many elements of the classical military conventions, nevertheless represent acta sui generis.

9. *Capitulation of Norway in 1940.*[60]

a) On the question of the legal character of the military convention entered into between Generalleutnant Dietl, the commander-in-chief of the German Armed Forces in North Norway, on one side, and General Ruge, commander-in-chief of the Norwegian Armed Forces, on the other, at Spionkop by Bjornefjell, on June 10, 1940, as well as on the convention entered into between Colonel Berschenhagen of the German High Command in Norway, on one side, and Lieutenant-colonel R. Roscher Nielsen of the Norwegian High Command, on the other, at Trondheim, also on June 10, 1940, there exist different opinions in literature.

The majority of writers call these military conventions capitulations, while in the History of the Second World War, United Kingdom Military Series, The Campaign in Norway, T. K. Derry[61] uses the term preliminary armistices. The third group of writers prefer the term surrender.

At the same time there are sharply differing opinions on the question of whether these military conventions brought to an end the state of war between Norway and Germany or not. Haakon Meyer[62] and some other writers defend the former view, while Halvdan Koht[63] and many others are on the side of the latter one.

b) Both above-mentioned military conventions have specific traits which make them differ from classical military conventions of this kind.

These peculiarities are expressed first of all in the question of competence for their conclusion.

On the Norwegian side, they were entered into by the military commanders, in their own competence, but on the initiative and with explicit orders from the Norwegian Government, as is stated in the Official Report of The Investigation Commission,[64] as well

[60] Main ideas of this section were expressed by this writer at a lecture-seminar at the Faculty of Law, Oslo University, December 9, 1959.

[61] "History of the Second World War. United Kingdom Military Series. The Campaign in Norway." By T. K. Derry, London 1952, p. 249.

[62] Haakon Meyer, "Et annet syn", Oslo 1952.

[63] Halvdan Koht, "Norway, neutral and free", London 1941.

ON MILITARY CONVENTIONS

AN ESSAY ON THE EVOLUTION OF INTERNATIONAL LAW

BY

VLADIMIR DEDIJER, DR. JUR.

Preface

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today, in the time of totality and universality of war, it may happen, as for example in the cease-fire order in Indochina in 1954, that the agreement on cease-fire was concluded not only by the military commanders in the field and not even only by their governments, but that this question was the subject of an international conference between the representatives of both coalitions as well as of the countries attempting to be outside either of the two blocks. In this specific case, the convention of cease-fire, formerly the purest form of military conventions, has become a political convention par excellence. Even to a higher degree, the activities of the United Nations have brought many-sided and profound changes into classical military conventions.

All the military conventions at present are at a stage of dynamic development. The armistices, as we have already seen, are being transformed more and more into preliminary peace treaties, or even into the actual peace treaties. The whole of this transformation of the institute of military conventions is not only confined to the question of the competence for the conclusion, but also of the procedure and the contents of individual conventions, and, no doubt, is still an unfinished process and thoughts on it are just being crystallized. In this process, the elements of the old are intertwined with the elements of the new so that it is very difficult to determine a sharp boundary, for certain classical military legal acts are still met in life and are entered into as before.

The transformation of law, just like the transformation of the relations regulated by it, is accomplished by evolutionary nuances of form and content; international law transformations are not characterized by a sudden revolutionary change. Their metamorphosis is always evolutionary.

In this chapter, the writer will attempt to point out the character of this evolution in the field of the military conventions, to analyze what is new in them in relation to the classical military conventions and what direction the development takes.

5. *Armistice-capitulation of 1918—1940.* The first of these acts sui generis which we shall attempt to ascertain are the armistices concluded at the end of the First and Second World Wars.

The armistice entered into between the Allied and Associated powers, on the one hand, and Germany, on the other, on November 11, 1918, at first seemed to have all the marks of a classical agree-

ment of general armistice.[19] Its temporary character was reflected in article 34 which stated: "The duration of the armistice is fixed at 36 days with the possibility of prolongation." The integrity of both armies was recognized but the German Army had to retreat to its own territory. The demarcation line was established.

This armistice had certain traits of its own. On behalf of Germany, it was concluded and signed by members of the German government and, thus, no ratification was required.

On the basis of these elements, the armistice of November 11, 1918, should have represented a classical agreement on general armistice: that is, each of the belligerents retains the undiminished possibility, after the expiration of the convention, to prolong the existing armistice or to conclude a new one or to undertake the renewal of operations according to the conditions of the agreement or, finally, to open negotiations for the preliminary treaty of peace or the peace treaty itself.

However, after the 36-days' period had elapsed, when the existing armistice has expired, the stronger side, the Allies, simply imposed new and heavier obligations on the weaker side, having in mind the fact that the German armies had retreated from their fronts, so that the road to Germany was actually open. Thus, the armistice of November 11, 1918, lost the basic element of a classical agreement on armistice. Evidently, we have here the fact that the armistice represented the capitulation of the weaker side. That is why Siebert[20] calls this act armistice-capitulation. This is actually an act sui generis, containing many elements, not only of the armistice and capitulations, but also of the preliminary peace treaty. In doctrine there are many estimates that it represents a novum.[21]

Marshal Foch estimated quite correctly the essential problem from a military point of view when he said of the 11th November Armistice: "What is an armistice? An armistice is a cease-fire, the ceasing of hostilities which has for its aim the discussion on peace, placing the governments in such a position that they can force the peace of the kind they desire." After this upon the continuation of the armistice there followed an imposition upon Germany of heavier conditions

[19] Martens, NRG 3 S XI, p. 178.

[20] Siebert, "L'armistice dans le droit des gens", "Revue générale de droit international public", November—December, 1933.

[21] Hyde, International Law III, § 643; Verdross, op. cit.; Kunz, "Die Revision der Pariser Friedensvorträge", etc. etc.

than those stipulated on November 11, 1918, in view of the fact that Germany's fronts were open.[22]

The other armistice agreements, concluded between the Allies and associated powers, on the one hand, and the allies of Germany, on the other, in the First World War: Bulgaria,[23] Turkey,[24] Hungary[25] and Austria,[26] are not identical with the agreement on armistice with Germany of November 11, 1918. Here the basic elements of the armistice convention in its classical form are lacking right from the start. There is no right to prolong the armistice, there is no date for the ending of armistice. The military integrity of the belligerents is accepted partially, the troops of the German allies are in the main left as police forces. In all of these acts, the dates are fixed by which the German troops have to retreat from these states, the break of diplomatic relations with Germany and her former allies is also included, in short, these agreements are called armistices, while actually they represent acts with many elements of unconditional surrender, in other words, they are acta sui generis.

The acta formally called "armistice agreement" between France and Germany of June 22, 1940, and France and Italy of June 24, 1940,[27] were also acta sui generis and are not identical with the capitulation-armistice of November 11, 1918.

They contain many elements of a convention of capitulation, and at the same time elements of a treaty on preliminary peace.

Some vital elements of the classical armistice are not included in it, for example the reciprocity of conditions and equality of relations to mutual rights and duties. In the agreement of June 22, 1940, this principle was repeatedly violated: the fact that only one side, France, bound herself to a cease-fire; furthermore, the convention was not concluded for a definite period of time with possibilities of prolongation. Article 23 especially asserts that while armistice is effective until the conclusion of the peace treaty, the act can be cancelled at will by a unilateral act on the part of Germany. No such right was granted to France.

[22] Mordacq, "Le Ministère Clemenceau".
[23] Martens, NRG 3 S XI, p. 126.
[24] Ibid., NRG 3 S XI, p. 159.
[25] Ibid., NRG 3 S XI, p. 183.
[26] Ibid., NRG 3 S XI, p. 191
[27] Translation into Serbian from the original text, Institute of International Law, Belgrade University.

Some German authors, for example Berber,[28] maintain that this type of convention like the one of June 22, 1940, is not a new institute created by Germany, but that it is a repetition of the step taken by France and the Allies against Germany in 1918. A similar thought is expressed by some French writers. For them, 1918 is just a repetition of 1871.

In conclusion, one can accept that the acts of November 11, 1918 as well as the act of June 22, 1940, represent new phenomena in International Law. But every new case should be assessed as to whether it is in the spirit of the general development of International Law, whether it represents a step forward or not. The capitulation armistice of 1918 as well as its repetition of 1940, are both phenomena sui generis in International Law; neither of them has passed the test of experience as an armistice. They expired by themselves when the Allied forces, in extending the agreement of November 11, 1918, imposed on defeated Germany new and heavier obligations, just as Germany, herself, had formally violated the agreement of June 22, 1940, when it carried out the occupation of the unoccupied part of France at the end of 1942.

Character of the armistice agreements with Italy (1943), Roumania, Hungary and Bulgaria (1944). The armistices concluded in the Second World War between the Allies, on the one hand, and the German satellites (Italy, Roumania, Hungary, and Bulgaria) on the other, offer a good example of the evolution of military conventions.

The Italian agreement on armistice[29] shows that it actually is an institute sui generis which contains within itself more elements of the classical convention on general armistice, than that of capitulation and also of the preliminary peace treaty. To this one should add the fact that Italy which in a technical sense was still in a state of war with the Allied powers, declared war on Germany, her ally of yesterday, and became a co-belligerent in the Allied coalition.[30]

[28] F. Berber, "Probleme des neuen Waffenstillstandsrechts", Berlin 1943
[29] Texts in 40 A. J. I. L. Suppl. I (1946).
[30] A certain similarity one can find in the armistice concluded between England and the Kingdom of Napoleon, after the fall of Napoleon, February 2, 1814. In article 4, it is stated: "Il sera conclu immédiatement une convention militaire entre les officiers, généraux et supérieurs de l'Armée autrichienne, napolitaine et anglaise, pour établir un plan d'opérations selon lequel les troupes respectives réunies sur la même cause devront agir . . ." (Martens, NR V, p. 31).

ore the thesis of Derry is unacceptable to us. The acts of
did not preclude any political issues, especially the issue of
of the war between Norway and Germany, because the
ın Government already on June 7, 1940, clearly stated:
High Command has therefore advised the King and Govern-
the present to give up the struggle within the country, and
and the Government have considered it their duty to follow
ce. They are, therefore, now leaving the country.
ıey are not thereby abandoning the fight to regain the inde-
of Norway. On the contrary, they will continue the fight
he frontiers of the country."[68]
eclaration very clearly establishes the fact that the bearers
overeignty of Norway regarded themselves as at war with
even after the capitulation of the armed forces in Norway
ould argue that in the first moments after the German
n Norway, there was some vacillation on the part of the
ın Government on the question of state of war with Ger
his fact has been recognized by The Official Report of The
tion Commission. In it the Government is criticized for
ıade soft declarations immediately after the assault:
d nothing about the country being at war with Germany
ıothing about enlisted men going on duty, and about the
being fought by the Army whenever they encountered

uch an attitude was only at the beginning. The Norwegian
e Storting, and the Government made it clear by their res-
lecisions and declarations that they were at war with Ger

iew is firmly held by the Investigation Committee, which
her in its report:
warfare was started the night before April 9, and after the
ultimatum was rejected on the morning of the same day, a
war existed between Norway and Germany. This was con
ı a Royal Resolution voted the same day at Hamar."
same sense the Supreme Court upheld the Larget Verdict
ıid:
and in particular in the opinion of the Court there is no
at a state of war in the sense of military penal law occurred

vdan Koht, op. cit., p. 122.

as in the memoirs of H. Koht. In the literature on this subject no
one challenges this fact.

Here we are witnessing a specific case wh[illegible]ers com-
manders are not completely cut off from the be[illegible]ority,
so that they are able to consult them.

c) The second specific characteristic of these co[illegible] that
they are an example of military conventions conclud[illegible]oali-
tion war.

According to W. Churchill's Memoirs, as well as the [illegible]s of
H. Koht, T. K. Derry, the Norwegian military command[illegible]ered
into the military conventions at Spionkop and Trondhei[illegible] the
explicit demand sent through the Norwegian Government by the
Allied coalition as such.

In May and June, 1940, the Allied troops were suffering heavy
defeat at the hands of the German armed forces on the Weste[illegible]
Front, the main battlefield of the coalition. There was danger of a
complete collapse of all the Allied defence. The most vital parts of
the Allied coalition had to be protected for the benefit of the coali-
tion as a whole and the further pursuance of the war. In such cir-
cumstances the Allies decided to abandon their other fronts in order
to strengthen their most vulnerable spot and thus the Allied forces
got an order to withdraw from the Norwegian front.

In such a way, the Norwegian Armed Forces were in a hopeless
situation to make further effective resistance immediately to the
German Armed Forces, and in such conditions, the Norwegian
Government decided to issue an order to military commanders to
enter into military conventions with the German military comman-
ders.

This measure was undertaken in circumstances when the Nor-
wegian and Allied forces in North Norway were on the offensive
against the German units. Narvik was liberated on May 28, and
that was the first Allied victory on land against Hitler. General
Dietl was surrounded at Bjørnefjell, and as German documents
captured revealed, Hitler had already issued orders to him to enter
into a capitulation of the positions and to withdraw the remnants
of his troops to Swedish territory, where the trains to evacuate the
troops to Germany had been waiting since May 25.[69]

[illegible]vdan Koht, op. cit., pp. 122–125.
[illegible]. K. Derry, op. cit., p. 218.

ady in the night between April 8 and April 9, 1940, when Ger-
y began a large scale military attack against Norway."[68]
lso the Supreme Court in the decision in the Five Cases stressed
a state of war between Norway and Germany continued after
e 10, 1940:
There is in our view no doubt that a state of war continued
veen Norway and Germany also after June 10, 1940. What
pened was that the remaining forces in Northern Norway ceased
ght and capitulated. The Norwegian Government, however, con-
ed beyond doubt the war, as the responsible leader of Norway's
ign and defence policy. This was demonstrated, when imme-
ely after the arrival in London in June, 1940, steps were taken
e-organize the Army, the Navy, and the Air Force. This state of
led to the consummation of a military agreement with Great
ain in May, 1941, and in June the same year, the Norwegian
ernment together with Great Britain and a number of German
pied countries solemnly declared that the war would continue
l victory."

As far as the content of the acts of Spinokop and Trondheim
concerned there is a difference between them, espiecially on the
tion of the competence of military commanders.
ne representative of the Norwegian High Command in Article
the Trondheim capitulation accepts that "Die gesamten nor-
schen Streitkräfte legen die Waffen nieder und werden sie
rend der Dauer des gegenwärtigen Krieges nicht wieder gegen
Deutsche Reich weder dessen Verbundete ergreifen".
his stipulation is quite contrary to the spirit and letter of the
lamation of the Norwegian King and the Government of June
)40 and the advice the military commanders gave to them. The
lamation explicitly mentions the capitulation of the Norwegian
"within the country", while the reprsentative of the Norwegian
Command adhered at Trondheim to "die gesamte Norwegische
tkräfte". Further the Government particularises that the struggle
in the country is stopped "for the present", thus leaving open the
ibility of further resistance by the Norwegian armed forces with-
ne country, while the Trondheim act does not envisage such a
ibility.
cording to the practice and doctrine of International Law, the

[68] Norsk Retstidende 1948 p. 164.

military commanders could enter into the military conventions only on the basis of their objective and spatial competence. They could bind only the troop under their own command.

Therefore it is obvious that they had gone beyond their objective competence at Trondheim and they were in no legal position to bind the Norwegian Government for the stipulations they concluded which were outside their competence.

From the point of view of International Law the Norwegian Government had the right to use in a further struggle against the Germans any armed forces and troops at their disposal except those which capitulated on the basis of the conventions entered into by their respective commanders.

From all the above mentioned facts, the final assessment of this writer on the matter under consideration is as follows:

1. The acts of Trondheim and Spionkop represent capitulation with conditions and are purely military conventions.

2. They had no political stipulations and did not end the state of war between Norway and Germany.

3. If one draws a parallel between the capitulation of Belgium, the Netherlands, France, Greece and Yugoslavia during the last world war with the Norwegian case, one should draw the conclusion that the Norwegian record is among the most clear, especially on the question of the state of war with Germany. All the acts of the Norwegian King and the Norwegian Government were based on the Storting's unanimous decision at Elverum, April 9, 1940.