ambulances or hospitals and various other atrocities were often practised.

28. Holland, the Law of War on Land, 45.
29. German War Book, 85.
Chapter III

Comparison between the views of Germans and General Jurists respecting military occupation.

1. Military Authority

Military authority is exercised in a region under military occupation by the military government. Such a government performs its functions and discharges its obligations by what is known as martial law which comes immediately after military occupation. Military occupation is an incident to military operation and ceases with war. As the French Official Manual 95 says "occupation is simply a state and needs no formal announcement." It results from military control and implies the exercise of authority by military force. The authority derives from the customs of war, not from municipal law. Its exercise is not necessarily proclaimed but sanctioned, because the former sovereignty is ousted, the local authority is unable to maintain order and protect lives and property in the immediate theater of war and the invading force now has control from the time being by a mode of making a supervision over an unfriendly population and of subjective malcontent non-combatants to the will of a superior force. The authority of the occupant is in no wise that of sovereign. He has no intention to hold it permanently as in case of conquest. His power is merely provisional and is based upon military necessity. The administration of sovereignty is still on behalf of the occupied territory, therefore, every act of the de facto ruler to be valid must be strictly limited by the transitory nature of his authority.

2. Lefin, Effect of War on Property 12.
Mere invasion is not occupation. It must have some substance. Constructive, presumptive or fictitious occupation is insufficient. Westlake agrees with Hall that a territory is occupied as soon as local resistance to the actual presence of an enemy has ceased and continues to be occupied so long as the enemy's army is on the spot. The English view is that occupation is strictly analogous to blockade and can only be exercised when it is effective. It must be real, not nominal. A paper occupation is more objectionable than a paper blockade. The true test is exclusive possession but when the strategic points of a place under military control is said to be occupied the occupant must always be in sufficient strength to repress an outbreak. If he did not keep a military force the people living there might properly rise against the occupying power without incurring the penalties. The Germans, however, took a different view - that it did not always manifest itself by exterior signs like a place blockaded. It may be established as soon as the inhabitants have been disarmed. This may do by means of flying columns quite as well as by maintaining garrisons and all risings there should be severely repressed. The test of effective occupation is the ability to suppress insurrection and not the visible presence of occupant every where within the occupied territory.

The German War Book says that so-called "fictitious occupation" without the country being actually occupied is no longer recognized as valid. Yet in 1870 the Germans interpreted occupation very liberally. They passed through huge areas of theoretically occupied country with-

4. German War Book 142.
cut seeing a Prussian soldier. Their whole principle, as Spaight says, was really "bluff". They traded on the fact that an army enjoying the prestige conferred by a long and all but uninterrupted series of victories may proclaim its dominion over an extent of country out of proportion to what it could really hold in face of determined resistance.

It is plain that the English view would favor risings of the people en masse to strike at the occupying power, while the German view is favorable to the government with a large regular army. There is also a difference of art in the governing of an occupied country. The old writer was of opinion that the secret of successful occupation was the disciplining of the conglomerate of disaffected persons of the occupied province. The occupant should make the soldiers of occupied territory more afraid of their own officers than of the enemy. But in 1870 the policy of Bismarck was otherwise. He said to the German armies that it was essential to inspire the inhabitants with a great terror of us than they have of their own government. It was death to have arms concealed or retained in any house or to cut a telegraph wire or to destroy anything used for the surface of the army. Indeed, the Prussian methods were far and away more ruthless than those used by any other modern occupant. To terrorize the civil population of the enemy was the first principle with the Germans on the art of war. The theory of "living off the country" had made their offensive policy very successful with a view to shifting the burden of war on the inhabitants of the enemy country.

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5. Munro, German Treatment of Conquered Territory,
2. Position of an Occupant.

Military government resulting from military occupation, the occupant will have to perform two services: (1) promote the military operations of the occupying army; (2) preserve the safety of society. The presence of a hostile army proclaims its martial law which is a military necessity and administered by the Generals of the Army called Military Tribunals. Necessity creates privileges, yet they do not mean arbitrary rules. They are to effectuate some laws for extraordinary administration of justice. In the British Army such tribunals are called "Military Courts under Martial Law". Technically courts so established by an English general would not be courts-martial within the meaning of the Army Act but courts established and regulated by the will of the general. The procedure of general courts-martial is generally followed. In the Armies of the United States military offences under the Statute law are tried by courts-martial, while cases under the common law of war are tried by military commissions. The latter, however, have long been abandoned. The French military tribunals for the trial of hostile nationals are composed in the same way and follow the same procedure as the "Councils of War" which try French soldiers for military offences. The tribunals employed by the Japanese in the war with Russia were Special War Courts and their procedure was very expeditious as compared with that of the "Councils of War," by which offences against the laws of war were tried. The Germans System is different; the

tribunals called courts-martial are established under martial law, basing sentence on the fundamental laws of justice and are bound by no special procedure.

Territory subject to military government by no means forms part of the national domain except by conquest. The justification of the vanquished power is indeed replaced by that of military occupation but it does not follow that this new jurisdiction is the same as that of the conquering State. According to the general principles of law occupation of territory does not confer upon the occupant any rights to abolish or modify existing civil legislation unless compelled by military necessity. The American Instructions provide that martial law consists of martial law consists in the suspension of the civil and criminal law and in the substitution of military rule and force as well as in the dictation of general laws as far as military necessity requires the suspension, substitution or dictation. The same clause we found in the German War Book that the occupant will have to establish the continuation of the administration of the country with the help of the existing laws. The issue of new laws and the abolition or alteration of old ones are to be avoided, if they are not excused by imperative requirements of war. It is indeed the interest of occupant to accept an existing routine and to avoid changing regulations which end will be secured by leaving existing institution in force.

Generally, an invader does not always take the whole administration into his own hands, partly because it is more easy to preserve order through the agency of the native functionaries, partly because they

are more competent to deal with the laws which remain in force. In Belgium the Germans left the civil service in the hands of the natives. Everything adaptable about the administrative bodies had been retained. In many cases the various establishments were operated by their old directors and engineers and only the work of superintendence was handled by the Germans. But by the decrees of the German Government under the date of February 3rd and 10th, 1915, modifying the decree of 10th Vandemiera, year IV and creating a court of arbitration of disputes in regard to rent, very strong protest was made by the Council of the Bar Association of the Court of Appeals of Brussels. As to Poland the administration was conducted neither by the Germans nor by the Russians but by the Polish themselves.

3. Rights over Persons.

Some continental writers are inclined to imply from the duty to preserve public order on the part of the occupant a reciprocal obligation on the part of the inhabitants. Some English writers, on the other hand, see in it an obligation incurred in the pursuit of the occupant's end, an obligation which the inhabitants would have only too gladly avoided and which does not derive them of any rights of resistance against the enemy. Contradictory as they are, there would be some truth in both of the two views. The fact of occupation works no change in the national character and the status of the occupant is not even that of a temporary or substituted sovereign so the theory of temporary allegiance of the inhabitants as laid down by Birkhimer in his "Military Government and Martial Law" is erroneous. Nevertheless, they do owe

him the duty of abstention from every action which might endanger his safety or success in so far as the occupant acts as the territorial authority for the purpose of insuring order and not for his own immediate belligerent purposes. Their duty of obedience is not due to the occupation but due to the laws of war. They are subject to the martial law regulations and they may be judged guilty of war treason. In the Anglo-Boer War Mrs. Anna S. Low was sentenced by the British Military Court at Bloemfontein to six months' imprisonment with hard labor for aiding and abetting the enemy. In the Great War Cardinal Mercier was arrested by the Germans for sending a letter to call on all Belgian priests to be patient in their work.

The acts a belligerent must of necessity punish severely. But as a matter of policy no belligerent does in practice in every case carry out the sentence. Generally he commutes it to some more lenient punishment for expediency. For this reason the execution in October 1915 of Miss Carrell had aroused the righteous wrath of the world.

(A) War Treason.

War treason is distinguished from war rebels or persons who rise actually in arms against the occupying power. Oppenheim, regarding this point, says: "there are four essential characteristics of war treason, namely - (1) the act must be committed within the lines of the belligerent who punishes it; (2) the act must be harmful to him;
(3) the act must be favorable to the enemy; (4) the perpetrator must have the intention of favoring the enemy by his act. The act, however, need not be committed on occupied enemy territory nor in the zone of the belligerent concerned.

Professor Morgan considers that the term "war treason" is of German origin which represents a stealthy insinuation that the inhabitants of occupied territory owe the enemy a temporary allegiance. But Oppenheim disagrees with him and says that it is asserted by neither German nor other Continental but American and English lawyers. In the Instructions for the Government of Armies of the United States in the field we have already found the Sections 90-102 dealing with war treason and its punishment.

In the German War Book war treason is said to be the injury or imperiling of the enemy's authority through deceit or through communication of news to one's own army as to the disposition, movement and intention of the army in occupation, whether the person concerned has come into possession of the information by lawful or unlawful means (i.e. espionage). It also included the deception in leading the way, perpetrated in the form of deliberate guiding of the enemy's troops by an inhabitant on a false or disadvantageous road, whether his service is voluntary or compulsory. Spaight defined treason as a conspiracy against the established authority in a state. In an occupied territory the occupant being the de facto ruler is the established authority who is alone able to enforce the laws of the former government or who might

abrogate them at his pleasure. Therefore any act of violence or unsuccessful uprising in occupied territory is punishable.

During the Franco-German War the inhabitants of occupied territory were entitled to shoot at sight a civilian caught red-handed or any one, who, though not caught red-handed is proved guilty on inquiry. But to Germans no inquiry was made. The mere cry "civillisten haben geschossen" was enough to hand over a whole village or district and outlying places to ruthless slaughter. In Brussels on the 5th of October 1914, notices were posted by the Germans as to the punishment of localities for individual acts committed, irrespective of whether the inhabitants are accomplices or not. True, the theory of vicarious responsibility may be enforced in military cases against the shooting of a sniper, but it should not be so severe as the execution of mayors or the burning of cities which was practiced by the Germans. At first the inhabitants of occupied territory were required to deliver up arms under penalty of five years imprisonment in Germany, but later, the mere possession of arms without special circumstance to overcome the presumption of a hostile purpose was declared to render the possessor guilty of treason. Sometimes the inhabitants of towns in which violent acts had been done were rendered collectively responsible and were punished by fines or by their houses being burned. The Germans thought that to protect oneself against attack from the inhabitants or to employ ruthlessly the necessary means of defence and intimation is a right as well as a duty of the Staff of the army. Curiously enough, a system of in-

14. Extract from Bryce Committee Report, 41-42.
15. Stowall and Munro, International cases #164.
novation which made not only the commune in which an offence was committed but also that from which the delinquent came liable for the offence.

Bluntschli admits that the Germans stretched their war right of collective punishment altogether beyond its proper limits in 1870-71. No principle is more clearly established in international law than the right of an occupant to the obedience of the inhabitants of the territory occupied by him and of his right to punish them for disobedience subject to certain limitations. The article 50 of the Hague Reglement provides that no general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of actions of individuals for which they cannot be regarded as jointly and severally responsible. Even in the case of reprisals every effort should first be made to punish the actual offenders, and the innocent should not suffer for the guilty. However, the infliction of collective punishment upon inhabitants of occupied territory for individual acts of the civil population was not invented by the Germans alone. It was resorted to with great severity by the British during the Boer War almost barbarously by Lord Kitchener. The case shows that the German "atrocities" of the Great War so universally condemned was not unparalleled in the history.

(b) Hostages

Hostage, as it is defined by the American Instructions 54, is a person accepted as a pledge for the fulfillment of an agreement, such as capitulation, requisition or non-disturbance of communication. It

Phillipson, International Law and The Great War, 162,222,241.
is generally signed by way of precaution in order to guarantee the maintenance of order in occupied territory either as a preventative measure or as a prophylactic reprisal. But he must be treated as a prisoner of war. It would be illegitimate to treat a hostage by taking his life, by making him march before the army to enter into a city or by tying him in front of the locomotive.

In the Franco-German War the German Commandant of Nancy threatened to shoot a number of workmen, if requisition for services were not complied with. Prominent citizens were compelled to accompany with train in order to prevent it from wrecking. The action was condemned by all jurists, but it was the sanction of the German General Staff who justified on the ground that it was completely successful in the security of traffic. Remember the same practice in this matter was taken by Lord Roberts in the Anglo-Boer War.

(c) Compulsory Service.

The occupant may generally keep officials in their posts as are willing to serve under him. Whether an oath of fidelity may be exacted from them is a question of controversy. The French Official Manual says "no"; the German and the American Manuals say "yes". Hall and Bluntschli had the same view. But care must be taken that the oath in question is not one of allegiance. In no wise it affects their nationality or implies that they have entered into the service of the enemy. However he cannot demand such officials to exercise their functions in his name. In 1870 this rule was infringed by the Germans.

in France who after the fall of the Emperor Napoleon ordered the court at Nancy to administer justice in the name of the German Emperor.

It is proper for the occupant to require the co-operation of the inhabitants and local authorities of occupied territory in the suppression of acts of lawlessness. It is also proper for the occupant to take measures to prevent the enemy from deriving support from the occupied territory either in supplies or men. But it is not proper for the occupant to require the co-operation of the inhabitants in the latter case as in the former because to do so would require them to do violence to every feeling of patriotism.

When act of violence in occupied territory is to be of such a public nature that the intention to commit them may be well known to the community at large or if acts are contrary to the laws of war, the occupants may require the aid of the community in suppressing them and even in holding them responsible, if they are not prevented. But this responsibility should not be extended to acts not themselves contrary to the laws of war. The Germans had gone further and done beyond the authority in requiring the co-operation of the inhabitants in the prevention of such acts as the escape of persons intending to join the French army from the occupied territory. Mayors were required to prepare names of the inhabitants capable of service in the army with a view to their punishment if they leave the occupied territory to enlist in their country's service.

Articles 23 and 44 of the Hague Reglement forbid the compulsion

of the nationals of the hostile party to take part in the operation of war directly against their own country, to furnish information about their own army or about their means of defence. They forbid to force the enemy’s nationals to participate in the operation of war not as combatants only but as co-operators in any military action. In signing the convention Germany, Austria, Russia and Japan made reservations on the subject of the article 44 but they are bound by the article 23.

Well, let us see the provision of the German War Book which permits the dealing up and employment of the inhabitants as guides on unfamiliar ground and the compulsion of the inhabitants to furnish information about their own army, its strategy, its resource and its military secrets. Punishment may be inflicted in case of refusal of workers. It is often necessary and no army operating in an enemy’s country will renounce the expedient. The German authorities contended that victorious army might force the service whatever it is except actual fight. Thus the inhabitants could be employed at farming, road work, munition making, dead burying, digging trenches, carpentering them, laying electric wires for military works, preparing ground for wire entanglements and even to the extent of taking part in the looting of their own land upon the pain of threat, coercion, imprisonment or starvation. These authorities made of them the direct auxiliaries of the fighting army, whether by placing them in front of the German troops as shields, protec-

against their fatherland.

In the European War due to the action of Germany in destroying the internal commerce and all works in Belgium the whole population was unemployed, the Germans asked why the Belgians were idle and sent them in droves as slaves into Germany for the purpose of forcing them to labor for their enemy under the pretention that it was the duty of the occupying power to make in accordance with the Hague Convention the necessary regulations to establish public order and public life. Thousands of innocent civilians were reduced to slavery without previous trial and condemned to the penalty which was next in cruelty to the death penalty - deportation - a system had been universally condemned to be in contravention of all precedent and of those humane principles of international practice which have been long accepted and followed by civilized nations on their treatment of non-combatants in conquered territory.

By means of this barbarous system the Germans had two objects. First, to terrorize the population, to bring families to despair and to force the workers to lend their aid to the German occupation. This manoeuvre was facilitated by the announcement that all those who receive public assistance for their maintenance would be subjected to forced labor. The workman who out of devotion to his country refused to serve the enemy would know that he exposed himself to exile and slavery.

23. Ibid. 163-181. Toynbee, The German Terror in Belgium. Munro, German Treatment of Conquered Territory.
The second object was to replace by Belgians some German workmen who thus become available to fill up the gaps at the front. The idea then was clearly to bring these miserable people to lend a direct help in the war in the hope of improving their lot.

In France the Germans did the same thing. All means of unjust severity and cruelty toward inhabitants were employed. Everywhere the people were exploited and deported. All free men, women and girls being carried from the invaded region were compelled to perform the hardest kind of work for the enemy. At the mere will of a commandant the slightest infraction of the Draconian rules were punished with imprisonment.

5 Rights over Properties.

The whole modern development of the laws of war has been in the direction of greater immunity in persons and properties for all non-combatants. The right of destruction as an incident to military operations shall be carefully distinguished from its taking for the use of the army. It follows logically that there can be no right of booty or plundering, pillage and loot.

By the doctrine of postliminium an occupant has merely a possessory right and he was prevented from being the definite owner of territory seized by him till the conclusion of hostilities. Westlake holds the occupant has physical power over the occupied district, but has no legitimate power therein. The title therefore to those properties taken remains in abeyance during military occupation. All the principal modern European authorities concur that when any territory passes within

the firm possession and occupation of a foreign power, the duty of protection is co-extensive with the power of control. The seizure of property is recognized as in the nature of an act of eminent domain, not an act of war.

The German War Book lays down the principle of inviolability of private property but it goes on to say that the necessity of war makes every sequestration, every appropriation, temporary or permanent, every use, every injury and all destruction permissible. It justifies even the very utmost, the most far-reading disturbance which the conduct of war requires or which comes in the natural course of it. But "necessity" says Kingsburg, is a dangerously elastic term; it is the "mother of invention" of sophistical excuses and it may be stretched to cover more sins than charity.

a. Public Property.

War is primarily a conflict between states; hence, it follows that a belligerent has special rights over the public property of the enemy. "No army", said the German delegate at Brussels, "can subsist during the campaign on the resources of its own magazines." Consequently, immovable property such as forts and arsenals destined for military uses because of special danger to the enemy may be appropriated or destroyed when tactical exigencies demand. Public buildings, railways, telegraphs, forests, etc., which are not destined for use in war but which may be productive of national income and is within the military jurisdiction of an enemy state may be administered by that state for his benefit accord-

27. Latifi, Effects of War on Property, 14.
ing to the principle of usufruct. The German General Staff considers
the occupant to be only a usufructuary pro tempore. In continental sys-
tem of war a usufructuary or a person to enjoy a "usufruct" in property
means one has an interest of a special kind as a life-tenant or for some
lesser period. The property subject to the right must be so used in
accordance with the principle Salva rei substantia that its substance
sustains no injury. He can neither sell nor dispose of it, but he must
treat it in a husbandlike manner.

In the administration of the State forests they shall not be dam-
eged by excessive cutting. Hall thinks, the occupant in cutting timber
apart from the local necessities of war, must conform to the forest
regulations of the country. The German War Book says that it is not
bound to follow the mode of administration of the enemy's forest au-
thorities. Westlake remarks, "the right of usufructuary is to cut the
trees which regularly come to cutting during his tenancy; and this
right has subject to the condition that those who buy the timber from
him must remove it during the continuation of the occupation, for the
restored government would not be bound to allow its removal. And if
the occupant sells timber which has not regularly come to cutting, the
courts of the legitimate government will give no effect to any claims
founded on such an illegal transaction." Lueder declares "the victor
has no power of acquisition or alienation which may be spoken of only
after effective conquest, not before; not even in the case of protracted
occupation.

In 1870 the Germans sold 15,000 oaks in the French State forests. After the peace was concluded the French government seized the timber which had not already been removed. The buyers appealed to the German government; but the matter was left to the French Court which held that the German government had no right to sell the oaks, the disposal of which amounted to an act of waste.

The rights of an occupant are also limited by considerations of humanity, of the interests of mankind, of the doctrine that the damage caused to the enemy must not be disproportionate to the advantage gained by the other side and of the fact that the injury so inflicted must tend to bring the war to an end. So the property of local bodies as well as that of religious, charitable and educational institutions and property devoted to arts and sciences even though vested in the State cannot be appropriated except by absolute necessity.

With regard to the movable public property, all public money, customs, dues and reliable securities, including all obligations already accrued or that accrue during occupation may be appropriated. The existing form of collecting taxes may be altered, but no new taxes shall be imposed, nor can they be raised prematurely. All debts due from individuals to the enemy state and payable within territory under military occupation can be sequestrated and payment to the occupant gives a final discharge as against the legitimate sovereign. Some forms of property, for example, nominally belonging to the State such as funds of savings bank may be private property under state management. The

German General Staff treats the funds of municipalities as being private property and are immune from confiscation.

b. Private Property.

The Hague Regulations formally prohibit pillage, even of places taken by assault and declare private property on hostile territory inviolable. But no restriction exists to prevent the commanding general in enemy territory from subsisting his army on supplies gathered there or appropriating property which in any wise is useful for military purpose. The imperative necessity of war, therefore, justifies the seizure or destruction of all kinds of property. Let us consider under what circumstances they can be dealt with.

First, seizures may be effected by way of penalty for military offences when the owner of the property has fled with moveables, his immovable could only be sold for paying the tax of his realty or they could be confiscated after the notice to require their return. But the practice seems to be that property may be confiscated in all cases for the violation of martial law regulations. In 1870 the Germans occupied Alsace-Lorraine. They decreed that every inhabitant who left the province to join the French Army should be punished by the confiscation of his fortunes, present and future. In the other occupied territory, if persons subject to the French conscription left their homes clandestinely and without sufficient motive, their relatives were fined fifty francs for each day of absence.

Second, property may be taken on the field of battle or in storming a fortress or town. Arms, horses and military papers seized from

combatants on the battlefield even though private property are lawful
booty. However, the term booty does not include objects not useful in
war such as watches, rings or trinkets, the carrying off of which is,
as the German War book says, to be regarded as criminal robbery.

Third, forced contributions may be levied for the support of the
invading armies or as an indemnity for the expenses of maintaining or-
der and affording protection to the conquered inhabitants. They may
only be levied to cover the needs of the army, i.e., only in the case
of military necessity. The needs are not to be attained at pleasure
but only determined on the basis of the numbers of the army. It is on-
ly through military necessity that this power becomes a right. They
are not to be levied by way of securing riches or indemnity or for the
purpose of inducing a stubborn enemy to submit. Bluntschli set forth
the German theory on the subject of contribution that the occupying
army demand of the inhabitants such gratuitous contributions as may ap-
pear necessary for the subsistence of the troops and for their trans-
portation as well as that of the material of war, provided such con-
tributions are recognized as a public duty by the customs and usages
of war. We say theory because from the accounts of German practices
in war it has not risen about that.

The German War Book denounced forced contribution as "a form of
plundering" and condemned it to be "Buccaneering Levies" for which the
conqueror has no right to extort the inhabitants as a ransom from the
violence of war and it is not justified to do so by this arbitrary
means of enrichment in order to recoup himself for the cost of war. So
the General Staff permits only money contributions in the following
cases, (1) in lieu of taxes; (2) in place of requisitions in kind; (3)
By way of penalty.

As to (1) the Hague Reglement permits contributions to be levied only for the needs of army or of the administration of such territory which the occupant seized. When the occupant may find the existing taxes and imports insufficient for the expenses of civil administration he may impose additional taxes on the population. The principal occasion for these war contributions, however, will always be met without imposing too great a burden on the inhabitants. The contribution of twenty-five francs per head levied by the Germans in 1870 in the occupied provinces with the intention to turn the French citizens against Cambetta was certainly illegal.

As to (2) Holland says that it may be justifiable to levy a money contribution on one place in order to spend it on the purchase of requisitions in kind in another place. The burden of the war may thus be more equitably distributed, falling on the inhabitants generally rather than upon individual owners of property which may be required.

As to (3) the British considers it to be absolutely just as a punishment. The usual mode of punishment is that of fines. Any breach of the occupant's proclamations may be punished in this way. Consequently collective punishment may be inflicted on a town or village for damage done to railways and telegraphs in vicinity. If a city bridge is broken down, the interest of the occupant may be vitally endangered by the damage to his communications, he will soon repair it and the cost

34. Holland, Laws of War on Land, 55.
is thrown on the fine.

But we should remember that contributions are not justified merely for enriching the invader and saving him from a portion of the cost of his army. In 1815 when the Allies entered Paris, Blucher demanded an immediate contribution of one hundred million francs to pay his troops and justified his demand by citing Napoleon's behaviour in Berlin. In the war of 1870-1871 the Germans adopted a peculiar and somewhat inconsequent system of collecting pecuniary punishment. Heavy contributions were exacted on towns such as Chateaudun and Orleans which had offered resistance. In 1914 a contribution of 650,000 francs was imposed on the Commune of Luneville for the inhabitants having made an attack by ambuscade against the German columns and transports. There was hardly a commune within the occupied territory that had not had its exchequer depleted by iniquitous fines. Brussels, Antwerp, and Ghent were drained dry. It is, says the German General Staff, the effective way of bringing a civil population to book.

Besides the exceptions I have mentioned above, private property in occupied territory is inviolable in general principle of law. On July 13, 1898 the President of the United States issued a general order No. 101 declaring that private property, whether belonging to individuals or corporations, is to be respected and can be confiscated only for cause. ------ private property taken for the use of the army is to be paid for, when possible, in cash at a fair valuation, and when pay-

35. Lawrance, International Law, 447.
37. Stowell and Munro, International Cases II, 161-162.
Phillipson, International Law and the Great War, 220.
ment in cash is not possible, receipts are to be given. Thus the rule
is this: Private property in occupied territory is subject to military
requisition for the necessities of the occupying force but to allow this
right to be exercised there must be a liability for compensation. Even
though war material belonging to private persons or companies, if taken,
must be restored or compensated on the conclusion of peace.

Requisition seems as contribution is a relic of the vested rights
which an invader once possessed to the money, goods and labor of the
people he had temporarily conquered. It is also the same as contribu-
tion that it can be levied only under military necessity and must not
exceed the needs of the army of occupation or the resources of the coun-
try. But the fact the requisition must not exceed the needs of the ar-
my of occupation does not mean the needs of the army on the spot only
so it is permissible in the French Official Regulation which empowers
a commander to requisition rations for more than his actual numbers with

38
a view to misleading the enemy as to his strength. It differs from con-
tribution because it is paid in kind or in service instead of money and
it must be compensated. Again it may be collected on the authority of
the commander and through the medium of the local civil authorities, not
necessarily under a written order of a commander-in-chief as in case of
contribution. Under urgent necessity direct "foraging" might be resort-
ed to. The troops will be justified in collecting fuel and for them-
selves. The German Field Service Regulation (paragraph 471) instructs
requisitioning officers to invoke the assistance of the chief civil

authorities or other leading inhabitants in order to avoid direct requisitioning by the troops and the consequent danger of plundering.

The British Manual of Military Law (P. 294, S. 36) says that requisitions may be made in three ways:

1. "The inhabitants may be required to provide supplies without payment."

2. "They may be required to provide supplies at a moderate cost without any regard being had to the increased value accruing from the presence of an army."

3. "They may be required to provide supplies on payment of such price as they demand."

Which of these ways is to be adopted is in the discretion of the General. The Duke of Wellington disapproved of forced requisitions whenever they could be avoided, and on entering France, he sent the Spaniards back rather than resort to them. But both Germans and French had constantly exercised the right.

The German plan in 1870-71 was to increase the amount demanded, if it were not immediately forthcoming, to bombard or burn the place. Sometimes hostages were taken to secure compliance with. It was said that the value of movable property taken, apart from requisitions by the German invaders, amounted to over ten million sterling. In the Great War illegal requisition of stud, horses, mares and colts was made on Belgium. Any person neglecting to bring their horses would be liable to have stock requisitioned without indemnity. Millions of dollars worth of merchandise were seized and prices were fixed by the German authorities at their own arbitrary valuation. According to the state-
ment made by the president of the Antwerp Chamber of Commerce enormous quantities of raw material and manufactured goods were requisitioned without necessity by the German army and were not paid for.

With regard to the immovable private property, as buildings, the occupant can appropriate only for the use of force in case of necessity, that is for the time being the privilege of eminent domain and in that case indemnity would be paid for, but they should not be appropriated for profit. Nor they are liable to destruction except to the actual consequences of actual belligerent operations. Ravaging and burning private property without the stern necessity are acts of "licentiousness and results of hatred or monstrous excess". If a belligerent wages war in that manner, he must justly, as said by Vattel, "be regarded as carrying on war like a furious barbarian". The Germans did forbid arbitrary destruction of buildings, unless they were called forth by the behaviour of the inhabitants themselves. Curiously enough certain exception is made as in case where inhabitants have foolishly left their dwellings or intentionally concealed their food, the soldier is excited by closed door, then necessity will impel him to burst open the doors and to track the stores.

41. German War Book, 127.
Chapter IV

Comparison between the views of Germans and General Jurists respecting Neutrality.

1. Idea of Neutrality.

The idea of neutrality implies two states at war and a third in friendship with both. A state said to be neutral is, on the affirmative side, under a duty of prevention to restrain foreign governments and private persons from using the territory and resources of a country for belligerent purposes and on the negative side, under a duty of abstention in not doing any act which would involve direct or indirect participation in the hostility to either belligerent. This duty is based neither on contract nor on quasi-contract but on the operation of law. It does not mean indifference or impartiality, but all that is required, as the German War Book says, is the observance of international courtesies so long as these are observed there is no occasion for interference.

2. Violation of Neutrality.

The duty to remain neutral involves a corresponding right — a right of inviolability. In order to maintain this right a neutral must be willing and able to perform the duty. But where the neutral cannot or will not enforce its right then the belligerent is fully entitled to prevent the violation permitted by the neutral redounding to his disadvantage. When the Germans were closing on MacMahon at the end of August, 1870, Woltke feared that the French army would escape by taking

1. Moore, International Law Digest, S. 1283
2. German War Book, 144.
refuge in Belgium who might be unwilling or unable to disarm them, he then issued an Army Order saying that should the army pass over into Belgium without being at once disarmed he is to be pursued thither without further delay. In the meantime informed an English Correspondent that Germany's respect for the neutrality of Belgium was contingent on its being respected also by France.

As a general rule, a belligerent is not justified in violating the territory of a neutral for the purpose of prosecuting his military operation against the enemy. Nor it is permissible to a neutral to grant the right of passage of troops through its territory for the purpose of attacking another state, nor the use of neutral territory as a theater of hostilities, a base of operation or a place for recruiting forces, for transshipment of reservists as organized bodies or for fitting out or increasing armaments. It matters not whether a neutral gives such permission to one of the belligerents or to both alike, therefore it is not only a neutral's right but also duty to refuse the demand.

The inviolability of neutral state is the principle which the German War Book admits to be the law of perfect obligation. A neutral state, it declares, must guard its inviolable frontiers and must take care to occupy its own frontiers in sufficient strength to prevent any portions of the belligerent armies stepping across it with the object of marching through. If either attempts it, the neutral has the right to resist "with all the means in its power." If it is true of a neutral

state it is undoubtedly true of a neutralized state. The neutrality of Belgium and Luxemburg had been protected not only by the principle of international law but by a special convention of long-standing to which Germany was herself a party; nevertheless, they were all invaded by the German force.

The War Book also admits the property of neutral state and that of its citizens to be respected. But see what Germans did in the World War. Having proclaimed a War Zone, the limits of which had been exactly defined and the areas of military effectiveness had been indiscriminately established within the enemy's water as well as the high seas. The extension of submarine warfare was not only an infringement upon the right of neutral nations to the freedom of the sea for peaceful trading but a violation of the provisions of the Hague convention.

3. Contraband of War

A neutral, as a rule, should not be compelled to restrict the normal commerce of his own citizens in time of war. A belligerent, on the other hand, has a right to conduct the war against his adversary unimpeded by any interference by a third party, so that the furnishing of contraband articles to his enemy in such an interference should be

Cornell, International Law and the World War, II, 186-225; 231-235.
Andre Weiss, the Violation by Germany of the Neutrality of Belgium and Luxemburg.
Gibbons, The New Map of Europe, 405-412.
5. Ibid, April 1915, 460.
Stowell and Munro, International Cases II, 463-487.
Phillipson, International Law and the Great War, 219.
prevented and confiscated. Here is evidently a conflict of rights between belligerents and neutrals. The principle is that the prevention of the contraband of war is a belligerent right not a neutral duty, therefore, all neutral vessels are subject to the visitation and search though a neutral is not bound to place any restraint upon the private commerce of its own citizens.

Yet a neutral may not allow its citizens to engage in such business, if he chooses. Thus the United States government has done so by statute through various revisions of neutrality laws. It is not international law but the municipal law which makes the contraband illegitimate. However, it must be done at the outbreak of war and not after one of the belligerents may have got control of the seas in which case an embargo might be construed as an unfriendly act towards the belligerent which by its naval supremacy has cut off the supply of the other.

In the Hague Reglement, Art. 3, belligerents are forbidden to move convoys of munitions across the territory of a neutral power, and Art. 7, a neutral is not called upon to prevent the export or transport of arms or munitions. Inconsistent as these two appear to be, we must clearly distinguish between the act of the neutral state and the act of the neutral individual. The former relates to any munitions transmitted from a government storehouse to an army in the field across an intervening neutral territory. The latter relates to purely commercial enterprises undertaken by the inhabitants of a neutral territory.

Certain schools of jurists such as Calvo, Gessner, Heffer and Bluntschli held that a neutral is responsible for the acts of its
nationals for the sale of munitions of war on a large scale to the agents of belligerents. Bluntschli made distinction between sales en gros and sales en detail that the sending of the former articles constitutes a subsidy of war. The German General Staff in the Kriegsbranch in Landkriege makes the same distinction.

Really, it is difficult in practice to introduce a distinction between the right to sell and export in small scale and to sell and export in large scale. Even among the German jurists there has been almost the unanimity of view in favor of the right of neutrals to engage in contraband trade. Let me cite what Professor Von Bar said: "It would not only injure incalculably the commerce of neutrals but it would necessitate a system of surveillance and control by neutrals over the sale and transportation of merchandise which would be intolerable." The same opinion was expressed by Geffcken that to attempt such a measure would be to impose upon neutrals impossible responsibilities.

No doubt the difficulty of drawing a line between a small trade and a large one is so great as to amount to impossibility. It is also uncertain that international trade on a large scale is confined to times of war. In order to enforce such a policy there would require an army of spies and informers.

6. German War Book, 147.
8. Lawrance, Principles of International Law, 712.