

0.120001851



Notes on the Laws
and Customs of War

By Ambrose Pratt

Written for the Australian
Imperial Force
1914

By Authority:
Albert J. Mullett, Government Printer, Melbourne

INTRODUCTORY.

The British Empire is making war against German soldiers, not against peaceful German citizens.

The only legitimate object which British and Australian soldiers should endeavour to accomplish during the war is to weaken the military forces of the enemy.

The modern view of war is that war is a contest between the armed forces of the belligerent countries. This principle has been adopted by all civilized nations in a code of regulations drawn up and subscribed to, at The Hague in 1899 and again in 1907; and all the contracting nations have agreed to regard the code as embodying the laws of war.

It is the bounden duty of soldiers to observe the code.

Civilians—men, women and children—were in olden times at the mercy of an invading army. This cruel doctrine has been abolished. Under the modern laws of war, civilians are entitled to enjoy security for their persons and property so long as they shall remain quiescent and refrain from hostile attempts against the invading troops.

In the following pages will be found the Articles of War which especially affect the private soldier, and which prescribe the rules of conduct which it is the obligation of all Australian soldiers to follow while engaged on active service abroad.

To each Article notes are appended amplifying the Article and giving useful hints and explanations.

Every soldier of the Australian Expeditionary Force is earnestly recommended to lay the instructions herein provided to heart, for the reasons following:—

- (1) Every Australian soldier has confided to his keeping the honour of Australia.
- (2) The wrongful act of any Australian soldier would not merely disgrace himself, it would involve his country and make Britain liable for payment of compensation. It would also render the whole British Army liable to reprisals in kind on the part of the enemy.
- (3) Article III. of the Convention makes every belligerent country penally responsible for all breaches of the laws of war committed by any persons forming part of its armed forces.

It is, therefore, apparent that it is within the capacity of every individual unit of the Australian Expeditionary Forces to put a stain of lasting infamy upon the good name of the Commonwealth.

In order that no soldier should sin in ignorance, it is imperative that all our troops should make a serious study of the rules of behaviour enjoined upon them by the laws of war.

ARTICLE XXIII.

It is especially forbidden—

- (a) To employ poison or poisoned weapons.
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army.
- (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion.
- (d) To declare that no quarter shall be given.
- (e) To employ arms, projectiles or material calculated to cause unnecessary suffering.
- (f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention.
- (g) To destroy or seize the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of the war.
- (h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country even if they were in the belligerent's service before the commencement of the war.

Note.—

Explosive bullets must not be used; and soldiers are expressly forbidden to mark, or pierce, or cut their bullets with the object of causing them to expand or flatten on impact with the human body.

Hand grenades do not come under the prohibition of explosive bullets.

The poisoning of springs, or wells, or rivers, and the deliberate spreading of infectious diseases are penal offences.

The prohibition against killing or wounding "treacherously" applies to all acts of assassination or perfidy. Stratagems and ruses are allowable, but they must not be of a treacherous nature. It is the essence of treachery that the offender assumes a false character by which he deceives and overcomes his enemy in a manner that could not have succeeded had he worn his true colours. A concrete instance of treachery is when a man throws up his hands in token of surrender, and then seizes his rifle again and shoots his trusting enemy. The offence of treachery is punishable with *death by hanging*.

Quarter must be given a defenceless enemy. If it be impossible to retain prisoners, they must be released. To kill a prisoner who cannot be retained is murder in the first degree.

The hoisting of a white flag protects the force which hoists it, but that force only. It must be respected. Soldiers, however, need not pay any heed to the hoisting of a white flag in the midst of an action by a few men who form part of a large force which still resists.

It is still the stern rule of war that a flying foe may be pounded by artillery and pitilessly cut down by charging cavalry. If any part of a flying enemy would save itself under Article XXIII., the fugitives must separate themselves from the rabble, throw down their weapons and hoist a white flag.

It is unlawful to menace with extermination a garrison which obstinately defends a fortress.

It is unlawful, under any circumstances, to kill a wounded enemy who has laid down his arms.

The assumption of an enemy's uniform or flag, even before a battle, is a violation of the laws of war; and in case of capture would justify the enemy in summarily executing the offenders.

The use of civilian dress by belligerent soldiers as a disguise to further the execution of some hostile act is forbidden, and captured offenders may be legally executed by the enemy.

The soldiers of an invading army are expressly forbidden to demand any sort of military aid either from the civilian population of the invaded country or from prisoners of war. To compel an enemy to serve against his country is a violation of the laws of war.

Private soldiers are forbidden to forage on their own account in the enemy's country, and any act of forage unauthorized by their commanding officer is a theft.

Troops who fight in the uniform of the enemy without any plain, striking and uniform mark of distinction of their own can expect no quarter, and no quarter need be given them.

The use of the enemy's national standard flag, or other emblem of nationality, for the purpose of deceiving the enemy in battle, is an act of perfidy by which they forfeit all claim to protection by the laws of war.

ARTICLE XXVIII.

The pillage of a town or place, even when taken by assault, is prohibited.

Note.—

Article XXVIII. forbids pillage of a locality. It must be read, however, in conjunction with Article XLVII., which especially forbids pillage generally. Now, what is the precise meaning of pillage? The British Manual defines it as loot or plunder or "booty which is not permitted." In this connexion it is important to remember that the British Army Act, section 6, prescribes the *death penalty* for the following offences committed by a soldier on active service:—

- (1) Leaving his commanding officer to go in search of plunder.
- (2) Committing any offence against the property or person of any inhabitant of or resident in the country in which he is serving.
- (3) Breaking into any house or other place in search of plunder.

It will be seen, then, that pillage is not merely prohibited by the International Laws of War; it is expressly constituted a capital offence by the law of

Britain. War necessity may demand that the Australian troops may be commanded to lay waste a section of the enemy's territory, and to clear the country of supplies, but devastation is not pillage. The essence of pillage is the appropriation of private property for the enrichment of the individual captor.

Devastating operations are conducted simply as a means towards overcoming the resistance of the enemy's armed forces. It is always permissible for an army to appropriate the spoils of war on the field of battle, for instance, that which consists of horses, munitions, arms, cannon, &c.

It is only the booty gained at the cost of private property that is forbidden by the laws of war, and it may be laid down as a fixed general rule that it is only Government property in the possession of the enemy's forces that is legitimately confiscable.

The Australian soldier will do well to make up his mind never to engage in any act of seizure or destruction of private property except in company and under the express orders of his officers. Thus he will protect himself from punishment, and uphold the reputation of Australia. He must never forget that the marauder has no place in civilized warfare, and that the penalty of death hangs over the head of every soldier guilty of any breach of Articles XXVIII. and XLVII.

ARTICLE XXIX.

A person can only be considered a spy when acting clandestinely, or on false pretences he obtains, or endeavours to obtain, information in the zone of operations

of a belligerent with the intention of communicating it to the hostile party. Thus, soldiers not wearing a disguise, who have penetrated into the zone of operations of the hostile army for the purpose of obtaining information are not considered spies. Similarly, the following are not considered spies:—Soldiers and civilians carrying out their mission openly, intrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belong also persons sent in balloons for the purpose of carrying despatches and generally of maintaining communications between the different parts of an army or a territory.

ARTICLE XXX.

A spy taken in the act shall not be punished without previous trial.

ARTICLE XXXI.

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

Note.—

If a civilian living in territory which has been occupied by an invading army gives information to his own side, he becomes a spy, and may be dealt with accordingly.

Private soldiers are forbidden, in any circumstances, shooting spies, even though caught red-handed.

If a spy be captured in the act of spying, he is entitled to a trial before he can be punished. The duty of private soldiers who have captured a spy is to take the prisoner to their commanding officer.

Spying is not necessarily dishonorable. The spy is a brave man who is risking everything to serve his country. Every army employs spies, and our soldiers should remember that if they were to treat the enemy's suspected spies with unwarranted severity, they would thereby entitle the enemy to inflict reprisals on British scouts and soldiers caught in suspicious circumstances in the enemy's zone of operations.

Balloonists, aeroplanists, and persons scouting in airships are not spies. If taken, they must be treated as ordinary prisoners of war.

ARTICLE IV.

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings except arms, horses and military papers, remain their property.

Note.—

The individual soldier has no longer any rights of disposition over the person or personal property of the captive of his bow and spear—the ancient prerogative and perquisite of the warrior. The arms, horses and military papers of prisoners of war belong to the Commander-in-Chief of the captor as representing the national Government, but not to the individual captor.

Prisoners may be searched for military papers, but their purses, money, jewellery, &c., must be restored to them; and they should not be subjected to any avoidable indignity. It is the duty of the soldier to treat prisoners with humanity; and it is expressly forbidden to execute prisoners even if there be a pressing danger of their rescue—unless the prisoners themselves take part in the combat and attempt forcibly to escape.

ARTICLE XLIV.

A belligerent is forbidden to force the inhabitants of territory occupied by him to furnish information about the army of the other belligerent, or about its means of defence.

Note.—

This Article forbids soldiers endeavouring to compel the civilian population of an invaded country to supply them with information the giving of which would make the said civilians traitors to their own side. The inhabitants of an occupied territory may be asked for information; but threats or force should not be employed if they refuse.

ARTICLE XXV.

The attack or bombardment by any means whatever of towns, villages, habitations or buildings which are not defended is forbidden.

Note.—

This Article is intended to protect from violation the dwelling-places of all the civilian inhabitants of an invaded country who do not resist the invading army.

If an undefended or unfortified town, village, or building resists the invader it forfeits its privileges, and it may be attacked and destroyed; but an unprovoked attack upon any such town, village, or building is a military crime.

ARTICLE XLVI.

Family honour and rights, the lives of persons and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

Note.—

If our soldiers invade and occupy the enemy's country they must regard the civilian population, while it remains quiescent, as under the protection of their honour.

They must refrain from all acts of spoliation. They must pay for all they require, and they must not oblige any person to sell to them by force. They must treat the men courteously, and the women and children chivalrously. They must remember always that they are not invading the enemy's country to hurt private citizens, but simply in order to weaken the enemy's military strength, and thereby to bring the war to a close. The quarrel of our soldiers is not against the enemy's passive civilians, but merely against those who oppose them by force.

ARTICLE LI.

No contribution shall be collected except under a written order, and on the responsibility of the Commander-in-Chief.

For every contribution a receipt shall be given to the payer.

Note.—

This Article forbids the soldiers of an invading army to levy upon the enemy's civilian population—even for food—except by virtue of the express authority of the Commander-in-Chief.

ARTICLE XXVII.

In sieges and bombardments all necessary steps should be taken to spare, as far as possible, buildings devoted to religion, art, science, and charity, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not used for military purposes.

Note.—

This article explains itself; but it may be added that it imposes on every private soldier a particular obligation to abstain from all acts of vandal destruction or desecration, of religious, educational, municipal and national edifices, and to treat all public buildings as sacred from injury or disfigurement. It would be a lasting disgrace to the country of an invading army if in the course of the invasion its troops were to mark their passage by damaging or disfiguring the architectural monuments and memorials of the enemy.

ARTICLE XXI.

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.

Note.—

The Geneva Convention provides that all wounded and sick who have ceased to resist must be protected and treated with all possible humanity. They are, of course, prisoners of war.

Soldiers who pillage, rob, or maltreat wounded or sick enemies incur the penalty of death.

It is the duty of commanders after a battle to search for the wounded of both sides, and to succour and protect them.

Cruelty to the enemy's wounded is rightly regarded as the most abominable of all military offences.

All medical units and establishments, hospitals, ambulances, &c., must be respected and protected by the belligerents.

It is a military crime to fire on the enemy's medical establishments; but the protection to which they are entitled under the laws of war ceases if they are made use of to cover hostile measures. The *personnel* of the enemy's army exclusively engaged on medical and sanitary service must be respected and protected in all circumstances; and they cannot be retained as prisoners of war.

The protection afforded to the medical and sanitary *personnel* of the enemy is contingent, however, on their not acting in a hostile manner to the interests of the other side.

If a doctor or other medical unit fights in battle, he forfeits all right to protection and may be shot like any other soldier. And if he is caught giving secret information to his own side, he may be treated as a spy.

The property and material, stores, drugs, &c., of the enemy's medical *personnel* is inviolable, and cannot even be requisitioned for temporary use if it be captured. It must be restored forthwith upon demand.

The Red Cross insignia and flag must be everywhere and at all times respected and protected. It is a crime to fire on a Red Cross train; and the wearing of the Geneva emblem entitles its bearer to protection and respect.

It is a capital crime for a combatant soldier to use the Geneva flag or emblem as a cover for hostile operations. The distinctive flag of the Convention is a red cross on a white ground. It may only be legitimately hoisted over the medical units and establishments which are entitled to be respected under the Geneva Convention. It must not be hoisted over civil hospitals. *Individuals are protected by the "brassard" or badge.* Individuals belonging to a medical unit of the enemy wearing the badge are liable to be shot if they approach a position our army desires to keep secret and do not halt when commanded.

All unauthorized uses of the Red Cross are forbidden, and are punishable with summary execution.

ARTICLE XXXII.

A person is regarded as bearing a flag of truce who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability as well as the trumpeter, bugler or drummer, the flag-bearer and interpreter who may accompany him.

Note.—

It is the duty of all soldiers and sentinels, when a person or a company of five or six persons (no more) advances from the enemy's lines carrying a white flag, to treat such person or persons as sacred. The bearers of the flag of truce may be blindfolded if thought necessary, but they must not be otherwise subjected to indignity; and they should be at once conveyed to the Commanding Officer.

The envoy can only lose his right of inviolability if it is proved clearly and incontestibly that he has taken advantage of his privilege to act as a spy, or to commit any other act of treachery.