UNIVERSITY OF ILLINOIS BULLETIN

ISSUED WEEKLY

Vol. XV. AUGUST 5, 1918 No. 49

[Entered as second-class matter December 11, 1912, at the post office at Urbana, Illinois, under the act of August 24, 1912]

THE GERMAN WAR CODE

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PUBLISHED BY THE UNIVERSITY OF ILLINOIS
UNDER DIRECTION OF THE WAR COMMITTEE
URBANA
1918

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A comparison of the German Manual of the Laws of War with those of the United States, Great Britain, and France and with the Hague Convention Respecting the Laws and Customs of War on Land.

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INTRODUCTORY REMARKS

If we compare the rules which regulate the conduct of war today with those of a century ago, we shall be struck by one notable difference: namely, the latter were for the most part unwritten, that is to say, they consisted in the main of a body of custom and tradition the evidence of which was found in the treatises of text writers and in the decisions of the courts, whereas those of today are for the most part written and are to be found either in manuals issued by governments for the guidance of their commanders in the field, or in international conventions and declarations which have been ratified by the great body of states.[1] The rights and duties of belligerents are therefore no longer left entirely to the arbitrary determination of commanders but they are limited by definite written rules formulated either by their own governments or by international conferences representing the various powers. The former, of course, are binding only upon the armies of the government which issues them; the latter are binding on all belligerents whose governments have ratified the conventions in which they are found.

The starting point in the process by which this change was brought about was the promulgation by President Lincoln in 1863 of General Orders No. 100, entitled "Instructions for the Government of the Armies of the United States in the Field." These "Instructions," as is well known, were prepared by a distinguished German-American publicist, Dr. Francis Lieber, who had served under Blücher at Waterloo but who in early life, to escape the oppression of his own country, had come to America and for many years was a professor in South Carolina College and later a professor in Columbia University.[2] They were not only the first notable example of a written code of war law ever issued by a government, but they were permeated through and through by a spirit of humanity; they were praised by the international jurists of Europe and they exerted a marked influence upon the subsequent development of the laws of war.[3] They remained in force until the year 1914, when they were superseded by a new code, entitled *The Rules of Land Warfare*, which was largely a revision of Lieber's "Instructions."[4]

The obvious advantages to a nation at war in having the rules which it proposes to observe in the conduct of hostilities reduced to

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[1] Compare Holland, "The Laws of War on Land," p. 1, and Renault, "War and the Law of Nations," *American Journal of International Law*, January, 1915, pp. 1ff.

[2] The imperative need during the Civil War for a written code for the guidance of the military commanders, many of whom were quite unfamiliar with the customs and usages of warfare, is well stated by General Geo. W. Davis in his "Elements of International Law," third edition, pp. 499-500.

[3] Compare Spaight, "War Rights on Land," p. 14; Martens, *La Paix et la Guerre*, p. 77; Merignhac, *Les Lois et Coutumes de la Guerre sur Terre*, p. 21; and Davis, "Dr. Francis Lieber's Instructions for the Government of the United States Armies in the Field," *American Journal of International Law*, Vol. I, pp. 22ff.

[4] The authors of the *Rules* of 1914 say that "everything vital" in Lieber's "Instructions" has been incorporated in the new manual. Certain obsolete provisions were of course omitted, while many new rules made necessary by the Geneva, the Hague and other international conventions were added.

written form in order that commanders and troops may know definitely their rights and duties and thus avoid, through ignorance or uncertainty, infractions of the law of nations soon impressed other governments, and a goodly number of them accordingly followed the example of the United States and issued manuals of instructions for the guidance of their commanders and troops during war.[1] The failure of many states, however, to follow this course caused the first Hague Peace Conference of 1899 to adopt a rule imposing upon the contracting parties to the Convention respecting the laws and customs of war on land an obligation to issue instructions to their armed land forces, which instructions were required to be *in conformity with the regulations governing land warfare annexed to the said Convention*,[2] and this obligation was reaffirmed by the corresponding Convention of 1907.[3]

The first government to act in pursuance of the obligation thus imposed was that of the German Empire, which in 1902 promulgated a manual entitled *Kriegsbrauch im Landkriege*, prepared by the Great General Staff of the German army.[4] The British government had already in 1884 issued a *Manual of Military Law*, prepared by a group of distinguished jurists and military officers. It has been frequently revised and brought into harmony with the great international conventions and declarations, the last edition having appeared in the year 1914.[5] The essential part of it, namely, the chapter on the "Laws and Usages of War on Land," was prepared by Colonel Edmonds of the British army and by Dr. L. Oppenheim, Whewell Professor of International Law at Cambridge. The French government likewise in pursuance of the obligation imposed by the Hague Convention has issued a manual of rules and instructions prepared by Lieutenant Robert Jacomet, the fourth edition of which appeared in 1913.[6] Lieber's "Instructions" of 1863 still being in force the government of the United States did not consider it necessary to issue a new manual, but in 1914 the earlier manual was revised and brought into harmony with the Hague and other international conventions and was issued under the title *Rules of Land Warfare*.[7]

In this study an attempt is made to compare the German manual with those of the United States, Great Britain, and France and

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[1] The character of some of these earlier manuals is discussed by Holland in his "Studies on International Law," ch. 4, and by Merignhac in his *Les Lois de la Guerre Continentale*, pp. 4ff.

[2] Article I.

[3] Article I.

[4] *Kriegsbrauch im Landkriege* (*Kriegsgeschichtliche Einzelschriften Herausgegeben vom Grossen Generalstabe*, Heft 31, Berlin, 1902). The *Kriegsbrauch* has been translated into French by M. Paul Carpentier under the title *Les Lois de la Guerre Continentale: Publication du Grand Etat-Major Allemand* (Paris, 2d ed., 1916) and a very fair and impartial analysis of it has been made by the well known French writer Merignhac, under the title *Les Théories du Grand Etat-Major Allemand sur les Lois de la Guerre Continentale* (Paris, 1907). An English translation has been made by Professor J. H. Morgan of University College, London, and published under the title *The War Book of the German General Staff* (New York, 1915). In the preparation of this study I have used the English translation by Morgan and the French translation by Carpentier, carefully comparing them on all points discussed.

[5] Published under the authority of His Majesty's Stationery Office. Pp. 908 (London, Wyman & Sons, 1914).

[6] *Les Lois de la Guerre Continentale, Préface de M. Louis Renault, Publié Sous la Direction de la Section historique de l'Etat-Major de l'Armée* (Paris, Pedone, 1913).

[7] Approved by the Chief of Staff, and issued by order of the Secretary of War April 25, 1914. Washington: Government Printing Office, 1914.

with the Hague Convention of 1907 respecting the laws and customs of war on land in respect to the more important points concerning which there is a difference, and to call attention to the instances of nonconformity of the German manual to the Hague regulations and the established usages of land warfare. Some attempt is also made by reference to German juristic authority and German practise to show that the code of the General Staff, extreme as many of its provisions are, is entirely in accord with the notions of the nature, objects, and methods of war generally held in Germany and applied in practice.

THE LAWS OF WAR ON LAND IN GENERAL

The Hague conference of 1899, with a view to revising the general laws and a customs of war and of defining them with greater precision for the purpose of mitigating their severity as far as possible, and inspired by the desire to diminish the evils of war as far as military necessity permits,[1] adopted a series of regulations setting forth the rights and duties of belligerents and prescribing various rules to be observed by them in the conduct of war on land.[2] This convention was readopted in revised and expanded form by the Second Hague Conference in 1907; and both were ratified by the governments of the four powers whose military manuals are here compared.[3] As stated above, an obligation was laid upon the contracting parties to issue manuals of instructions for the guidance and information of their military commanders, and it was expressly required that these instructions should be in conformity with the rules and regulations governing land warfare, which were annexed to the convention. The American, British, and French manuals appear to conform in every respect to this requirement. At the outset they mention by title the great international conventions and declarations adopted at St. Petersburg, Geneva, and the Hague and declare that they constitute "true international law" and as such are binding upon states and upon their military commanders.[4] The manuals of the United States and France in particular incorporate the texts of these conventions and declarations and in the main their rules are literal reproductions of those found in the international conventions, with such amplifica-

[1] See the Preamble to the Convention Respecting the Laws and Customs of War on Land.

[2] It being impossible, however, to agree upon regulations covering all cases which might arise during the course of war, the Conference took the precaution to add that in all cases not covered by the regulations it was not intended that military commanders should be left to their arbitrary judgment but that until a more complete code of the rules of war should be issued the inhabitants and the belligerents "should remain under the protection and the rule of the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience."

[3] In consequence of the so-called "general participation" clause (Art. 2) in the Convention of 1907 it is, technically speaking, not binding on any of the belligerents in the present war since five of them have never ratified it. Nevertheless, such of its provisions as are merely *declaratory* of the existing laws and customs of war (and most of them belong to this class) are binding independently of the status of the Convention, as much so as any other established customary rule of international law. Cf. Spaight, "War Rights on Land," p. 12, and Martens, *La Paix et la Guerre*, p. 240. Moreover the Convention of 1899 to which all the belligerents in the present war are parties, and of which the Convention of 1907 is mainly a revision, is binding on all of them, since it was declared to remain in force as between the powers not ratifying the Convention of 1907. Cf. Scott in the *American Journal of International Law*, January, 1915, p. 193. This view is admitted by German writers. Cf. e.g. Zittelmann in *Deutschland und der Weltkrieg* (English translation published under the title "Modern Germany", p. 604.

[4] American *Rules*, Art. 7; British manual, Art. 4; French manual, p. 24.

tions and explanations as seemed desirable. A careful comparison of the rules which the American, British, and French manuals lay down fails to reveal a single important instance of nonconformity to the regulations of the Hague Convention. The latter are cited in connection with every question covered by the manuals, they are always referred to with respect, and occasionally, as in the French manual, military commanders are enjoined to interpret them liberally in the interests of the rights of the inhabitants of occupied territory. Finally, the authors of the American and British manuals, in particular, frequently cite in support of the principles which they lay down the opinions of distinguished modern writers on international law and refer to the more enlightened practices in recent wars as evidence of the best usage today.

In these respects the German manual forms a striking contrast to those of the United States, Great Britain, and France. This manual was framed entirely by a body of high military officers, distinguished alike for their extreme views of military necessity and for their evident contempt for the opinions of civilian jurists and academic writers on international law, to whom they frequently refer as impractical theorists and overzealous humanitarians. The authority of no great non-German master on international law is or could be invoked in support of the extreme views which the General Staff sets forth in its manual.[1] Not even their own more modern and liberal jurists like Bluntschli, Geffcken, and von Liszt are appealed to, their main reliance being upon the older militaristic writers such as Dahn, von Hartmann, von Moltke, Bismarck, Loening, and Leuder, whose views for the most part were in accord with those of the General Staff. Whenever a German writer could be found who supported the views of the General Staff he is quoted; those who are opposed are passed over in silence. Although intended as a code of instructions, the German manual abounds in bitter and for the most part unfounded charges against the French for having violated the laws of war in 1870-71, and it goes out of the way to defend the German armies for acts which have been condemned not only by nearly every writer outside of Germany but even by high German authorities themselves.[2] Indeed, the conduct of the Germans during the war of 1870-71 was, we are told, characterised by unusual tenderness and consideration for the rights of the inhabitants of the districts occupied by the German armies. Wherever possible the practices of remote wars, and especially those of the Napoleonic wars, are invoked and relied upon in support of the extreme views of the General Staff, rather than the more enlightened and humane usages of recent wars.

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[1] The solitary exception being the Belgian jurist Rolin Jacquemyns who in two articles published in the *Revue Générale du Droit International et de Législation Comparée* (Vols. II and III) attempted to justify certain acts of the Germans in 1870-71, which have been almost universally condemned by writers on international law outside Germany.

[2] Such acts, for example, as the levying of heavy fines on French communes for offenses committed by Frenchmen in distant communes and even for such acts as Graf Renard's threat to shoot a number of civilians in case 500 laborers requisitioned by the German military authorities did not report for duty at a certain hour and place. See the *Kriegsbrauch*, English translation by Morgan, p. 154, and French translation by Carpentier, p. 112.

ATTITUDE OF THE GERMAN MANUAL TOWARD THE HAGUE CONVENTION

But one of the most regrettable features of the German manual is the manner in which it ignores the great international conventions and especially that of the Hague respecting the laws of land warfare, which the German government solemnly ratified and to whose provisions all war manuals were required to conform. It neither reproduces them textually as do the American and French manuals, nor does it enumerate them by title with a statement that they constitute a body of rules binding upon states as well as upon their military commanders. One can scarcely determine from a reading of the German manual whether the rules of the Hague Convention were ever intended to bind belligerents in the conduct of war. In fact, they are rarely mentioned and when they are referred to it is usually in derision. A good many of its rules are clearly in conflict with the Convention and various regulations annexed to the Convention are cynically dismissed with the statement that they are excessively humane, or that they are good in theory but will never be observed by belligerents in practice, etc. The fact is, the General Staff does not look with favor upon the movement to reduce the law of war to written form, for the reason that the effect would be to limit the arbitrary powers of military commanders and thus to put an obstacle in the way of military success. It would prefer to see the commanders restricted only by traditions, usages, and customs, the exact meaning and application of which could be interpreted to meet the particular necessities of the moment.[1]

Adverting to the various attempts to define and reduce to written form the laws of war, through international agreement, the General Staff asserts that "all these attempts have hitherto, with some few exceptions, completely failed," and it adds that the "law of war" as the expression is understood is not a *lex scripta* introduced by international agreements, but only "a reciprocity of mutual agreement; a limitation of arbitrary behavior, which custom and conventionality, human friendliness and a calculating egoism have created, and for the observance of which there exists no express sanction, but only the fear of reprisals decides."[2] Such is the poor opinion which the General Staff has of the Hague and other great international conventions which the world after generations of effort has agreed upon with a view to regulating as far as possible the conduct of war and of diminishing its evils. They are nothing more than a body of moral prescriptions which will be observed, if at all, not because they have any legally binding effect, not through any desire to avoid the obloquy and odium which are always visited upon a civilized nation which will

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[1] It will be recalled that at the second Hague Peace Conference, when Sir Ernest Satow was pressing for the adoption of rules restricting the employment of submarine mines, Germany's first delegate, Marschall von Bieberstein, made a powerful plea against binding belligerents by means of formal conventions and rules and in favor of leaving their conduct to be regulated only by conscience, good sense, the unwritten law of humanity, and the like. *Conférence International de la Paix, Actes et Documents* T III, p.382.

[2] Morgan, pp. 70-71; Carpentier, p. 4. See also the criticism of Merignhac, *op. cit.*, p. 46.

not keep its engagements, but simply through fear of reprisal on the part of the enemy who would be injured in consequence of their violation by its adversary. No evidence of such a standard of international obligation can be found in the American, British, or French manuals.

THE OBJECT AND ENDS OF WAR

The idea that war is an evil, "the greatest of human evils," as Jefferson characterised it, a "plague to mankind," as Washington regarded it; that the manner of conducting it should be regulated by law in "the interests of humanity and the ever progressive needs of civilization," which was the predominating motive which avowedly animated the Hague Conferences;[1] that war is a contest between the armed forces, only, of the belligerents and not a contest between their peoples as such; and that consequently the "only legitimate object which states should endeavor to accomplish during war is to weaken the military forces of the enemy"[2] —are sentiments which apparently find no recognition in the German manual.

"A war conducted with energy," it tells us, "cannot be directed merely against the armed forces of the enemy state and the positions they occupy, but it will and must in like manner seek to destroy (*zerstoren*) the total moral (*geistig*) and material resources of the latter. Humanitarian claims, such as the rights of individuals [presumably noncombatants] and their property, can only be taken into consideration *in so far as the nature and objects of war permit.*"[3] In short, whenever the overcoming of the enemy may be facilitated thereby it is legitimate to direct the war against everything that goes to make up the *ensemble* of his *Kultur:* his education, art, science, finance, railroads, industry; even the established immunities of noncombatants and of private property fall to the ground, if respect for them stands in the way of the attainment of the object of the war, which, according to the *Kriegsbrauch*, means nothing less than the total destruction of the enemy's material and moral power. As is well known, this brutal doctrine was taken from the great oracle of the German militarists, von Moltke, who in a letter written in 1880 to Professor Bluntschli criticising his proposed code of international law in general and the Declaration of St. Petersburg in particular, said, "I can in no manner agree with the Declaration of St. Petersburg that the 'weakening of the armed forces of the enemy is the only legitimate object which states should endeavor to accomplish during war'; no, all auxiliary resources of the hostile government must be destroyed: its finances, railroads, necessaries of life, and even its prestige."[4] It is also in line with the teachings of von Clausewitz, Germany's first

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[1]See the Preamble to the Convention Respecting the Laws and Customs of War on Land.
[2]So declared the Declaration of St. Petersburg of 1868, to which the North German Confederation was a signatory.
[3]Morgan, p. 68; Carpentier, p. 3.
[4]Helmuth von Moltke. *Gesammelte Schriften und Denkwürdigkeiten*, Vol. V, p. 196.

and greatest military writer, who advocated violence and terrorism as a means of reducing the enemy to submission, warned German commanders against the baleful theories of philanthropists and humanitarians who think war can be carried on in a civilized manner, and cynically referred to the usages of international law as "self-imposed restrictions, almost imperceptible and hardly worth mentioning."[1] A similar view of the nature and objects of war may be found in the writings of von Hartmann, von der Goltz, Bernhardi, and other German military writers. The doctrines of von Clausewitz and the General Staff have been brought up to date by Generals von Hindenburg, von Bissing, and others during the present war. Von Hindenburg, in an interview published in the Vienna *Neue Freie Presse* in November, 1914, said: "One cannot make war in a sentimental fashion. The more pitiless the conduct of the war, the more humane it is in reality, for it will run its course all the sooner. The war which of all wars is and must be the most humane is that which leads to peace with as little delay as possible."[2] Speaking on August 29, 1915, at Munster of the extreme measures which the Germans had felt obliged to take against the civil population of Belgium, General von Bissing said: "The innocent must suffer with the guilty. In the repression of infamy, human lives cannot be spared, and if isolated houses, flourishing villages and even entire towns are annihilated, that is regrettable but it must not excite ill-timed sentimentality. All this must not in our eyes weigh as much as the life of a single one of our brave soldiers. The rigorous accomplishment of duty is the emanation of a high *Kultur*, and in that, the population of the enemy country can learn a lesson from our army."[3]

GERMAN THEORY AND PRACTICE IN REGARD TO HUMANITY IN WARFARE

Throughout the *Kriegsbrauch* there is a disposition to belittle the efforts which have had as their object the humanizing of war and the diminishing of its evils. Again and again they are declared to be inconsistent with the true nature and objects of war and those who have taken the leadership in such movements are referred to as misguided sentimentalists and theorists who erroneously assume that the conduct of war can be humanized. These humanitarian tendencies, we are told, have "frequently degenerated into sentimentality and flabby emotion" (*Sentimentalität und Gefühlsschwärmerei*) which are in "fundamental contradiction with the nature of war and its object." Soldiers are warned not to be misled by such tendencies and to take care to avoid the danger of arriving at "false conceptions concerning

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[1] See his *Vom Kriege*, English translation by Colonel J. J. Graham (London, 1916), Vol. I, pp. 2-3.
[2] Reproduced in the *Berliner Tageblatt* of November 20, 1914, and quoted by Somville in his book, "The Road to Liége," p. xi.
[3] *Kölnische Zeitung*, September 8, 1914. English text in Langenhove, "The Growth of a Legend," p. 265, and in Somville, *op. cit.* p. 2. After his appointment as Governor-General of Belgium, von Bissing repeated in substance the above opinion to a Dutch journalist. The interview is published in the *Düsseldorfer Anzeiger* of December 8, 1914.

the essential character of war" by "a profound study of war itself." "By steeping himself in military history an officer," we are assured, "will be able to guard against exaggerated humanitarian notions; he will learn therefrom that certain severities are indispensable to war, nay more, *that the only true humanity very often lies in a ruthless application of them.*"[1]

Here we have the German philisophy of the nature of war and the solemn duty of commanders to prosecute it ruthlessly and without regard to the principles of a mistaken humanitarianism. "The greatest kindness in war," said von Moltke, "is to bring it to a speedy conclusion."[2] The great object of war is to overcome the enemy, not simply the defeat of his armed forces. Ruthlessness, violence, terrorism, the destruction of his intellectual power, the appropriation of private property, even war against noncombatants—all are legitimate provided they contribute to the attainment of the object of the war. And if they serve to shorten the duration of the war, they are even praiseworthy, for "true humanity" consists in bringing it to a speedy termination.

German practice during the present war has been entirely in accord with this philosophy. If space permitted a thousand examples could be cited in illustration. The sacking or burning of hundreds of cities, towns, and villages in Belgium and France and the massacre of their inhabitants; the wanton devastation of extensive districts without military purpose; the shooting of innocent civilians as hostages; the deportation of hundreds of thousands of peaceful laborers to Germany for forced labor; the use of civilians as screens for protecting German troops against attack; the compelling of civilians to work in German munitions plants and other war industries; the murder on the high seas of more than 12,000 unoffending men, women, and children—all of them noncombatants and many of them neutrals; the poisoning of wells; the bombardment by land, sea, and air of peaceful and undefended towns and the killing of thousands of their noncombatant population; the destruction of cathedrals, churches, universities, libraries, art galleries, and ancient historical monuments; the spoliation of occupied regions by means of huge fines, contributions, and requisitions; the deliberate sinking without warning of hospital ships and Belgian Relief steamers— these are a few of a long list of acts every one of which is forbidden by the Hague Conventions, to say nothing of the sacred principles of humanity; yet they are defended in Germany as being in accord with the true philosophy of the nature and objects of war.

MILITARY NECESSITY

The Hague Convention frankly admits that there are circumstances which permit a belligerent to disregard the established rules

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[1]Morgan, pp. 71-72; Carpentier, pp. 6-7.
[2]Letter to Bluntschli cited above.

of international law,[1] and this principle is affirmed in the war manuals of most countries. All the great authorities on international law outside Germany, however, are in substantial agreement that the excuse of necessity is no justification for overriding the law unless conformity to its prescriptions would actually imperil the existence of the violating belligerent. The late Professor Westlake, than whom no greater or more highly respected authority ever lived, affirmed the generally admitted principle when he said that the doctrine of necessity was applicable only in cases of self-preservation and when the threatened injury or danger would not admit of the delay which the normal course of action would involve.[2] In short, there must be an actual case of necessity; mere considerations of convenience, utility, or strategical interest are not sufficient to justify a violation of the law.[3] The American *Rules of Land Warfare* even go to the length of affirming that military necessity does not admit of measures which are *forbidden by the modern laws and customs of war.*[4]

When we turn to the German manual, however, we find enunciated a very different theory of military necessity. This manual, following a doctrine long maintained by German writers, draws a distinction between what they call *Kriegsraison* and *Kriegsmanier.* The former, which may be translated as the "reason of war," permits a belligerent to adopt any measures and employ any means which will contribute to the attainment of the object of the war, even though they are forbidden by the customs or usages of war (*Kriegsmanier*).[5] This distinction between *Kriegsraison* and *Kriegsmanier* has generally been interpreted by writers outside Germany to mean that the laws and customs of war cease to be binding on a belligerent whenever their observance would hinder or defeat the attainment of the object of the war. *Kriegsraison geht vor Kriegsmanier* is an old and well-known German maxim;[6] that is to say, the duty to achieve military success takes precedence over the obligation to observe the law. Manifestly such a theory when carried out to its logical conclusion leads to the absolute supremacy of strategical interest as expressed in the ancient maxim, *omnia licere quae necessaria ad finem belli.* It is condemned by both the spirit and the letter of the Hague Convention;[7] it finds no recognition in the manuals of the United States,

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[1] E. g. this is recognized by implication in the Preamble to the Convention Respecting the Laws and Customs of War on Land..

[2] "International Law," Vol. II, p. 114.

[3] Compare Rivier, *Principes du Droit des Gens*, Vol. I, p. 278; Hall, "International Law," 6th ed., p. 264; Oppenheim, "International Law," Vol. II, p. 177; and Hershey, "Essentials of International Public Law," p. 144.

[4] Art. 11.

[5] *Kriegsbrauch im Landkriege*, translation by Morgan, p. 69; trans. by Carpentier, p. 3. The distinction is fully explained by the German jurist Leuder in Holtzendorff's *Handbuch des Völkerrechts*, secs. 65-66. The distinction is emphasized by nearly all German writers, see e. g. von Clausewitz, *op. cit.*; von Hartmann in two articles in the *Deutsche Rundschau* (Vols. XIII-XIV); von Moltke, *Gesammelte Schriften*, Band V, pp. 195ff; and von der Goltz, *Die Volk im Waffen*. Strupp, a high contemporary German authority, tells us that the distinction is founded on the supreme duty of the military commander to assure the successful termination of the war. "The provisions of the laws of war," he says, "may be disregarded whenever a violation *appears to be the only means of carrying out an operation of war or even of preserving the armed forces, even if only a single soldier is concerned.*" See his *Das Internationale Landkriegsrecht*, p. 5; and an article by him in the *Zeitschrift für Völkerrecht*, Band VII, p. 363.

[6] Oppenheim, *op. cit.*, Vol. II, sec. 67.

[7] Art. 22.

Great Britain, or France, and it has been criticized by practically all writers outside Germany.[1]

German practice during the present war has been in accord with this theory of military necessity. At the very outset it was invoked by Bethmann Hollweg and Herr von Jagow in justification of the invasion of Belgium and subsequently it was appealed to by many of Germany's great and heretofore highly honored jurists like Kohler,[2] Niemeyer,[3] Schoenborn, Zittelmann, von Liszt, and others. Schoenborn, a distinguished professor in the University of Heidelberg, tells us that it was *absolutely necessary in the interest of self-preservation* for the German troops to go through Belgium; it was "a question of life and death" that Germany should forestall the action of the French, etc.[4] The attempt to justify the invasion of Belgium on the ground of military necessity is a good illustration of the extreme lengths to which the German theory of military necessity leads. Not the slightest evidence has ever been furnished by the German government or its apologists that France contemplated the invasion of Belgium.[5] Indeed, according to the admission of Bethmann Hollweg and von Jagow, it was the shortness of the distance through Belgium and the presence of French fortresses on the southern route that led Germany to send her troops through Belgium. It was not, therefore, a case of military necessity but merely considerations of convenience and strategical advantage which animated the German government. The only possible conclusion therefore is that if the plea of military necessity was a valid excuse for the German invasion of Belgium, any violation of the law which subserves a military interest may be justified on the same ground; and it is quite useless for states to enter into engagements to respect one another's rights, for in that case treaties will be nothing more than what Frederick the Great conceived them to be: namely, "works of filigree, more satisfying to the eye than of any utility."

This extreme theory which virtually identifies military necessity with military interest has been appealed to by the Germans as a defense for many other violations of the law of nations committed by them during the present war. It was the main excuse put forward for the frightful devastation of the Somme region in the spring of 1917, for the deportation of Belgian and French laborers, for the shooting of hostages, for the bombardment of undefended towns, for the atrocities committed by German submarines, for the burning of hundreds of Belgian and French towns and villages and the shooting

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[1] See Westlake, "Collected Papers on International Law," pp. 243ff; Holland, "Laws of War on Land," p. 13; Bordwell, "Law of War," p. 5; Merignhac, *Les Lois et Coutumes de la Guerre*, p. 143; Nys, *Droit International*, Vol. III, p. 203; Pradier-Fodéré, *Traité de Droit International*, sec. 2740; and Pillet, *Lois de la Guerre*, sec. 59.

[2] See his article *Notwehr und Neutralität* in the *Zeitschrift für Völkerrecht*, Band VIII (1914), pp. 576ff.

[3] Article in the *Juristische Wochenschrift*, 1914, No. 16, reprinted in English in the *Michigan Law Review* for January, 1915.

[4] See his chapter on "Belgium's Neutrality" in a book entitled *Deutschland und der Weltkrieg*, p. 545.

[5] Mr. James Beck very aptly remarks that if Germany really had any evidence of such an intention on the part of France, it was the greatest tactical blunder that she did not permit France to carry out her intention because it would have furnished Germany with a justification of her own act which could neve have been impeached. See his "Evidence in the Case," p. 229.

of their inhabitants, for the destruction of art galleries, historic monuments, educational buildings, and the like. In fact, wherever any possible military advantage could be subserved by measures forbidden by the laws and customs of war, the German armies have overridden the law and set up the plea of military necessity as an excuse.

INSTRUMENTALITIES AND MEANS

The Hague Convention declares that the means which a belligerent may adopt in order to injure his enemy are not unlimited and among the instrumentalities and measures which it forbids are the use of poison and poisoned weapons, arms, projectiles, and materials calculated to cause unnecessary suffering, the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases, the use of expanding bullets, the compelling of the inhabitants to take part in military operations against their own country, assassination, the killing of prisoners, the destruction of property except when imperatively demanded by the necessities of the war, etc.[1] These prohibitions are all expressly incorporated in the war manuals of the United States, Great Britain, and France.

The German manual, however, declares that *all* measures may be employed to overcome the enemy which are necessary "to attain the object of the war" and that they include both "force and stratagem."[2] Again, "every means may be employed without which the object of the war cannot be attained; what must be rejected, on the other hand, is every act of violence and destruction which is not necessary to the attainment of this end." Again, "all means which modern inventions afford, including the most perfected, the most dangerous, and those which destroy most quickly the adversary *en masse* are permissible; and since these latter result most promptly in the attainment of the object of the war they must be considered as indispensable and, all things considered, they are the most humane."[3] Nevertheless, says the German manual, while *Kriegsraison* permits a belligerent to employ "all means of such nature to contribute to the attainment of the object of the war, practice has taught the advisability, in one's own interest, of employing with limits certain means and of renouncing completely certain others. Chivalrous and Christain spirit, the progress of civilization and especially the knowledge of one's own interest have led to voluntary relaxations the necessity of which has received the tacit assent of all states and of all armies."[4] It is quite clear that the authors of the German manual regard military effectiveness rather than considerations of humanity the test of the legitimacy of an instrument or measure. Therefore any instrumentality or method, the employment of which will contribute to the

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[1]Convention Respecting the Laws and Customs of War on Land, Art. 22.
[2]Morgan, p. 84, translates the German words as "violence and cunning" but Carpentier, p. 20, more accurately renders them as "*la force et la ruse.*"
[3]Morgan, p. 85; Carpentier, p. 21.
[4]Carpentier, p. 4; Morgan, p. 69.

speedy attainment of the object of the war, is permissible whether it is inhumane or results in unnecessary suffering to the enemy or not; and if its use results in the shortening of the duration of the war, it is for that reason the most humane.

This interpretation of the German manual becomes evident when we read it in connection with the theories enunciated by the German military text writers and in the light of German practice. Von Moltke, from whom the General Staff draws so much of its philosophy and inspiration, tells us that "the great benefit in war is that it *should be terminated as soon as possible.*" To this end it is permissible to employ "*all* means except those which are positively condemned" (*Dazu müssen alle, nicht geradezu verwerfliche Mittel, freistehen*).[1] This is also the view of von Clausewitz already quoted, of von Hartmann, and of many recent German generals and military writers. Von Hartmann, who many years ago was requested by the Prussian minister of war to combat the liberal and humane views set forth in the honored Bluntschli's code, wrote a series of articles for the *Deutsche Rundschau*[2] in which he laid down the propositions that war today must be conducted with rigor, and with greater violence and less scruple than in the past; that every means without restriction must be employed;[3] that the "shackles of a constraining legality" in the conduct of war only serve to paralyze belligerents and postpone the termination of hostilities;[4] that humanity in war has a place only so long as it does not hinder the speedy attainment of the object of the war;[5] that when war breaks out terrorism becomes a principle of military necessity,[6] etc. General Colmar von der Goltz quotes with approval von Clausewitz's sneering reference to the philanthropists and humanitarians and lays down the proposition that it is permissible to employ "all means, material and intellectual, to overcome the adversary."[7] Somewhat similar views have been expressed by Generals von Blume,[8] Bernhardi,[9] von Hindenburg,[10] von Bissing[11] and other military writers.

This view of means and measures is not confined to the military writers but it is held by German statesmen and writers on international law. Thus the Imperial Chancellor in an address to the *Reichstag* in March, 1916, declared that "every means that is calculated to shorten the war constitutes the most humane policy to follow. When the most ruthless methods are considered best calculated to lead us to victory, and a swift victory, I said, then they must be employed." Again, in a note of January 31, 1917, addressed to the Secretary of State, the German Ambassador at Washington,

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[1] Letter to Bluntschli. Moltke, *Gesammelte Schriften und Denkwürdigkeiten*, Band V, pp. 194-197.
[2] Entitled *Militärische Notwendigkeit und Humanität*, Vols. XIII-XIV (1877-1878).
[3] *Ibid.*, Vol. XIV, pp. 76, 89.
[4] *Ibid.*, Vol. XIII, pp. 119, 122.
[5] *Ibid.*, p. 466.
[6] *Ibid.*, pp. 459-462.
[7] See his book *Die Volk im Waffen*, French translation entitled *La Nation Armée*, by E. Jaeglé, pp. 3, 7.
[8] See his book *Die Strategie* (2d ed., 1886).
[9] *Vom Heutigen Kriege* (1912) and *Deutschland und der nächste Krieg* (1912).
[10] Quoted above.
[11] Quoted above.

defending Germany's resumption of unrestricted submarine warfare, declared that Germany was "now compelled to continue the fight for existence with the *full employment of all the weapons which are at its disposal.*"[1]

German practice during the present war has been in accord with this theory of means and instrumentalities. A hundred examples could be cited in illustration. They include the employment of submarine torpedoes for the destruction of merchant vessels, although submarines are totally without accommodations for saving crews and passengers, the use of poisonous gases, the poisoning of wells in South Africa, the use of explosive shells, the use of civilians as screens to protect German troops against attack, the bombardment of undefended towns, the putting to death of hostages, the devastation of the Somme region, the destruction of towns and villages for the acts of individuals, and many others.

THE RIGHT OF SELF-DEFENSE

The Hague Convention lays down certain conditions as to organization and insignia which must be fulfilled by troops in order to entitle them to the treatment accorded lawful combatants, in case they are captured by the enemy. Thus they are required to be commanded by a responsible officer, and to bear a distinctive sign or emblem recognizable at a distance. But in order to enable the inhabitants of a place not yet occupied by the enemy to rise spontaneously with a view to beating off an invader, the Convention goes on to declare that in case they have not had sufficient time to organize and provide themselves with uniforms they shall nevertheless be regarded as lawful combatants and entitled, if captured, to the treatment accorded prisoners of war, provided only that they carry their arms openly and respect the laws and customs of war.[2] In short, they are exempt from the obligation to have a responsible commander and to be clothed in uniform. This provision was a concession to states which do not have large standing armies and was intended to legalize the *levée en masse* as a means of defense against an invader. It is incorporated textually in the manuals of the United States, Great Britain, and France, and the British and French manuals add that the rule should be liberally interpreted by belligerents since it is the first duty of a people to defend themselves against invasion and if they do so loyally they should not be treated as criminals.[3] But the right of self-defense thus recognized and affirmed by the Hague Convention is in effect denied by the German manual, which declares that the right of the inhabitants of an invaded district to take up arms and repel an invader can be admitted only when they have an organization and a responsible leader, and wear emblems recognizable at a distance.[4] This in face of the fact that the Hague Convention

[1] Official text published by the Department of State.
[2] Article 2.
[3] British manual, Art. 30; French manual, Art. 5.
[4] Morgan, p. 83; Carpentier, p. 18.

requires the provisions of war manuals to conform to the rules of the Convention, to which the German government is itself a party.

During the present war German military commanders in Belgium appear to have admitted the binding force of the above-mentioned article which the *Kriegsbrauch* repudiates, but in fact the right of self-defense which it proclaims was generally refused to the Belgian population on the alleged ground that they had ample opportunity to effect an organization and provide themselves with uniforms before the arrival of the German armies.[1] Belgian civilians therefore who took up arms and attempted to resist the advance of the Germans were whenever captured summarily shot as *francs-tireurs*. Considering the rapidity of the German advance into Belgium during the first days of the invasion, if the contention of the Germans that the civil population had ample time to effect an organization and equip themselves with uniforms be admitted, it is difficult to conceive a situation such as that which the Hague Convention contemplates, when the inhabitants may lawfully rise and resist an invader without incurring the penalty reserved for *francs-tireurs*.

Not only did the Germans refuse to treat all such persons as lawful combatants, but they even declined to treat as lawful belligerents the members of the Belgian *garde civique*, a militia force not very different form the German *landsturm*, organized long before the outbreak of the war for purposes of defense, and commanded by regular army officers and equipped with a distinctive uniform. All were treated as *francs-tireurs* when captured and were summarily shot. At least Belgian writers so claim. In fact, the Germans according to their own admission proceeded on the theory that they were at war with the whole Belgian population; that the contest was on the part of the Belgians an "unorganized peoples war" and that only the members of the regular Belgian army were entitled to the treatment reserved for prisoners of war.[2]

TREATMENT OF PRISONERS AND HOSTAGES

The Hague Convention declares that prisoners must be humanely treated.[3] The American, British, and French manuals reproduce the text of this provision and further lay down the rule that prisoners may be put to death only for crimes punishable with death under the laws of the captor and after due trial and conviction.[4] The American and British manuals also take occasion to express doubt whether such extreme necessity can ever arise that will compel or warrant a

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[1]See the German White Book, *Die Völkerrechtswidrige Führung*, etc., p. 4.

[2]See the German White Book referred to above; Grashoff *Belgiens Schuld*, ch. v, and Strupp *Die Belgische Volkskriege* in the *Zeitschrift für Völkerrecht*, Band IX (1915), pp. 281ff.

The case for the Belgians is set forth by the Belgian writers Waxweiler, "Belgium Neutral and Loyal," pp. 225ff; Dampierre, *L'Allemagne et le Droit des Gens*, pp. 190-191; Langenhove, "The Growth of a Legend," pp. 254ff; Massart, "Belgians under the German Eagle," p. 65; the report of the Belgian Official Commission of Inquiry ("Violations of the Rights of Nations in Belgium,") p. 97 and an official publication issued by the Belgian government entitled *Réponse au Livre Blanc Allemand*, pp. 10ff.

[3]Art. 4.

[4]American *Rules*, Art. 68; British manual, Art. 79; French manual, Art. 8.

military commander in killing his prisoners on the ground of self-preservation. The German manual, however, affirms the right of a captor to put his prisoners to death in case of "overwhelming necessity" and whenever the presence of the prisoners "constitutes a danger to the existence of the captor."[1] "The necessity of the war and the safety of the state," we are told, "are the first consideration rather than the unconditional freedom of the prisoners."

The Hague Convention contains no provisions in regard to hostages. The French manual, however, declares that it is forbidden as a general rule to demand or take hostages for the purpose of insuring the execution of conventions.[2] The British manual declares that the practice of taking hostages for such purposes is now "obsolete," and that it is preferable to "resort to territorial guarantees instead of taking hostages."[3] The American rules enumerate the purposes for which hostages have been taken in recent wars but express no opinion as to the legitimacy of the practice today.[4] The German manual, however, repudiates the assertion of certain "professors of the law of nations" that the taking of hostages has disappeared from the practice of civilized nations, and it defends the conduct of the Germans in 1870 in placing hostages on railway trains to insure the latter against derailment by the inhabitants, although it frankly admits that it was a "harsh and cruel" measure and that "every writer outside of Germany has stigmatized it as contrary to the law of nations and as unjustified towards the inhabitants of the country"; nevertheless it was legitimate, because it was effective in preventing a repetition of the acts.[5]

During the present war the Germans have resorted to the practice of hostage taking on a scale never before known in any war. In nearly every town, city, and village occupied by their forces the leading citizens were seized and the inhabitants notified that in case acts of hostility were committed by the civilian population the hostages would be shot.[6] Generally they were taken to insure the good behavior of the inhabitants, but the practice was also resorted to for various other purposes such as to insure compliance with the demands for requisitions, the payment of collective fines, to prevent acts of espionage, to insure railways, telegraph, and telephone lines against destruction, and the like. The hostages thus seized were usually confined as prisoners; sometimes they were led through the streets and required to warn their fellow citizens against committing acts of

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[1] Morgan, p. 97; Carpentier, p. 36.
[2] Art. 92.
[3] Art. 461.
[4] Art. 387.
[5] Morgan, p. 156; Carpentier, p.156. Lord Roberts issued a proclamation for a similar purpose in South Africa on June 19, 1900, but it was withdrawn eight days later. The measure was severely criticized by Mr. Bryce at the time and it is condemned by the British manual, Art. 463. Bonfils, Pillet, Hall, Westlake, Bordwell and indeed nearly all writers outside Germany, as the *Kriegsbrauch* admits, criticize it. It is even condemned by some German writers, notably by Bluntschli and Geffcken.
[6] The texts of many proclamations issued by German commanders to this effect may be found in the reports of the Belgian Commission of Inquiry, in the Report of the Bryce Commission, in the Report of the French Commission, in Davignon's "Belgium and Germany," in the Belgian document *Réponse au Livre Blanc Allemand*, in Massart, "Belgians under the German Eagle," in Waxweiler's "Belgium Neutral and Loyal," and numerous other publications official and private.

hostility; sometimes they were stationed on bridges to prevent their destruction by the enemy; not infrequently they were marched in front of German columns to protect them against attack; thousands were deported to Germany; occasionally they were put through the ordeal of sham executions and other forms of maltreatment as though they were criminals; and what seems almost incredible in this age, a goodly number were actually put to death as a penalty for acts committed or alleged to have been committed by the inhabitants. At Les Rivages, a suburb of Dinant, to refer to a single instance out of many, a large number of hostages who had been taken to insure a German detachment engaged in the construction of a pontoon bridge against attack were shot by the 101st Regiment. The German White Book admits the truth of the charge[1] but undertakes to defend this act in particular and the shooting of hostages in general on the principle that the mere taking of hostages and the holding of them as prisoners would prove ineffective in deterring the inhabitants from committing acts of hostility, if a belligerent were not allowed to inflict the death penalty for violation of the conditions for which they are taken.[2]

It is impossible to justify such an extreme and cruel measure. The American *Rules of Land Warfare* very justly remark that a hostage must be treated as a prisoner of war.[3] He cannot therefore be put to death or subjected to other severities than those which may lawfully be inflicted upon a regular military prisoner.[4] The right to put hostages to death was frequently asserted in earlier times, but it does not appear that it had ever in practice been exercised for at least a century prior to the present war.[5] Few measures resorted to by the Germans during the present war have illustrated more forcibly their extreme theories of military necessity or revealed German militarism in a worse light.

REQUISITIONS OF SUPPLIES AND SERVICES

The laws of war allow an invader to take supplies from the country occupied by him, but the Hague Convention expressly declares that they may be taken only for "the needs of the army of occupation" and that, as far as possible, they shall be paid for in cash; and if this cannot be done, receipts shall be given and payment made as soon as possible.[6] This rule, in the identical language of the Hague

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[1]See especially the testimony of Dr. Pretenz, a German Staff Surgeon, in *Die Völkerrechtswidrige Führung des Belgischen Volkskriege*, *anlage* 51, and of Lt. Baron von Rochow, *ibid.*, *anlage* 47. It is stated in the Belgian *Réponse* (p. 220) that the total number shot was 90. Dr. Pretenz admits that among the number were several women and children.

[2]See the German White Book, "The Belgian Peoples War", pp. 67-68.

[3]Art. 387.

[4]This is the opinion of practically all military writers. See e. g. Bluntschli, secs. 426 and 600; Hall, 4th ed., pp. 493-494; Pillet, *Les Lois Actuelles*, pp. 212-213.

[5]Merignhac, however, states that the Germans in 1870 did put to death certain Frenchmen, presumably held as hostages, for the refusal or inability of their districts to pay contributions and fines imposed upon them and for certain acts committed against isolated Prussian soldiers. If his statement is true his own judgment that such a severity was "absolutely unworthy of a civilized people" will generally be accepted outside Germany. See his *Les Lois de la Guerre Continentale*, p. 33.

[6]Art. 52, Convention Respecting the Laws and Customs of War on Land.

Convention, is incorporated in the military manuals of the United States,[1] Great Britain,[2] and France.[3] The German manual, however, repudiates the rule of the Convention and declares that the "right of requisitioning *without payment* exists as much as ever and will certainly be claimed by the armies in the field, and also considering the size of modern armies must be claimed." It admits, however, that it has become the custom to furnish receipts; but it adds that the question of payment "will then be determined on the conclusion of peace,"[4] the inference being that payment will be made, if at all, out of an indemnity extracted from the vanquished belligerent and not by the requisitioning belligerent if he is the victor. The Hague Convention also lays down the rule that supplies requisitioned shall "be in proportion to the resources of the country;"[5] and the writers on international law outside Germany are all agreed that a belligerent may not exercise his power of requisition to such an extent as to reduce the inhabitants to destitution, but must leave them enough for their own subsistence. The *Kriegsbrauch*, however, does not accept this humane principle. The Hague rule, we are told, would be "willingly recognized by every one in theory, but it will scarcely ever be observed in practice. In cases of necessity the needs of the army will alone decide; and a man does well generally to make himself familiar with the reflection that, in the changing and stormy course of a war, observance of the regular procedure of peaceful times is, with the best will, impossible"![6]

This has long been the doctrine of German military writers. Von Clausewitz in his day declared that the resource of requisition and contribution "has no limits *except those of exhaustion, impoverishment, and devastation of the country*";[7] that "war must support war" (*la guerre nourrit la guerre*, as the French translate the ancient maxim); that an invader has a right to live on the country, etc. Von Clausewitz even warned military commanders against the mistake of relying too much on "artificial means of subsistence," that is, of bringing their own supplies with them. This is also the doctrine of von Moltke who, in his letter to Bluntschli referred to above, declared that "the soldier who is exposed to suffering and privation, to exertion and danger, cannot be satisfied with requisitioning supplies in proportion to the resources of the country; no, he must take everything that is necessary to his existence."[8] This philosophy, summed up, means that since *Krieg ist Krieg* an invader is entitled to take the last mouthful of food, the last horse or cow, the last bushel of grain, and the noncombatant population may be left to starve if the occupying army needs the supplies thus taken.

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[1] Art. 345.
[2] Art. 416 and note h. to the same article.
[3] Art. 103.
[4] Morgan, p. 175; Carpentier. p. 136.
[5] Art. 52.
[6] Morgan, p. 176; Carpentier, p. 138.
[7] *Vom Kriege*, English translation by Graham, Vol. II, p. 98. General von Hartmann defends substantially the same view. See his article in the *Deutsche Rundschau*, Vol. XIII, pp. 450, 458.
[8] *Gesammelte Schriften und Denkwürdigkeiten*, Vol. V, p. 195.

The Hague Convention allows an invader to requisition the services of laborers as well as supplies, but it expressly forbids the forcing of the inhabitants to perform work having any connection with "military operations" or to furnish the enemy with information concerning their own army or its means of defense.[1] This clearly forbids compulsory labor in munitions plants, or factories engaged in the manufacture of war materials generally, work on fortifications, the digging of trenches and the like, and it has generally been interpreted as forbidding the taking of forced guides.[2] But the German manual, on this point as on so many others, lays down a different rule. It frankly admits that the majority of writers of all nations have unanimously condemned the practice of compelling the inhabitants of occupied territory to furnish the occupant with information regarding their own army, its resources, military secrets, and the like, but, nevertheless, it adds, that this cruel measure "cannot be entirely dispensed with." Defending the right to force the inhabitants to serve as guides, the manual remarks that "whatever may be the horror aroused by the sentiments of humanity in requiring a man to commit an injury to his own country and indirectly to fight against his own troops, no belligerent operating in an enemy country can entirely renounce this expedient."[3] *Kriegsraison* may make it necessary. As to compelling the inhabitants to perform work in "military operations," it warns officers against a too elastic interpretation of this expression. Again, we are told, *Kriegsraison* must decide; which means that if an important military interest may be subserved by disregarding the prohibition, the obligation to conform to the rule ceases.

German practice during the present war has been in accord with the doctrine of the *Kriegsbrauch* rather than with the Hague Convention. In the occupied regions of Belgium and France supplies have been requisitioned without regard to the resources of the country; in many instances indeed it has amounted to sheer spoliation and pillage. One of the first acts of the Germans after establishing their occupation of Belgium was to take an elaborate inventory, by means of compulsory declarations, of the available stocks of everything which could be of use to the Germans and to prohibit the exportation of the same—except to Germany. Thereupon a wholesale system of requisition was inaugurated. Growing crops were requisitioned while still standing in the fields; live stock, farm implements, grain, raw materials, metals, manufactured articles, even the church bells were taken and many charges have been made by the Belgians that no payments were made, that bogus receipts were given, and the like. The Hague rule that requisitions can only be made for "the needs of the army of occupation" was flagrantly disregarded. Immense quantities of raw materials were taken away for use in the

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[1]See articles 22 and 44 of the Convention Respecting the Laws and Customs of War on Land.
[2]See Spaight, *op. cit.*, p. 369; Westlake, *op. cit.*, Vol. II, pp. 101-102; Hershey, p. 141; Higgins, p. 269; Lawrence, p. 418; Pillet, *op. cit.*, p. 144. Even some German writers such as Loening, Strupp, Huber Meurer, and Zorn so interpret the prohibition. See also the American *Rules of Land Warfare*, Art. 322; the British manual, Art. 382, note d; and the French manual, Art. 95.
[3]Morgan, p. 153; Carpentier, p. 110.

home industries of Germany; millions of cattle and horses were similarly transported to Germany and sold to German farmers and stock raisers, even Belgian factories were dismantled of their machinery which was likewise carried off and installed in German factories. By no process of interpretation could it be said that such requisitions were for "the needs of the occupying army"; they were, in fact, for the maintenance of Germany's home industries—i.e., for a purpose the legitimacy of which is not recognized by the Hague Convention, the military manuals of other countries, or by any writer on international law outside Germany. In many cases the deposits in private banks and private pension funds in the post offices were seized and appropriated in violation of the express terms of the Hague Convention.[1] Finally, the services of thousands of Belgian laborers were requisitioned for work in munitions plants, in establishments for the manufacture of barbed wire and other war materials, for digging trenches, operating military railway trains, and even for guides.[2]

Such is the German theory and practice in respect to requisitions. It is in flagrant contradiction with the long-established customary laws of war, contrary to the express provisions of the Hague Convention, and it has been condemned by every authority on international law outside Germany and even by reputable German jurists.

PECUNIARY CONTRIBUTIONS

The Hague Convention allows a military occupant not only to collect the taxes levied by the state in the territory occupied, but in addition it allows him to raise "other money contributions," subject to the condition, however, that the latter shall be levied "only for the needs of the army or for the administration of the territory in question."[3] This rule, with the limitation with which it is coupled, is incorporated in the manuals of the United States, Great Britain, and France. In order to leave no doubt as to the purpose for which such exactions may be made, the British manual takes the precaution to add that they may not be resorted to for the purpose of enriching the occupant or for the purpose of pressure or of punishment, and that they shall not be exorbitant in amount. It further adds that the chief purpose in allowing an occupant to levy such exactions on the inhabitants is to permit an equitable distribution of requisitions between towns and cities, on the one hand, and the country districts, on the other; money being contributed by the former to purchase supplies requisitioned of the latter.[4] This view of the nature and purpose of contributions is that generally held by the writers on inter-

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[1] Art. 53.
[2] I have discussed at length German policy in respect to requisitions during the present war, in an article in the *American Journal of International Law* for January, 1917, pp. 74-112.
[3] Art. 49.
[4] Articles 423, 424. Article 107 of the French manual likewise adds that contributions imposed for self-enrichment or for weakening the enemy are prohibited.

national law everywhere,[1] at least outside Germany, and it is also the view of some reputable German authorities.[2]

The German manual itself admits that contributions cannot be levied for the "arbitrary enrichment" of the conqueror, nor for the purpose of recouping himself for the cost of the war, but it allows them to be levied for the purpose of punishment[3] and it does not take the trouble to say, as does the English manual, that they shall not be "exorbitant" in amount. In fact, German theory and practice have been in accord with the view that contributions are not merely levies on towns and cities as a substitute for requisitions in kind, that they are not limited to the needs of the occupying army or the administration, but that they may be exacted for the purpose of compelling the inhabitants to sue for peace, for the purpose of punishment, for covering the expenses of the war, and even for the enrichment of the occupant. Von Clausewitz, for example, declared that the first object of war is "invasion, that is, the occupation of the enemy's territory, not with a view to keeping it but *in order to levy contributions upon it or to devastate it.*"[4] Von Moltke expressed essentially the same view in his letter to Bluntschli, referred to above. Loening, a high German authority, maintains that it is even legitimate for a military occupant to exact money contributions for the purpose of compelling the inhabitants to sue for peace,[5] and the distinguished Austrian publicist, Lammasch, defended this view at the first Hague Conference in 1899, although it found no favor there.[6] Other German writers maintain this extreme view universally condemned by all the authorities outside Germany and Austria.

German practice during the war of 1870-71 was in harmony with this view and it has been the same during the present war. During their occupation of France in 1870-71 they not only levied enormous contributions on cities, towns, and departments,[7]—so exorbitant in amount that many of them did not differ from sheer pillage except in name,[8]—but for the avowed purpose of breaking the resistance of the French people and inducing them to sue for peace, they levied in December, 1870, a per capita contribution of 25 francs on every inhabitant in the occupied districts of France. The German writer Loening admits that this expedient was "extraordinary," but he defends it on the ground that the "situation was none the less so," and

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[1]Compare e.g. Spaight, *op. cit.*, p. 383.

[2]E.g. Bluntschli, who remarks that international law forbids the levying of contributions on the inhabitants of occupied territory except when they are *absolutely indispensable for the maintenance and needs of the occupying army*, *op. cit.*, sec. 654. So Leuder remarks that they are limited to the *urgent needs of the army* and the power to exact them must be strictly construed. Holtzendorff's *Handbuch des Völkerrechts*, Vol. IV, p. 503.

[3]Morgan, p. 178; Carpentier, p. 140.

[4]*Vom Kriege*, Graham's translation, Vol. I, p. 33.

[5]See his article in the *Revue de Droit International et de Législation Comparée*, Vol. V, p. 107.

[6]Quoted by the German writer Wehberg (*Capture in War on Land and Sea*, p. 42), who condemns the view that a belligerent may seek to induce his enemy to submit by exhausting him through the power to lay contributions and exact requisitions.

[7]I have given many examples in an article published in the *American Journal of International Law* for January, 1917, pp. 74-76.

[8]Cf. Latifi, "Effects of War on Private Property," p. 34.

that it was effective![1] It is refreshing to be able to record, however, that this harsh and unjust measure, unanimously condemned by writers outside Germany, has not met with the approval of all reputable German authorities.[2] But the German manual assures us that the power of requisition and contribution as resorted to by the Germans was exercised "with the utmost tenderness for the inhabitants, even if in isolated cases excesses occurred"![3]

During the present war Belgium and France have been bled by huge contributions, the frequency and amount of which repel the assumption that they were levied only for the needs of the army and the expenses of the administration.[4] In addition to a general annual contribution of 480,000,000 francs levied on the occupied portion of Belgium in December, 1914,[5] which was subsequently increased to 720,000,000 and renewed each year since, huge contributions, often running into the millions, have been levied on scores if not hundreds of towns and cities in both Belgium and France. In addition to these exactions the Germans of course collected the regular taxes[6] and raised other huge sums under the guise of collective fines.

COLLECTIVE FINES

The Hague Convention forbids the imposition of collective punishments, pecuniary or otherwise, upon the inhabitants of occupied territory on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.[7] This rule is incorporated in the war manuals of the United States,[8] Great Britain,[9] and France,[10] in the identical language in which it was formulated by the Hague Conference. The American manual interprets the rule to forbid collective punishments except for such offenses "as the community has committed or permitted to be committed," the inference being that the community cannot be punished for the acts of isolated individuals when the population as a whole is not an accomplice, either actively or passively, or for acts which the local authorities could not have prevented. If, for example, the act is committed by an isolated individual in the dead of night in a remote part of the town or district, under circumstances which make it impossible for the public authorities to have prevented it, or if there is no proof that the population as a whole was a party through either participation or sympathy, it would be a violation of the most elementary rules of

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[1] See his article in the *Revue de Droit International et de Législation Comparée*, Vol. V, p. 108.
[2] It is condemned e.g. by Bluntschli (*op. cit.*, sec. 654), by Geffcken (ed. of Heffter, p. 30, note 4) and by Wehberg (*Capture in War on Land and Sea*, ch. iv).
[3] Morgan, p. 176; Carpentier, p. 138.
[4] I have given numerous examples in my article referred to above.
[5] The text of the order imposing this contribution may be found in Huberich and Speyer, "German Legislation in Belgium," 2d ser., p. 11.
[6] Not content with collecting the regular taxes on the inhabitants who remained in Belgium, General von Bissing by an order to Jan. 16, 1915, issued for the purpose of compelling the hundreds of thousands of Belgian refugees who had gone into exile in Holland and England to return to Belgium in order that their labor might be requisitioned by the Germans, gave notice that all Belgians who did not return by March 1 would be penalized by an additional levy equal to *ten times the regular personal tax*. Text in Huberich and Speyer, *op. cit.*, p. 41.
[7] Art. 50.
[8] Art. 354.
[9] Art. 385.
[10] Art. 109.

justice to hold the community responsible and subject it to punishment; and it is safe to say that the Hague Conference never intended to sanction the application of the principle of collective responsibility and punishment in such cases.[1]

The German manual does not deal with the subject of collective fines further than to say that they are the most effective means of insuring the obedience of the inhabitants of occupied territory.[2] It also remarks that they were frequently employed by the Germans during the Franco-German war of 1870-71, and the manual naturally attempts to defend the German practice. As is well known, huge fines were laid on many towns, cities, departments, and communes of France. The enormity of the amounts exacted and their disproportion to the offenses alleged are evidence enough that in many cases they were nothing more than contributions exacted under the guise of fines, and were imposed not as a punitive measure but merely for the enrichment of the military occupant.[3] The Germans even pushed the theory of collective responsibility to the length of fining remote communes, from which offenders originally came, for acts committed by them in other distant communes in the occupied portion of France.[4] This iniquitous theory of collective punishment is defended by the *Kriegsbrauch im Landkriege* and by most German writers on international law, mainly on the ground that it was effective in preventing a repetition of the acts complained of.[5] Leuder and the authors of the German manual find a justification also in the "embittered character which the war took on during its later stages."[6] Regarding the French complaint that the fines were in many cases grossly excessive and out of all proportion to the gravity of the offenses alleged, Leuder remarks that the promptness with which they were paid is evidence enough that they were "in truth not too exorbitant."[7] Leuder even goes to the length of asserting that a community may be fined for the continued persistence of the inhabitants in keeping up a futile struggle (*durch frivol fortgesetze Kriege*). The 25 franc per capita fine levied in 1870 on all the inhabitants of the occupied regions of France for the purpose of breaking their spirit of resistance was therefore a justifiable measure.[8]

Such is the theory of the German manual and of German writers regarding collective punishments. It is criticized by practically every writer on international law outside Germany and even some

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[1]Compare Lawrence, *op. cit.*, p. 447; Spaight, *op. cit.*, p. 408; Despagnet, *Cours de Droit International* secs. 587-588; Bordwell, "Law of War," p. 317; and Nys, *Le Droit International*, Vol. III, p. 429.

[2]Morgan, p. 178.

[3]Compare Bonfils *Manuel de Droit International*, sec. 1219. I have reviewed the German practice of 1870-71 and given many details as to the imposition of fines by the Germans, in an article in the *American Journal of International Law*, July, 1917, pp. 512ff.

[4]The text of the order putting into effect this extraordinary theory of collective responsibility may be found in the *Revue de Droit International et de Législation Comparée*, Vol. II, p. 666.

[5]See the defense by Loening in an article in the *Revue de Droit International et de Législation Comparée*. Vol. V, pp. 77ff.

[6]Leuder in Holtzendorff's *Handbuch des Völkerrechts*, Vol. IV, p. 508; also sec. 112, note 14M; organ, p.178; Carpentier, p. 141.

[7]*Op. cit.*, p. 509.

[8]*Ibid.*, pp. 505 and 510. For a criticism of this extraordinary contention see Westlake, "Collected papers on International Law," p. 251.

German writers have condemned it.[1] It is likewise contrary to the rule of the Hague Convention and to the most elementary principles of the criminal law.

During the present war the Germans in both Belgium and France have proceeded on this theory on an even larger scale than they did in 1870-71. Scores of cities, towns, and communes have been punished by huge fines for offenses committed by individuals which the civil authorities were powerless to prevent and in which the population could not by any process of reasoning have been regarded as accomplices. In many cases the fines were out of all proportion to the gravity of the offenses alleged, leaving no doubt that in fact they were levied not as a punitive measure but for the purpose of enriching the military occupant and recouping himself for the cost of the war. In some cases they were levied on the inhabitants not for acts of the civil population but for acts committed by the regular armed forces of the enemy, which of course are not punishable by community fines since they are legitimate acts of war.

The city of Brussels, to cite a notable instance from many, has already been fined at least five times. It was fined 5,000,000 francs in November, 1914, for the act of a policeman in attacking a German officer during the course of a dispute between the two; again in July, 1915, it was fined 5,000,000 francs for the alleged destruction of a German Zeppelin by a British aviator near Brussels; in the same month it was fined 5,000,000 marks in consequence of a patriotic demonstration by the inhabitants on the occasion of the celebration of the national holiday (July 21); early in 1916 it was fined 500,000 marks on the charge that a crime had been committed in the suburb of Shaerbeek with a revolver obtained in Brussels where the possession of fire arms by the citizens had been forbidden by the military authorities; finally, in March, 1918, the city was fined 2,000,000 marks on account of a demonstration by anti-Flemish agitators. A fine of 60,000,000 francs was imposed on the province of Liége; 10,000,000 on the city of Liége; 3,000,000 on Tournai; 10,000,000 on Courtrai; 3,000,000 on Wavre; 500,000 on Lille; 650,000 on Lunéville, and scores of others.[2] Many towns were fined for the alleged firing of shots against German troops by civilian inhabitants; others were fined on account of the refusal of the municipal authorities to furnish the military commanders with lists of unemployed laborers whom the Germans were preparing to deport for forced labor in Germany; others were fined for inability to comply with requisitions; for the refusal of the inhabitants to work for the Germans; for the cutting of telephone wires, and the like.

In many instances these fines were in addition to other heavy exactions under the form of requisitions, contributions, and tax

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[1] E.g. Bluntschli, *op. cit.*, sec. 643bis; and Geffcken, note 7 to sec. 126 of his edition of Heffter's *Le Droit International de l'Europe*.

[2] I have given the details regarding a good many other instances in the *American Journal of International Law* for July, 1917, pp. 515ff.

levies. As one reads the long list of such exactions and the reasons alleged for imposing them, it is difficult to avoid the conclusion that they were a part of the well-established German philosophy of war that an invader is entitled to live on the country which falls under his occupation and that the employment of any instrumentality or measure is legitimate whenever its use contributes "to the attainment of the object of the war."

BOMBARDMENTS

The Hague Convention forbids the bombardment by whatever means of towns, villages, dwellings, or buildings which are undefended;[1] it requires the officer in command of an attacking force to do all in his power to warn the authorities before commencing a bombardment, except in cases of assault;[2] and it enjoins belligerents to spare as far as possible buildings dedicated to religion, art, science, or charitable purposes, historic monuments, and hospitals.[3] These rules are incorporated textually in the war manuals of the United States, Great Britain, and France.

The German manual, however, as it so often does, repudiates the Hague rule and declares that a preliminary notification of bombardment is not required in any case. The claims to the contrary put forward by some jurists are, we are told, absolutely contrary to the necessities of war and must be rejected by soldiers; moreover, the instances in which warning has been voluntarily given do not prove the existence of an obligation. The besieging commander must determine for himself whether the giving of preliminary notice will have the effect of endangering the success of his operations through the loss of precious time. If he is satisfied that it will have this effect he is not bound to give warning; if, on the contrary, he has nothing to fear from giving the notification, "conformity to the exigences of humanity" requires that it should be given.[4] In short, the duty of the belligerent in this as in other cases is determined not by considerations of humanity but by its effect upon the success of the military operations. The American rules add that while there is no rule requiring a besieging commander to allow women and children to be removed before the bombardment commences, it has been the American practice to allow them to leave and the manual reproduces the text of an order issued by General Noghi during the Russo-Japanese war giving permission to the women and children to leave Port Arthur before the bombardment commenced.[5] The text of the German manual does not differ from those of the other three countries in holding that no such obligation is incumbent upon a besieging commander, but it does not go to the length which the British manual does[6] of saying that considerations of humanity make it desirable if

[1]Art. 25.
[2]Art. 26.
[3]Art. 27.
[4]Morgan, p. 104; Carpentier, p. 45.
[5]American *Rules*, p. 68.
[6]Art. 127.

possible to permit the inhabitants to leave, nor does it call attention to the fact, as do the American rules, that the best recent practice is in favor of this humanitarian procedure. On the contrary, it asserts that the "pretentions of the professors of international law on this point must be deliberately rejected in principle as opposed to the principles of war," because the presence of the noncombatant population who must be fed from the supplies of the besieged may have the effect of hastening the surrender of the place. By refusing to allow them to leave, the besieging commander derives a military advantage and it would be foolish, therefore, for him to renounce voluntarily this advantage.[1]

Regarding the prohibition to bombard open towns and villages which are not occupied by the enemy or defended, the German manual takes occasion to say, somewhat cynically, that such a prohibition was indeed embodied in the Hague regulations but it was a "superfluous provision because the history of modern wars hardly knows of any such case."[2] In short, according to the view of the German manual, practically every town within the lines of the enemy is today a "defended" place and may therefore be bombarded. This extraordinary contention in effect reduces the prohibitions of the Hague Convention in respect to bombardment to a nullity and it is directly contrary to the views of practically all writers on international law as to what constitutes "defense." There is a general agreement among the text writers that a place is "undefended" and therefore exempt from bombardment if it possesses no means of defense or offers no resistance to the entrance of the enemy. If it is without fortifications or artillery or is unoccupied by troops, as many towns are in time of war, it cannot by any reasonable process of interpretation be said to be "defended."[3] The German manual, however, proceeds on the assumption that practically all towns in modern times possess the means of defending themselves against the enemy. If there are military stores, railway establishments, telegraph lines, or bridges in the town, this constitutes a sufficient excuse for bombarding it.[4]

In practice the Germans have during the present war proceeded in accord with the teachings of the *Kriegsbrauch*. They have bombarded many open and undefended towns in Belgium and France. In some cases these appear to have been technically defended in the sense of being occupied by troops, although without batteries; in other cases, such as the bombardment of the coast towns of Hartlepool, Whitby, Scarborough, and Yarmouth, there was not a soldier or a battery in the town. They were bombarded in the darkness of night without a word of warning; scores of women and children were killed, and hundreds of private houses were destroyed, when in fact

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[1]Morgan, p. 107; Carpentier, p. 49.
[2]Morgan, p. 108; Carpentier, p. 50.
[3]Compare Holland, "Laws of War on Land," p. 30; Spaight, *op. cit.*, p. 158; Pillet, *Les Lois Actuelles*, p. 104; Bonfils, *Manuel*, secs. 1081-1082; Westlake, *op. cit.*, Vol. II, p. 315; Merignhac, *op. cit.*, p. 177.
[4]The British manual, Art. 118, expressly condemns this view as do the American *Rules* (Art. 212, note 1) which add that if it is necessary to destroy such objects it must be done by other means than bombardment.

no military purpose was subserved. As long ago as 1844 the Duke of Wellington, adverting to a recommendation of the Prince of Joinville's that in the event of war between France and England the undefended coast towns of England should be bombarded, declared that such a method of warfare had been "disclaimed by the civilized portions of mankind." He was right, but it remained for the Germans to revive it in the year 1915.

The injunction of the Hague Convention that in sieges and bombardments all necessary steps must be taken to spare as far as possible buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and the like has been systematically disregarded by the German military commanders during the present war. The destruction of the University of Louvain with its library of priceless treasures; of many beautiful historic city halls, some of them dating from the middle ages; of the cathedrals of Rheims, Malines, St. Quentin, Soissons, and Arras; the ancient Cloth Hall at Ypres completed in 1304 and one of the most exquisite examples of Gothic architecture in Europe; the historic Chateau de Coucy built in the thirteenth century; and scores of other ancient historic edifices—some of which like the Cathedral of Rheims belonged not to France alone but were in a real sense the property of all mankind—is evidence enough of the manner in which the injunction of the Hague Convention has been respected.[1] Brand Whitlock, American minister to Belgium, in a report made to the Department of State in 1917, declared that the only institutions scrupulously respected by the Germans in Belgium were the breweries. It is only just to the Germans, however, to assume that in some instances it was impossible for them to spare churches and historic monuments situated as they were in the center of the towns or cities which they had a lawful right to bombard, and it may be true that in some instances church towers were, as they charged, used for purposes of military observation by the enemy, although these charges have been emphatically denied by the Belgian and French authorities. But even if we admit the validity of the German excuse that the immunity of certain edifices from bombardment had been forfeited by their use for military observation and that it was impossible to spare others because of their situation, what justification can they offer for the destruction of buildings of this character after their armed forces had gained possession of the towns in which they were situated and effectively established their authority over the population? In fact, most of them were destroyed or damaged not through bombardment from the outside but were burned by the Germans while they were in full possession and consequently when there was no military justification for destroying them. Some of them, like the Castle of Coucy, were wantonly destroyed as a measure of devastation before the

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[1] M. Malvey, French Minister of the Interior, in a report made by him in 1917 stated that 221 city halls of France had been damaged or wrecked by the Germans, 379 school buildings, 331 churches and 306 other structures of a public or semi-public character. Fifty-six of the buildings destroyed were classified as "historical" edifices. The number of such buildings destroyed or injured in Belgium was even larger.

retreat of the Germans and when no direct military object was subserved thereby. The war manuals of all countries condemn the destruction of such buildings except where it is absolutely required by the gravest military necessity.[1] Even the German manual declares that they must be spared and protected.[2]

CONCLUSION

Such are the theories of the German war manual and such are some of the more important points of divergence between it and the manuals of the United States, Great Britain, and France and the Hague Convention. The statement of the London *Times* that "it is the first time in the history of mankind that a creed so revolting has been deliberately formulated by a great civilized state" may seem a little severe, but it can at least be said that the doctrines of the German manual on many points are absolutely in conflict with the liberal and enlightened views of practically all jurists and text writers outside Germany, contrary to many of the rules agreed upon by the powers represented at the Hague Conferences and formally embodied in the Convention Respecting the Laws and Customs of War on Land, and out of harmony with the whole spirit and progress of modern civilization. As such, the manual has been justly condemned by American, Belgian, English, and French writers on the laws of war, almost without exception.

It is but just to say, however, that some of its provisions are irreproachable and entirely in accord with the letter and spirit of the Hague Conventions as well as the generally recognized customs and usages of civilized warfare. Thus the manual declares that belligerents are bound to respect the inviolability of neutral territory and that if a belligerent trespasses upon the territory of a neutral state the latter may resist such a violation with all the means in its power;[3] that an occupying belligerent is bound to respect the laws in force except where "imperative military necessity" requires alteration;[4] that occupation of the enemy's territory does not mean annexation of it;[5] that the law of nations no longer recognizes the right of pillage and devastation;[6] that private property in land warfare may be taken only for the needs of the army;[7] that libraries, churches, school buildings, museums, almshouses, and hospitals must be protected and that art treasures can no longer be carried off by an invader for the enrichment of his own galleries;[8] that the civil population of the enemy territory are not to be regarded, generally speaking, as enemies; that

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[1]Compare the American *Rules*, Art. 225; the British manual, Art. 133; and the French manual, Art. 65.
[2]Morgan, pp. 105, 169. The following from an article by Major General Disfurth published in the *Hamburger Nachrichten*, November, 1914, has been quoted as an example of the estimation in which historic monuments are held by German military commanders: "War is war and must be waged with severity. The commonest ugliest stone placed over the grave of a German grenadier is a more glorious monument than all the cathedrals in Europe put together. They call us barbarians. What of it? For my part I hope that in this war we have merited the title of barbarians. Our troops must achieve victory. What else matters?" Quoted by Sir Gilbert Parker in his book, "The World in the Crucible," p. 80.
[3]Morgan, p. 197.
[4]*Ibid.*, p. 181.
[5]*Ibid.*, p. 180.
[6]*Ibid.*, pp. 161 and 177.
[7]*Ibid.*, p. 170.
[8]*Ibid.*, p. 169.

they cannot therefore be injured, insulted, maltreated, carried away into bondage, or killed;[1] that the sick and wounded of the enemy should be protected and cared for; etc.[2] In fact, however, every one of these rules has been violated—some of them many times— by the German armies during the present war.

The German manual, therefore, must be studied not merely as a document but in the light of German practice in order to arrive at a just conception of the real German philosophy of the nature and objects of war and the means and instruments that may be employed in prosecuting it to a successful termination. One can no more obtain a true notion of this philosophy by confining his study to the text of the manual than he can understand the real character of the German government by reading the formal prescriptions of the constitution.

THE GERMAN CODE OF NAVAL WARFARE

Happily what is said above in criticism of the German manual of land warfare cannot be applied to the German manual for the conduct of war at sea.[3] The rules of the German prize code in respect to blockade, contraband, capture, search, and the destruction of prizes are quite in harmony with the generally recognized laws and usages of naval warfare. In the main they are literal reproductions of the corresponding rules of the Declaration of London, although there are some unimportant divergencies.

Before capturing a vessel, the prize code tells us, the commander must cause it to stop by means of a signal, he must then send aboard a searching party, its papers must be examined for the purpose of determining its nationality as well as the character and destination of its cargo, etc. If the examination establishes the liability of the ship or cargo to capture, a prize crew must be placed on board and the vessel taken in for trial by a prize court. Members of the crew who are subjects of a neutral state must be released without conditions.[4] Following the rules of the Declaration of London, the prize code allows the captor under certain conditions to destroy his prize instead of taking it in for adjudication[5] but it takes care to add that "before proceeding to a destruction of the vessel, the *safety of all persons on board*, and, so far as possible, of their effects, is to be provided for, and all the ship's papers and other evidentiary material of value for the formulation of the judgment of the prize court are to be taken over by the commander."[6] Regarding the destruction of neutral vessels for carrying contraband, the prize code expressly declares, following the Declaration of London, that such vessels may be destroyed

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[1] *Ibid.*, pp. 147-148.
[2] *Ibid.*, p. 115.
[3] The *Prisen Ordnung* of Sept. 30, 1909, and the *Prisen Gerichtsordnung* of April 15, 1911, together promulgated as a prize code on Aug. 3, 1914. Both have been translated into English by C. H. Huberich and Richard King and published under the title "The Prize Code of the German Empire as in Force July 1, 1915" (New York and London, 1915).
[4] Arts. 81-98.
[5] Art. 113.
[6] Art. 116. This humane requirement regarding provision for the safety of the crews and passengers is repeated in Art. 129.

only when subject to condemnation by a prize court; and it adds that they are not subject to condemnation unless the contraband on board constitutes more than half the cargo.[1]

As to blockades, the prize code lays down the universally accepted principle that a blockade to be legal must be effective,[2] that is, it must be maintained, in the language of the prize code, by a "cordon" of ships off the blockaded ports,[3] and that, when vessels are destroyed by the captor for breach of blockade, provision must be made for the safety of the persons on board.[4] Finally, the prize code in accordance with Conventions No. X and XI of the second Hague Conference declares that hospital ships and vessels engaged on missions of philanthropy and relief are exempt from capture, and of course from destruction.[5]

GERMAN METHODS OF WAR AT SEA

These rules are beyond criticism; unlike so many of those in the German manual of land warfare they conform to the requirements of the great international Conventions as well as the best usage of modern naval warfare. Unfortunately, however, German practice during the present war has been in flagrant contradiction to them. The requirement that vessels shall be searched, their nationality verified, and their liability to capture established before destruction, has rarely been observed by German submarine commanders. Their examination has usually consisted of nothing more than a long distance view through a periscope, under circumstances which make it impossible for the commander to determine the destination of the ship or the character and destination of the cargo. Hundreds of neutral vessels, more than a thousand altogether, have been torpedoed, in most cases, for carrying contraband, yet there appear to be few or no instances in which the destroying commander stopped the vessel, inspected its papers, or examined its cargo—this in the face of the rule of the German prize code that a vessel may not be destroyed for carrying contraband unless it is liable to condemnation by a prize court and unless the contraband goods constitute more than half the cargo. How it is possible for a submarine commander peering through the narrow slit of a periscope to determine the character of a cargo in the hold of a distant ocean liner, much less to determine what proportion the contraband goods, if there be any, bear to the total cargo, has never been explained.

The provision of the German prize code that the captor shall make provision for the safety of all persons on board before destroying the vessel has, as is well known, been ruthlessly disregarded. Ocean liners by the hundred have been torpedoed by German submarines sometimes without a word of warning, sometimes with warn-

[1] Arts. 41 and 113a.
[2] Art. 59.
[3] Arts. 76, 77.
[4] Arts. 78, 113.
[5] Art. 5.

ing entirely insufficient to enable the crews and passengers to take to the life boats. Even when provision was made for the safety of those on board, it consisted of nothing more than placing them in small life boats, frequently in rough weather, sometimes hundreds of miles from land, leaving them to drift about for many days exposed to the rigors of winter, to suffer the tortures of thirst and hunger, and often to be washed overboard and drowned in the seas which they were innocently traversing and for the freedom of which the German government pretends to be fighting. According to official British returns published in March, 1918, 12,836 noncombatants of British nationality alone, including many women and children, had lost their lives in consequence of this method of warfare.[1] Down to May, 1918, the toll taken in this way of Norwegian ships and seamen amounted to 755 vessels and 1006 lives, not counting 700 men on 53 missing vessels most of which are now regarded as lost.[2]

Notwithstanding the rule of the German prize code that for a blockade to be legal a "cordon" of vessels must be stationed off the blockaded coasts and ports so as to make the blockade effective, the German government pretends to have established a lawful blockade of England by means of the submarines, which, of course, by reason of their number and character, are incapable of maintaining a blockade. Such a blockade is very much like the expedient of a police commissioner who without having a sufficient number of officers at his disposal to close a street depends upon the occasional dash of a policeman upon the scene who shoots innocent bystanders and trespassers alike. There in no formality of search, no notification, no adjudication. The whole procedure is like ambushing a man and sending him to his death without warning and without a trial.

DESTRUCTION OF HOSPITAL AND BELGIAN RELIEF SHIPS

In a similar manner the immunity of hospital ships and vessels engaged in charitable work, proclaimed by the German prize code in its very first chapter, has been deliberately overridden again and again by German submarine commanders. On October 26, 1914, the French steamer *Amiral Gauteaume* with 2500 Belgian refugees who were being transported to England from their stricken country was deliberately torpedoed by a German submarine without warning and without excuse. The French government justly characterized the act as the "murder of inoffensive individuals" and asserted that "never before in the most barbarous times had a crime comparable to this been committed."[3] Among hospital ships similarly torpedoed were

[1] *New York Times*, March 14, 1918. See also an address by Wesley Frost, United States Consul at Queenstown, published in the London Weekly *Times* of Dec. 7, 1917; also his despatch to the Department of State, text in *New York Times* of April 23, 1917. Mr Frost, who saw hundreds of the rescued victims, gives many harrowing details of the sufferings which they endured. See also a book by Alfred Noyes entitled "Open Boats" (New York, 1917) and a very frank and illuminating account by a German submarine commander in his book entitled "The Journal of a Submarine Commander" (English translation by Russell Codman, Boston, 1917).

[2] Despatch from the Norwegian Foreign Office published in the *New York Times*, May 7, 1918.

[3] *Revue Générale de Droit International Public*, July-Oct., 1915, Docs. p. 112.

the *Asturias* (31 persons lost their lives), the *Anglia* (with a loss of 100 lives), the *Britannic* (about 50 lives being lost), the *Bremer Castle*, the *Gloucester Castle*, the *Donegal*, the *Lanfranc* (75 lives lost), the *Stephano*, and others. Every one of these vessels bore in conspicuous letters the Red Cross markings which at night were highly illuminated. In some cases the excuse given by the German government was mistake; but in January, 1917, the German government threw off the mask and announced that in the future all British and French hospital ships would be regarded as vessels of war and would if encountered in the war zone be sunk without warning[1]—this on the pretext that the Entente hospital ships were engaged in transporting troops and munitions of war. The British and French governments emphatically denied the charge and caused the attention of the German government to be called to the provision of the Hague Convention which allows belligerents to stop and search hospital ships and to verify any suspicions which they may have that the Red Cross privilege is being abused. But German submarine commanders apparently did not care to take the trouble to observe this humane requirement of the Convention and they continued to sink every hospital ship which they pretended to suspect of misusing the Red Cross flag, without making any effort to verify their suspicions by an examination. There is no evidence that one of the ships thus torpedoed was ever employed for any other purpose than the transportation of the sick and wounded and the neutral world has accepted the denial of the British and French governments as a truthful statement of facts. The decree of January, 1917, was justly regarded in America as the climax of German savagery in its methods of submarine warfare.

Many relief ships engaged in the transportation of food and other supplies to the stricken people of Belgium, and equally protected by both the Hague Conventions and the German prize code, were similarly treated. The *Harplyce*, the *Ulriken*, the *Otamas*, the *Tokomaru*, the *Hendron Hall*, the *Friedland*, the *Storstad*, the *Lars Fostenes*, the *Haelen*, the *Tunisie*, the *Hinghorn*, the *Camilla*, the *Trevier*, the *Anna Fostenes*, the *Euphrates*, the *Ministre de Smet*, the *Festein*, and various others whose names were not given in the press despatches were some of the victims. Every one of them bore in huge letters the markings of the Belgian Relief Commision, and what is more, every one carried a safe conduct issued by authority of the German government. In a few cases the excuse alleged was mistake, which could have been avoided had German submarine commanders taken the trouble to observe the formality of search and verification which the German prize code itself requires. In most cases, however, the pretext put forward was the same as that alleged in justification of the sinking of hospital ships: namely, that they were engaged in carrying troops and munitions, and in some instances they

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[1]Memorandum of Jan. 29, 1917, to the American government for transmission to the governments of Great Britain and France.

were even charged with attacking German submarines. How submarine commanders, in view of their practice of destroying without searching and verifying the character of the cargoes carried by their victims, could have known that the vessels in question had on board troops and munitions is not apparent. Most of the relief ships thus destroyed were in fact of neutral nationality and could have had no motive in transporting troops or munitions for either belligerent. No evidence was ever offered in support of the charges made by the Germans, and the vigorous denial of the officials of the Relief Commission may be taken as an absolutely truthful statement of the facts.

Such is the manner in which German naval commanders have respected the rules of their own prize code promulgated by the German government on August 3, 1914. It is hard to see how it can be reconciled with the noble utterance of Germany's great diplomat, Marschall von Bieberstein, at the second Hague Conference: "The officers of the German Navy, I loudly proclaim it (*je le dis à voix haute*), will always fulfill in the strictest fashion the duties which emanate from the unwritten law of humanity and civilization. As to the sentiments of humanity and civilization, I cannot admit that there is any government or country which is superior in those sentiments to that which I have the honor to represent."[1]

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[1] *La Deuxième Conférence de la Paix, Actes et Documents*, T. III, p. 382.

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