

Norms on Organization and Conducting War

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The Law of War is also defined as a set of customary and conventional norms on the organization and development of military actions. In this respect, *the Law of War is meant to reduce to the minimum* the damages and the negative effects that armed conflicts bring about.

From earliest ages, there were elaborated certain rules on declaring war, conduct towards prisoners, the utilization of war capture, putting an end to hostilities and concluding an armistice etc. Thus, for instance, "Manu's Laws" from the XII-XI centuries B.Ch., contained a set of norms on the methods of conducting war and on the individuals these wars were waged against. By means of these rules it was forbidden to use bows with poisoned arrows or to attack defenseless persons. Peace treaties signed between Sparta and Athens in 446-445 and 421 B.Ch., included stipulations with regard to arbitrage and mediation used for finding a solution to conflicts regarding frontiers, trade etc. between the two parties. Regulations on finding solutions to litigation by peaceful means are to be found in the Roman Law. Thus, the Roman Senate and a certain Sacerdotal College (The Fecials' College) were conferred important competencies in the regulation of certain conflicts.

Later on, during Middle Age, Church had an appreciable influence in the elaboration of certain norms on methods of conducting wars. In 1139 the Concilium from Lateran prohibited the use of bows and arrows. In Spain, during the reign of King Alfons (1256-1263), the Code of the seven parties (*Codigo de las siete partidas*) has been elaborated. There were also issued rules concerning the wounded, war prisoners and the civil population. As for solving conflicts, we may find important norms in the 1162 litigation between France and Prussia, which was submitted to an arbitrary court, made up

of arbiters from both countries. The mediation is mentioned in the Treaty signed between Carol VI, king of France, and different Swiss cantons.

Following the Westfal Peace (1648) that put an end to religious wars, the *principle of necessity* is elaborated. It does not recognize in belligerents an unlimited liberty as to the means of using force. This principle asserts the obligation of ending hostilities in the moment that victory is gained over the enemy, and rejects the conception – widely spread those days and in earlier times – of complete annihilation. Some *humanitarian* principles enhance simultaneously, such as those promoting the circumcision of forms of violence in wartime by avoiding needless severity.

Historical analysis let us notice that during the evolution from the Law of War to the Law of Peace it has been registered important progress with the elaboration of international documents. Thus, in 1856, the Declaration of Paris prohibited corsairs to rob merchant ships in time of war, while by the 1854 *Geneva Convention* humanitarian norms are promulgated with regard to wounded campaign soldiers. Jean Henri Dunant and G. Moynier, both of Swiss origin, had an extremely important role in the elaboration of this convention. They insisted upon the necessity of settling some adequate rules on the sick and the wounded, and sanitary service within campaign armies. The positive attitude of the Swiss government regarding this subject was reflected in the conditions created for the convocation of the 1864 Geneva Conference, with a view to the adoption of the above-mentioned Convention¹.

Later on, by the 1868 *Declaration of St. Petersburg* it has been forbidden the use, in time of war, projectiles of less than 400 gr., which are explosive or charged with fulminating or inflammable substances, on account of the abidance to certain humanitarian demands

during the proceedings of military operations. The Declaration of St. Petersburg sanctions, at the same time, that "the only legitimate end that States may have in war be to weaken the military strength of the enemy". The laws of war do not recognize in belligerents an unlimited liberty as to the means of injuring the enemy, thus aggravating uselessly the sufferings of people taken out from battle, by making their death unavoidable. The most notable provisions with regard to the initiation of military hostilities, war by land, by sea or by air as well as regulations concerning the cessation of "the state of war are set down in the 1899² and 1907³ Conventions of Hague, the Protocol of Geneva signed on the 17th of June 1925⁴, the 27th of July, 1929 Conventions of Geneva⁵, in the Protocol of

London, made up on the 6th of November 1936⁶, the 12th of August,⁷ 1949 Conventions of Geneva as well as in the Convention and Protocol of Hague signed on the 14th of May 1954⁸.

The analysis of the Law of War viewed as a set of norms on starting hostilities as well as their proceedings on land, by sea and air constituted the object of several studies, research⁹ and ample scientific syntheses¹⁰ which underlined the role that these regulations played in restraining the best possible the ominous effects of war¹¹. There is no doubt that the multiplication of rules on organizing and conducting war has a particular significance in presenting not only the theatre of war but also the responsibilities of those guilty of not having abided to the rules and norms of war.

a. Norms on initiation of war

According to the laws and customs of war, hostilities may get started by means of: war declarations; proclamation or manifesto; ultimatum or by committing an armed attack.

From earliest times it has been claimed that a public notice was needed for starting hostilities. Moreover, it has been stressed that the absence of such a notice was an act of injustice that ran counter to the rules and customs of a just war. In his work, *On Duties*, Cicero showed that "the laws of war were given prominence within the fetial law of the Roman people. Therefore, it proves that *just is only the war initiated* only after having presented its revendications¹², following a notice or declaration"¹³. According to Titus Livius' opinion, war should be waged "openly on grounds of a previous declaration"¹⁴. He believed in the significance of the solemnity this act would imply¹⁵.

The notice made on starting hostilities is "fair and advisable to occur"¹⁶ in order to offer, this way, one more try to escape war¹⁷. In demonstrating in details the necessity and importance of war declarations, Hugo Grotius showed that "natural law does not require any notice for the circumstance in which someone *defends against aggression* or has in view to punish the one who is guilty, indeed"¹⁸. Thucydides – promoting the same point of view – claimed that in such situation it was needed to act "at once and using all power"¹⁹, while Dion Hrisostom, in *Speech to the inhabitants of Nicomedia*, showed that most wars were started

without any previous notice, making reference to Plato's thesis that stated that a war initiated to reject an aggression *was not declared by a representative but by nature itself*²⁰.

As known, in practice, wars have often started without any express declaration made in this respect. It has been considered that, if not found any solution to the litigation by means of negotiations it became possible to resort to war without any previous declaration, especially in situations when diplomatic relations were broken. There are several authors that claim the need to declare war in such situations as well²¹. According to the *(Hague) Convention on starting hostilities*²², in law it is statuted that "contracting forces recognize that hostilities between states *should not start without a previous and fair warning*, which should appear either under the form of a motivated declaration of war or an ultimatum with a conditional declaration of war" (art. 1). It is specified that state of war "will have to be notified, without delay, to neuter Powers and it will not have any impact on them only after the receipt of a notification that may be made even telegraphically". Nevertheless, the Convention statutes that neuter States "could not invoke absence of notification if proved, beyond any doubt, that in fact, they knew about the state of war" (art.2). On the grounds of the Convention, *the ultimatum* – in order to tantamount a declaration of war – has to qualify, that is, to indicate precisely that if required conditions are not met there will be recourse to war.

In the light of the UN Charter, starting military hostilities regardless the way it is done – should it be by means of a declaration, proclamation or ultimatum –, means recourse to force or threat by force, while the Charter of the World Organization forbids such actions.

Notice made on the initiation of war is not needed any longer, provided it is the case of a war of self-defence. In this situation, counteracting the aggressor has to be prompt and

efficient, the victim-state having the difficult mission of rejecting aggression – firmly condemned by the norms of international law.

Nowadays, on account of the evolution of military technique – preventing war *by surprise* represents a requirement of greatest importance. The most certain way to attain this major goal is putting an end to arms race, achieving general and total disarmament as well as ridding society of warfare.

b. War on land

Over years, war on land was submitted to certain rules and customs on account of the specific features of armed conflict the type.

The promotion of certain norms with regard to conducting war on land aims to settle practical modalities limits of operations implied by conflict on land. In elaborating and adopting norms in this field, state representatives made this option starting from the premises that "while searching means for peace maintenance and the prevention of armed conflicts between nations, it is, however, important to consider the situation in which resort to weapons were the consequence of incidents that could not have been avoided"²³. In the conception of the participating states in the (Hague) Convention on the laws and customs of wars on land²⁴, the promulgation of clear norms in this field serves "the interests of humanity and the constantly progressive demands of civilization" (al. 2 preamble). Therefore, the revision of general laws and rules of war states were estimated as being necessary "either in order to define them with more accuracy or to trace certain limits to them in order to reduce of their severity as much as possible" (al. 3 preamble)²⁵. In the past, it has been considered that the end justified the means with gaining victory. In Homer's vision, enemy has to be damaged "openly by means of sly tricks"²⁶. It is the same vision with Plutarh²⁷, Agesilaus²⁸ and Virgil. For instance, the habit of poisoning arrows and, thus, doubling the causes of death is mentioned by Ovid related to Geta, by Lucan with Parthians, by Silius with Africans. Furthermore, Titus Livius when making reference to different violent means used in war, he showed that everything done against enemies "is justified by

the Law of War"²⁹. Concomitantly, opposing opinions developed gaining more and more ground. Thus, for example, Cicero thought that it should be done away with "all pretence and concealment"³⁰ while Josephus showed that law ought attend even to "war prisoners, keeping them safe from harm and violence"³¹. Limiting violent means used in war constituted the object of several international debates³² and some works of speciality³³. It was approached more thoroughly within the 1874 Conference of Brussels and within the 1899 Debates of Hague, which ended in the adoption of a new general regulation concerning wars on land³⁴. The New Convention – 1907 – developing the provisions of texts adopted in 1899, aimed to "lessen the sufferings of war as far as military necessities allow it", by elaborating general norms on the relations between belligerents and their relation with populations" (al. 5 preamble). The concrete aspects of war on land were settled by the Regulation concerning laws and customs of war on land³⁵, its stipulations constituting the substance of the 1907 Hague Convention. This regulation stipulates the statute and obligations of belligerents to use only certain methods of conducting war (cap. I), specifies principles of conduct with regard to war prisoners (cap. II)³⁶, the sick and the wounded (cap. III), defines military occupation and settles the rules on exercising military authority upon occupied territories (section III).

The efforts of nations to restrain the means of waging war found an eloquent expression in the regulations adopted in Geneva 17 June 1925 by *Protocol on Prohibiting Asphyxiating and Deleterious Gases or any Other Bacteriological Weapons*³⁷.

c. Norms on Maritime War

Maritime war has been submitted to regulations recognizing the necessity of more effectively ensuring the equitable application of law to the international relations of maritime Powers in time of war³⁸ by pointing out methods of conducting armed conflict at sea. In the elaboration of rules on maritime war it is also to be noticed, as with norms regulating war on land, the tendency of not allowing the use of all possible means to produce damages to the adverse party³⁹. By the *1856 Declaration of Paris*, important laws are settled on the protection of vessels and neuter goods and there are also stipulated regulations by which the conditions and character of maritime blockade is specified with particular regard to the protection of neuter merchandise ships.

The most ample provisions on maritime war were adopted in 1907⁴⁰, on the occasion of the second Hague Conference. It specified the status of enemy merchant ships at the outbreak of hostilities⁴¹, issued norms on turning merchandise ships into men-of-war⁴², on placing contact submarine mines⁴³ and norms relative to bombardment by naval forces in time of war⁴⁴. By the Convention said, there have been settled certain restrictions in exercising to the right to capture during time of war at sea⁴⁵. Thus, for instance, "vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo" (art.3). Due to previous experience, it has been statuted that "they cease to be exempt as soon as they take any part whatever in hostilities" (al. 2 art. 3). Moreover, "The Contracting Powers agree not to take advantage of the harmless character of the said vessels in order to use them for military purposes while preserving their peaceful appearance" (al.3 art.3). Furthermore, "vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture" (art.4).

There are also restrictions regarding the crews of enemy merchant ships as citizens of a neutral State. In conformity with Hague Convention, "when an enemy merchant ship is captured by a belligerent, such of its crew as are

nationals of a neutral State are not made prisoners of war" (art.5). The same rule applies in the case of the captain and officers likewise nationals of a neutral State, if they promise formally in writing not to serve on an enemy ship while the war lasts (al.2 art.5). Moreover, the captain, officers, and members of the crew, when nationals of the enemy State, "are not made prisoners of war, on condition that they make a formal promise in writing, not to undertake, while hostilities last, any service connected with the operations of the war" (art.6).

Further important restrictive specifications – on conducting maritime war – are in the *Convention on bombardment by naval forces in time of war*. Thus "naval forces are prohibited to bombard undefended harbors, cities, towns, villages, dwellings or buildings" (art. I). A locality "may not be bombed only for the reason that in front of the given harbor there are placed some automatic contact submarine mines" (al.2 art 1). Should there be a reasonable presumption that military necessities are sufficiently important to justify such bombardment, the commander should have regard to the danger thus caused to the civilian population" (al.3 art.2)⁴⁶. In this respect it is clearly statuted the obligation of the commander to take "all necessary steps to spare, if possible, buildings dedicated to religion, art, science and charitable purposes, hospitals and places where the sick and the wounded are gathered on the condition that they are not being utilized at the time, directly or indirectly, for defence" (al.1 art. 5). The commander of an attacking naval force, save in cases when military necessities do not allow it, shall, before commence bombardment make every due effort to "give notice thereof to the local authorities" (art.6). The only circumstance exempting the commander from acting so, should be referred to as express military requirements.

It becomes plain that elaborated and enabled laws in this field attain to avoid violent confrontation, if it can be done, or at least to restrain its harmful effects.

d. Norms on aerial warfare

Aerial warfare was subject to several international debates, especially in the 1899 and 1907 Hague Conferences. However, norms adopted by these two conferences prohibiting aerial bombardment have not rallied the necessary support of the States. Later on, in 1922⁴⁷, there had been elaborated certain rules in the field and, however, they were not ratified. Along with the regulations issued in the above-mentioned Hague Conferences, laws traced in 1922-1923, state the methods of conducting air war and stipulate the requirement that aerial warfare meet the general conditions settled for war on land and war by sea.

With aerial warfare direct attack against non-combatants, the entry of a belligerent military aircraft within the jurisdiction of a neutral state as well as making use of it to set up an air base for military operations is strictly forbidden. Belligerent military aircraft are prohibited to attack enemy merchandise vessels. Furthermore, flying ambulances enjoy particular protection against all attack⁴⁸. "Flying ambulances, used exclusively to evacuate the sick and the wounded, as well as to transport the personnel of sanitary service and their materials, will not be attacked but be paid due respect by belligerents provided flights will conform height, hours and routes agreed upon by all belligerents concerned" (art.36). The elaborated laws statute that these aircraft must bear, in a visible manner, the distinctive sign⁴⁹ or other sign or means that make possible recognition "agreed upon by belligerents, either at the beginning or during hostilities" (art. 36).

Flying ambulances must obey all challenge to land on grounds of the adopted regulations. "In the event of such a required landing, the aircraft and the passengers on board may continue their flight after a possible control" (al.4 art.36). If an enemy aircraft falls into the hands of a belligerent, should it be a forced landing on the adversary's territory or on a land occupied by it "the wounded, the sick and the staff on board may be made prisoners of war" (al.5 art.36). Sanitary personnel will be entitled to protection and respect in all circumstances" (art.24). Sanitary aircraft are forbidden to enter the jurisdiction of enemy states except it has been agreed so. (al.3 art.36). However they may enter, land or alight in the jurisdiction of a neutral State, in case of emergency or to stop over, provided a previous notification has been made on it and the "submission to all challenge to land or alight" (al. 1 art. 37). Flying ambulances are safe provided flights conform height, hours and routes consented upon by Contracting Parties and the neuter Powers concerned" (art. 37)⁵⁰. Meanwhile, neuter States may very well condition or restrict the entry or landing of these aircraft on their territory. Such possible conditionings or restrictions "will be, equally, applied to all Contracting Parties" (al.2 art.37).

Rules on prohibiting aerial bombardment against civilian population are of particular importance. Thus, aerial bombardment for the purpose of terrorizing the civilian population, injuring non-combatants and destroying or damaging private property is prohibited.

e. Norms on using outer space for peaceful purposes

Technical and scientific development, mankind entering outer space as well as starting activities of exploration and exploitation in the extra atmospheric space determined the elaboration of certain norms regarding the utilization of this space in the common interest of humanity and on peace preservation and consolidation in cosmic space⁵¹. Thus, in 1958, the UN General Assembly set up the Committee for the Peaceful Uses of Outer

Space with a juridical Sub-Committee in its subordination, dealing with the legal implications of using cosmic space and the its consequences on aerial, maritime and terrestrial space. The main outcome of the activity undertaken by these UN legal bodies is the adoption of the Declaration on the legal principles ruling the activities of States with regard to the use and exploration of the outer space⁵². Its provisions served as grounds for

the elaboration of the Treaty regarding the principles ruling the States' activities in the exploration and the use of outer space, here included the Moon and all celestial bodies⁵³. The treaty sanctions the obligation of the contracting parties to develop activities of exploring and using cosmic space in the interest of peace preservation and international security as well as the promotion of worldwide cooperation and understanding (art. III). States forming part assume the obligation of not placing on the circumterrestrial orbit any object bearing nuclear weapons or any other arms of large-scale destruction, of not installing such weapons on celestial bodies and, not at the least, sending such arms out into space. The Treaty sanctions the prohibition of setting up bases, military settlements and defence works on the Moon or other heavenly bodies; it also forbids to carry on military operations or to make any experiments implying weapons of any sort (art. IV). The Treaty allows military personnel to

make scientific research or for other peaceful purposes. Moreover, it permits the use of equipment or installations of any kind, necessary for the peaceful exploration of the Moon and other celestial bodies (art. IV). By the agreement ruling the activities of States on the Moon and the other heavenly bodies it is forbidden the resort to force or threat by force on celestial bodies or against the Earth, crews or any other spatial object. Express prohibition regarding only nuclear weapons led to the conclusion that this space had the conditions of an atom-free zone where military operations with no aggressive character were allowed, thus generating the facilitation of arms race in the outer space. The only appropriate interpretation given to the regulation stipulated in the Treaty is that all military operation is forbidden in the cosmic space and on celestial bodies, while their exploration and use should be made exclusively for peaceful purposes.

f. Norms on armistice and the cessation of the state of war

Armistice and the cessation of the state of war made the subject of some customary norms, first, and then, of international regulations – mainly of the Regulation on the laws and customs of war, annexed to the 1907 Hague Convention. On the grounds of these regulations, armistice represents an agreement between belligerent forces regarding the temporary cessation of hostilities. Such a thing is possible to occur in military purposes, should they be momentary or partial, and then it is the case of delaying hostilities. It may very well concern the ensemble of belligerent armed force, thus including the entire war theatre in the event of a general armistice. Moreover, it might concern only a part of the front and of the armed forces, its purposes being no military but political ones – and here it is the case of a partial armistice. According both to customary laws and written regulations, armistice violation is forbidden. Should there be any important infringement made by one of the parties involved, the other party has the right to denounce the armistice and to resume hostilities with no preliminary warning⁵⁴. Therefore, the convention of armistice includes engagements the observance of which constitutes

an obligation for each party and they have a major significance in the prospective evolution of international relations as well as in peace maintenance.

The cessation of the state of war occurs by signing a peace treaty⁵⁵, which is preceded by negotiations, while in certain cases – like the one between Russia and Turkey at San Stefano (3rd of March 1878) by peace preliminaries. It has been considered, and certain authors still consider, that the subjugation of the defeated State constitutes another means of putting an end to the state of war, that is to say that it may be attained by its elimination as a State and its very subjugation (*debellatio*). Nowadays, both in law⁵⁶ and in doctrine⁵⁷ as well, such a method for terminating war is considered to be illicit.

In the past, it would happen the cessation of hostilities in fact, as it was the case with the 1716 war between Sweden and Poland, the 1720 war between Spain and France, and so many others.

In our days, the licit termination of the state of war should occur by signing a peace treaty, which has as major effect the resettlement of the state of peace between former belligerents. It implies a guarantee of all the rights and

obligations, during the time of peace, given to all States forming part of the belligerent parties. The cessation of the state of war implies the liberation and repatriation of war prisoners⁵⁸, damages of war are to be repaired⁵⁹, treaties⁶⁰ are revalidated and offenders against the laws of war are liable to be punished, as it happened since World War II.

In the absence of a peace treaty, the termination of war may occur by means of unilateral agreements. It was the case of the

declarations adopted by India, Egypt, Pakistan, U.S.A., Great Britain and France with regard to putting an end to war with Germany; the 1955 Decree of the supreme Soviet U.S.S.R. on the cessation of state of war between U.S.S.R. and Germany or by common declarations, such as the 1956 Declaration between the U.S.S.R. and Japan on concluding peace between the two contracting parties.

NOTES :

¹ As well known, by means of the 1864 Convention of Geneva Red Cross was founded.

² The Convention relative to Laws and Customs of War on Land; The Convention for the Adaptation to Maritime War of the Principles of the Convention of Geneva (August 22, 1864; Declaration on Launching Projectiles and Explosives from Balloons or other new similar methods, on the Use of Projectiles the Object of which is the Diffusion of Asphyxiating or Deleterious Gases and a Declaration on the Use of Bullets which expand or Flatten Easily in the Human Body.

³ The Convention on Starting Hostilities; The Convention on norms and rules regarding wars on land; The Convention on the rights and obligation of neuter powers and the persons belonging to them as far as wars on land are concerned; The Convention on the statute of enemy commercial ships when starting hostilities; The Convention on turning commercial vessels into warships; The Convention on the instalment of contact submarine mines; The Convention on the bombardment by naval forces in time of war; The Convention on for the Adaptation to Maritime War of the Principles of 1864 Convention of Geneva; The Convention relative to certain restrictions on the exercise of the right of capture in maritime war; The Convention on creating an International Court of maritime spoils; The Convention on the rights and obligations of neuter powers in maritime wars.

⁴ It concerns the prohibition of using during wartime asphyxiating and deleterious gases or any other bacteriological weapons.

⁵ The Convention on improving medical attendance given to wounded and ill people in army campaigns; The Convention on the behaviour towards war prisoners.

⁶ It concerns the use of submarines against commercial vessels. All these settlements were worked out and adopted after World War I, in the light of an ample debate and confrontation of opinions on the grounds of the terrifying experience that this world conflagration implied.

⁷ The Convention on improving medical attendance given to wounded and ill people in army campaigns; The Convention on improving the treatment of wounded, ill and shipwrecked people belonging to the maritime armed forces; The Convention on the treatment of war prisoners; The Convention on Civil persons' protection in wartime.

⁸ It concerns cultural values in case of armed conflicts. These regulations were elaborated and adopted after World War II. They represent the development and clarifications of already existing rules and norms on war initiation, conducting and termination, on the grounds of events occurring during the above mentioned unprecedented armed conflict.

⁹ See A. Nussbaum, *A Concise History of the Law of Nations*, New York 1954; P. Guggenheim, *Traité de droit international public*, t. II, Geneva, 1954; Ch. Rousseau, *Droit international public approfondi*, Paris, 1958, p. 317 and next; M.A. Marin, *The Evolution and Present Status of the Laws of War*, in R.C., 1957, II, 92, p. 647 and next.

¹⁰ See Grigore Geamănu, *cit. work*, vol. II, p. 361-425; Ionel Cloșcă, *Armed Conflicts and Ways of Finding Solutions to Them*, Edit. Militară, Bucharest, 1982; Oppenheim - Lauterpacht, *International Law*, vol. II, 7th Edition, London, 1955, p. 231 and next; H. Standke, K. Krumbiegel, *Der Krieg im Völkerrecht*, Berlin, 1961; G.J. Weber, *Effect of War on Contracts*, 1948; Mc. Nair, *Legal Effects of War*, London, 1948; O.V. Bogdanov *Iadernoe orujie i mejdunarodnoe pravo*, Moskva, 1961; Sergiu Verona, *Arms and Disarmament*, Bucharest, Edit. Politică, 1970; J.M. Spaight, *Air Power and War Rights*, Washington, 1947.

¹¹ See H. Coursier, *L'évolution du droit international humanitaire*, in R.C., 1960, I, 99, p. 409 and next.

- ¹² The appearance of revendications was a *repetitio rerum* through which it was aimed to avoid war or in any case, criticised people should be given a justified cause for conflict. It was a complicated procedure and it would occur under a solemn form (see G. Dumitriu, *Sur la nature juridique de la clarigatio*, Bucharest, 1943).
- ¹³ Cicero, *On Duties*, p. 56 (underl. en.).
- ¹⁴ Titus Livius, *From the Foundation of Rome*, vol. IV, Edit. Stiințifică, Bucharest, 1962, p. 21.
- ¹⁵ *Ibidem*.
- ¹⁶ See Mariana, XXVII, 13; see Hugo Grotius as well, *cit. work*, p. 637.
- ¹⁷ *Ibidem*.
- ¹⁸ Hugo Grotius, *cit. work*, p. 637 (underl. ns.).
- ¹⁹ Tucidide, *The Peloponesiac War*, Edit. Stiințifică, Bucharest, 1966, p. 340.
- ²⁰ Cf. Hugo Grotius, *cit. work*, p. 637 (underl. en.).
- ²¹ See Oppenheim - Lauterpacht, *cit. work*, vol. II, p. 29.
- ²² The Convention was adopted at Hague on the 18th of October 1907. Romania become a part of it on the 1st of March 1912 by ratification (Decree nr. 442/1 February 1912, in M.of.nr. 272/11 March 1912).
- ²³ These the opening words of the *Convention of laws and rules of war and land*, adopted at Hague on the 18th of October 1907.
- ²⁴ Romania become part of it by ratification on the 1st of March 1912 (Decree nr. 442 issued in 1912).
- ²⁵ Until convention was adopted it has been considered that any means for waging war was permitted (*licere in bello, quae ad finem sunt necessaria*) (see in this respect Hugo Grotius, *cit. work*, p.642 and next).
- ²⁶ Homer, *Iliada*, XV, 106.
- ²⁷ Plutarh, *Hist. Bell. Mith*.
- ²⁸ Agesilaus, asserted that in war "deceiving enemies is right and lawful" (cf. Hugo Grotius, *cit. work*, p.611).
- ²⁹ Titus Livius, *cit. work*, p.559 and next.
- ³⁰ Cicero, *On Duties*.
- ³¹ Josephus, *Contra Appionem*, II, 29, 212.
- ³² See the Declaration of the 1899 Conference of Hague; art.171 of the 1919 Peace Treaty of Versailles; art.5 of 1922 Treaty of Washington etc.
- ³³ P. Guggeinheim, *cit. work*, p.390 and next; Kunz, *Gaskrieg und Völkerrecht*, 1927.
- ³⁴ Convention of laws and rules concerning warsony land, adopted at Hague on the 29 July 1899.
- ³⁵ Regulation, adopted on the 18th of October 1907.
- ³⁶ An ample settlement on this important issue was made on the 12th of August 1949 by adopting the *Geneva Convention on the treatment of war prisoners*. Romania became part of it on the 1st June 1954 by ratification (B.of. nr. 25/21 May 1954).
- ³⁷ This Protocol is valid from the 8th of February 1928. Romania became part of it by ratification on the 23th of August 1929 (Decree nr. 3050 on the 16th of September 1929, in M.of. nr. 218 issued on the 1st of October 1929).
- ³⁸ Maritime war aims to defeat the maritime fleet of the enemy; destroy fortifications, naval and military installations on the enemy coast; interrupt communications with the shore of the enemy State, and support by all means military operations on land etc.
- ³⁹ For instance, by the rules stipulated in *Consolato del Mare*, issued in the XIVth, it has been made distinction between enemy vessels or enemy private propriety and neutral vessels and goods. The pillage of enemy merchant ships has been considered illicit.
- ⁴⁰ *Convention for the Adaptation to Maritime War of the Principle of the Geneva Convention*, adopted at Hague on the 18th of October 1907 replaces the 1899 Convention. Romania adhered on the 1st of March 1912 by ratification (Decree nr. 442 on February the 1st 1912 in M.of.nr. 272 issued on 11th of March 1912). For the application of the Convention, Romania issued a special norm published in M.of.nr. 35 on the 17th on May 1913, modified and republished in M.of.nr. 111 issued on the 16th of May 1934.
- ⁴¹ See *Convention Relative to the Status of Enemy Ships at the Outbreak of Hostilities*, adopted at Hague on the 18th of October 1907. Romania became part of it on the 1st of March 1912, by ratification (Decree nr. 442/1912).
- ⁴² See Convention on turning merchandise ships into man-of-war, adopted at Hague on the 18th of October 1907. Romania adhered on the 1st of March 1912, by ratification (Decree nr. 442/1912).
- ⁴³ See Convention on placing contact submarine mines, adopted at Hague on the 18th of October 1907. Romania adhered on the 1st of March 1912, by ratification (Decree nr. 442/1912).
- ⁴⁴ See Convention on Bombardment by Naval Forces in Time of War, adopted at Hague on the 18th of October 1907. Romania adhered on the 1st of March 1912, by ratification (Decree nr. 442/1912).
- ⁴⁵ See Convention on Certain Restrictions in Exercising the Right to capture in War at Sea, adopted at Hague on the 18th of October 1907. Romania adhered on the 1st of March 1912, by ratification (Decree nr. 442/1912).
- ⁴⁶ On grounds of the operative regulations, the commander of a naval force may, following a previous warning, destroy by means of guns "earth works, military or naval establishments, deposits of arms or materials of

war, the enemy's or their own fleet devices as well as enemy vessels being in port" provided "there is no other choice and that local authorities did not proceed to the given destruction in due time" (al. 1, art.2). On grounds of the laws and customs of war, in such circumstances, the commander "is exempt from liability for involuntary damage that could be done by bombardment" (al.2, art.2).

⁴⁷ At the Conference of Washington regarding the armament limitation.

⁴⁸ These norms were stipulated in the Geneva Convention (adopted on the 12th of August 1949) for the relief of the wounded and the sick in campaign armed forces. This Convention replaces the 1864, 1906 and 1929 Conventions. It entered into force on the 29th of October 1950. Romania adhered to it on the 1st of June 1954, by ratification (B.of. nr. 25 issued on 21st of May 1954).

⁴⁹ The heraldic sign of the red cross on a white background is preserved as an emblem and the distinctive sign of armies' sanitary service (see art.38).

⁵⁰ These regulations take into account the request of guaranteeing maximum protection to sanitary aircraft. The settlement and abidance to norms agreed upon are of relevant importance for the protection of neutral States' security.

⁵¹ See R. Quardi, *Droit International cosmique*, in R.C., 1959, III, p. 513 and next; Modesto Seara Vesquez, *Cosmic International Law*, Droit, 1965, p. 23 and next; S. Grove, *Space Law, its Challenges and Prospects*, Leyden, 1977, p. 33 and next; Al. Bolintineanu, *Opinions on the Legal Regime of the Cosmic Space in the Light of the General Principles of International Law*, in Legal Studies, Editura Academiei, Bucharest, 1959, p. 537 and next; Marțian Niciu, *The Conquest of Outer Space and the Progress of Humanity*, Edit. Dacia, Cluj-Napoca, 1978, p. 27 and next.

⁵² See resolution nr. 1962 (1963).

⁵³ It was adopted on the 27th of January 1967 and entered into force on the 10th of October. Romania ratified the Treaty by Decree nr. 74 on the 2nd of February 1948.

⁵⁴ See art. 40 in the Annex to Convention IV, adopted at Hague in 1907.

⁵⁵ See Oppenheim-Lauterpacht, *cit. work*, vol. II, p. 600 and next.

⁵⁶ Annexation is forbidden by Contemporary International Law, which did away with the "right of the winner", so much debated in earlier ages.

⁵⁷ See H. Weehberg, *Krieg und Eroberung im Wandel des Völkerrechts*, Frankfurt am Main, Berlin, 1953, p. 90 and next. Professor Tunkin demonstrates that this method of ending the state of war has an illicit character, as a consequence to the abolishment of the right of the States to war (see G.I. Tunkin, *Mejdunarodnoe pravo, iuridiceskaia literature*, Moscow, 1982, p. 526 and next).

⁵⁸ See the 1949 Geneva Convention on the prisoners of war.

⁵⁹ Clause the appears in the 1947 Peace Treaties, concluded by the allied forces with Italy, Finland, Romania, Bulgaria and Hungary.

⁶⁰ Clause that is included, in an express manner, in most peace treaties signed between belligerents. The effects of such clauses are extremely important for the resettlement of the ensemble of rights and obligations of States in time of peace.