

LAW AND USAGE OF WAR

The Provisions of Dr. Lieber's General Orders One Hundred.

There has been much talk recently about General Orders 100, some of which are much of it foolish, for although this celebrated order has been accepted as sound international law for more than a generation and has been the acknowledged rule of conduct for the armies of the civilized nations of the world, the conditions under which it came into being have so long been matters merely of reminiscence in the United States that most men either never knew or have forgotten about it.

The civil war called into the field on both sides so many unversed in the science and rules of warfare, especially in the United States, that there resulted in the first two years of fighting some very curious and contradictory decisions and rulings on questions of international law. In 1863 this state of affairs having reached something like a crisis, Secretary of War Stanton asked Francis Lieber, then professor of history and political economy in Columbia college, to prepare a code of instructions for the government of armies in the field.

Professor Lieber drew up a set of rules, which was submitted to a board of army officers and approved. It was then published to the entire army as general orders 100 by the adjutant general's office, and from that day to this has been the rule of conduct for our army.

More than that, it has been accepted by the modern authorities as the substantial basis of the present works upon the subject. Minutichil, one of the most celebrated writers upon the usage of war, made this order the basis of his elaborate work.

It would require more than a page, says the New York Sun, to give this order in full, but its more salient points, especially those invoked by our commanders in the Philippines, can be reviewed in much less space.

Martial law, says Professor Lieber, is the immediate and direct effect and consequence of occupation or conquest; it consists in the suspension of the criminal and civil law and the substitution of military rule and force for it.

The presence of a hostile army proclaims martial law. Its most common way is allowed when face to face with the enemy. It extends to property and to persons.

The law of war disclaims all cruelty, all tortures or any kind of inhumanity; all acts of private revenge or enmity; all acts of private violence or of enmity against the modern usages of war.

It admits of all direct destruction of life or limb of armed enemies and of other persons whose destruction is inevitable in the armed contest of the war; it allows the capture of every armed enemy and of every enemy of importance to the hostile government or of peculiar value to the captor; it allows all destruction of property and withholding of sustenance or means of life from the enemy; the appropriation of whatever the enemy abandons for the subsistence and safety of the army; and permits such destruction as does not involve the breaking of good faith.

An enemy may be ordered put to death if within three days after capture it is discovered that he belongs to a corps which gives no quarter. Unnecessary or revengeful destruction of life is not lawful. Modern war usages permit no violence against prisoners in order to extort information or to punish them for having given false information.

Men who commit hostilities, whether by fighting or by raids of any kind, without being part of the organized hostile army and without sharing continuously in the war, but who intermittently return to their homes, or occasionally assume the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers, are not entitled to the treatment of prisoners of war, but shall be treated summarily as highway robbers or pirates.

War rebels are persons within an occupied territory who rise in arms against the occupying or conquering army or against the authorities established by the same. If captured they may suffer death, whether they are singly or in large or small bands, or whether they are called upon to do so by their own, but expelled, government or not. They are not prisoners of war; nor are they if discovered and secured before their conspiracy has matured to an actual rising or to armed violence.

All intercourse between the territories occupied by belligerent armies, by traffic, letter, travel or in any other way, ceases. Contraventions of this rule are highly punishable.

A spy is a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy. He is punishable with death by hanging whether or not he succeeded in obtaining the information or in communicating it to the enemy.

A war traitor as a person in a district under martial law who, unauthorized by the commander, gives information of any kind to the enemy or holds intercourse with him. He is always severely punished. If his offense consists in betraying to the enemy any thing concerning the condition, safety, operations or plans of the troops of occupation his punishment is death.

If the citizen of an invaded country gives information to his own government from which he is separated by the hostile army or to the army of his government, he is a war traitor and death is the penalty. If a citizen of an invaded district voluntarily serves as a guide for the enemy, or offers to do so, he is a war traitor, and shall suffer death.

The law of war, like the criminal law regarding other offenses, makes no difference because of sex, concerning the spy, the war traitor or the rebel. Prisoners of war may be released by exchange or parole. The parole is the pledge of individual good faith and honor to do, or to omit doing, certain acts after he who gives the parole shall have been wholly or partly released from the power of the captor. Breaching parole is punishable by death.

The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen, or a subject of the hostile government, an outlaw who may be shot without trial by any captor, but only by the modern law of peace allows such international outlawry; on the contrary, it abhors such outrages.

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