

“WAR AIMS” — METHODS OF WARFARE — THE RULES
OF WAR

**Reflections on the Centenary
of the Declaration of St. Petersburg**

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This article will be of special interest to international law jurists and we thank the author for thus allowing us to mark the centenary of an important Convention, the first of those, on the international level, which aim at prohibiting the use of certain weapons. It originated, as did the first Geneva Convention, at a time when universal bonds were becoming increasingly close with a view to defending humanity against the dangers of technical progress and as a result also of a keener perception of the community of interests uniting man. (Ed.)

I.

The oldest of the international conventions concerning the prohibition of the employment of certain weapons, that is to say deriving from that part of the law of war, sometimes known as the “law of The Hague”, to distinguish it from the “law of Geneva”, will be a hundred years old this month: the *Declaration of St. Petersburg of November 29—December 11, 1868*.

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The enacting terms of this text, which is still in force¹, have only a restricted range. It lays down that the contracting States mutually renounce "the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances". Of more importance is the *preamble* to the Declaration whose subject gives rise to certain reflections on the convention's centenary. The preamble reads as follows:

On the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburg in order to examine the expediency of forbidding the use of certain projectiles in time of war between civilized nations, and that Commission having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare as follows :

Considering :

That the progress of civilization should have the effect of alleviating as much as possible the calamities of war ;

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy ;

That for this purpose it is sufficient to disable the greatest possible number of men ;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable ;

That the employment of such arms would, therefore, be contrary to the laws of humanity.

Two factors can be distinguished in this text. First of all there is the definition of the "legitimate object" in war, then follows

¹ The States bound by the Declaration are not very numerous: Austria, Belgium, Brazil, Denmark, France, Germany, Great Britain, Greece, Hungary, Iran, Italy, Netherlands, Norway, Portugal, U.S.S.R., Sweden, Switzerland, Turkey. The Declaration is affected by the famous general participation clause, by virtue of which the engagement would cease to be compulsory "from the moment when, in a war between Contracting or Acceding Parties, a non-Contracting Party or a non-Acceding Party shall join one of the belligerents". It is certain that the Declaration's enacting terms have not become a rule of international customary law which is generally obligatory. In spite of this, it cannot be excluded that the general participation clause should be considered to have been rescinded as a result of custom.

the notion, connected with this object, of *unnecessary suffering*. It is only by this last idea that the preamble has entered positive law. Article 23 (*e*) of the Regulation annexed to the Hague Convention of 1899 concerning the laws and customs of war on land, a provision which assumes the character of a customary law standard, stipulates that it is forbidden "to employ arms, projectiles, or material of a nature to cause superfluous injury", transcends the subjective idea of "unnecessary suffering". It is true to say that this expression is not defined and that, because of its vague, normative meaning, it is not easily determined. It is, however, indisputable that the prohibition has a wider range than that suggested by the official English translation of the authentic French text: "arms, projectiles, or material calculated to cause unnecessary suffering". What this paragraph prohibits are not only arms *intended* to cause superfluous injury, and even less those *intended* to cause *useless suffering*, but all methods which are *liable* to cause *superfluous injury*, whether such effect is specially sought or not. On this point, therefore, the preamble to the 1868 Declaration has received the sanction of positive law; but what can be said of the other point in the preamble: the notion and definition of the "legitimate object" in war?

II.

The first thing which one is obliged to observe when broaching the problem of the definition of the "legitimate object" of war or during war is the extreme conceptual and terminological confusion surrounding this notion. The second is the great difficulty presented by the problem itself. In part, this confusion and difficulty are alien to the fact and to the rule of war and are due to the multiplicity of the meanings comprising the word "object" in normal parlance and in philosophical language. The main point, however, is that confusion and difficulty are both peculiar in matters of war.

It appears that the different meanings in which the expression "object of war" or similar terms are used, can be grouped under three acceptations. All three are contained in the idea of war and are necessarily reunited in every international armed conflict.

Firstly, the plural expression *war aims* refers to concrete motives which decide a State to resort to arms and also to the designs it proposes to realize through the expected victory. Essentially varied and various, the "war aims" tend sometimes to the alteration and at other times to the maintenance of the *status quo ante bellum*. Belonging as they do to the realm of politics, they are external to the essence of war. To define these aims by an abstract term which should not, however, hide the reality of its changeability, one can use the expression the "political purpose of war". This concept does not concern the *jus in bello*. On the other hand, it does in part belong today to the *jus ad bellum*, but this aspect is outside the scope of our subject.

Secondly, as opposed to the "war aims", the *object*, the *end* or the *final purpose* of war is unique and fixed. This end, which is and remains the same in any war, is to force the enemy to bend to our will. In other words, the end of a war, the reason for which it is waged *by both sides*, is always *peace* whether such peace can either alter or consolidate the *status quo ante bellum*. This then is the ultimate purpose of a war. To achieve it, *victory* must first be obtained which constitutes an intermediate end, or rather a means in relation to the ultimate end. This concept of end or purpose of war assumes an abstract character which goes beyond the scope of law.

In the third case, the word "object" indicates the objective of the warlike activity, the strategic objective or objectives pursued with a view to placing the enemy in a position in which he is incapable any longer of fighting. This object is therefore in reality but a *means*. It is this *object-means* which forms the matter proper to the profession of war and it is in this sense that the notion of the purpose belongs to the *jus in bello*. When speaking of the "legitimate object which States should endeavour to accomplish during war", those who had drawn up the Declaration of St. Petersburg had this meaning of the word "object" in mind. Therefore, in order to avoid confusion with the concept of the *purpose of war*, it would seem to be preferable, if one is aiming at this third meaning, to talk of the *object in war*, rather than the "object of war".

Can one define the tenor of this object? It has been tried. The attempts, however, to reduce this to a single definition have

struck one or other of these reefs: either the definition is too narrow, or else it is too abstract to the extent that it possesses no practical utility and is not sufficiently differentiated from the notion of the *purpose* of war. In reality, the object in war is *multiple*. It consists of the objectives of different types of hostile activities comprising this overall action, war: the destruction or decisive weakening of the enemy land, sea and air forces; the occupation of enemy territory; the destruction of the enemy's military infrastructure; damage to his industrial potential, the interception of his maritime communications, etc.

From the assortment of hostile enterprises, the St. Petersburg preamble has extracted the one, which, at that time, was the most important, but by no means the only warlike activity: the *combat*. Those drawing up the 1868 instrument were also only thinking of *land* combat, and more particularly of infantry combat, even if the terms of the Declaration also applied to operations of maritime warfare. When proclaiming that the "legitimate object which States should endeavour to accomplish during war", entirely summarizing what in fact only constitutes the object of infantry combat, their language obviously went further than their intention. For they certainly did not intend to deny that other forms of land warfare, such as *occupation* and *siege* or that maritime economic warfare, with its institutions of *blockade* and *prize*, were sanctioned by the laws and customs of war, although these in no way had as their "object" the placing out of action of the enemy's *military forces*. Similarly, words betrayed their intention when they affirm as contrary to the "legitimate object" the employment of arms in military operations *rendering death inevitable*. What they had in mind was the condemnation of a particular category of projectiles, of which experience in the War of Secession had shown that they caused not only cruel wounds—this is the idea of "unnecessary suffering"—but more those which were *incurable* and had just been forbidden in the Russian army. The intention of the members of the international military commission was surely not to declare that it was overall not legitimate to employ arms *intended to kill* enemy combatants.

Not only the definition of the "legitimate object during war" formulated by the drafters of the St. Petersburg Declaration failed to express positive law, but this first attempt in defining the object of war under a convention had no sequel. In 1874, Russia submitted a draft convention to the Brussels International Conference which first of all corrected the 1868 formula by stating in its § 2 that war operations are not only directed against the enemy's military forces but also against his *means of fighting*. A reference to the "object of war" can be found in § 3 of the draft¹: "In order to attain the purpose of war, all methods and measures, conforming to the laws and customs of war and justified by the necessities of war, are permitted". The term "object of war" (it will be noted that it was no longer a question of the "legitimate object") was here included in the meaning of the second and third acceptations mentioned above. However, as definition of the object of or in war was abandoned, reference to this notion became unnecessary. It therefore did not figure in the draft Declaration on the laws and customs of war adopted by 1874 Conference. It cannot be found in any other international convention relative to the law of war. No more did international customary law know of a notion, or even less, a definition of the object of or in war.

At first sight, the observation is a matter for surprise. Did not the St. Petersburg drafters have logic on their side which requires that the *object* is determined before deciding the *means*, in relation to this object? When drawing up the famous *Instructions for the Government of Armies of the United States in the Field* in 1863, which were the first national codification of the laws and customs of war on land, Francis Lieber did not think he could avoid mentioning, on four occasions, the notion of the object or the purpose of war, each time using a different expression applied to a different facet of the complex concept: "ends of the war" (para. 14); "ultimate object of all modern war" (No. 29); "war not its own end, but the means to obtain great ends of State" (No. 30); "object of the belligerent" (No. 68). This was too much theorizing for a national regulation on the law of war. This was all the more reason for an international convention not being

¹ The original official text existing only in French, we have translated it into English (*Ed.*).

able to accept such terminology, on whose interpretation no agreement could have been made. As for the alleged logical necessity for defining the "object of war", apart from the fact that formal logic is not an obligatory part of law, and in particular of the law of war, such reasoning is refuted by history. The law of war had been successful in regulating the means of war before 1868 in the form of the "laws and customs of war", as it has subsequently by international conventions, without ever including a definition of the "object of war".

III.

It is a fact that the law of war, exclusively applied to the means and incidents of war, has dispensed with a conventional or customary *definition* of the purpose of war or of the object in a war. There exists no international consensus of opinion on the *conception* of the legitimate purpose of war or of the legitimate object in war. Does this not then prove that this definition or consensus is not indispensable? Such a conclusion would appear to be excessive. If there has never been any definition or even an agreed conception of the purpose of war or of the object in war, there at least existed an *implicit notion*, a notion contained in the definition of means permitted or prohibited by the law of war. All that the past absence of any definition or conception of the legitimate purpose of war or of the legitimate object in war can prove, is that the law of war has *until now* been able to adapt itself to the absence of an international agreement on this definition or conception. It is therefore now a question of knowing whether it can continue to exist without a consensus of opinion, if not on the definition, at least on the conception of the purpose of war and of the object in war. If the law of war has been able to content itself only with bringing its attention and regulating efforts on the means of injuring the enemy, this is because there existed a hidden balance, on the one hand, between the legitimate means and, on the other hand, the legitimate purpose of war and the legitimate object in war. This inherent correspondence between the means and the object has been upset by the transformation which war has undergone over the last fifty years and above all since the second half of the

Second World War. This time, the whole structure of the law of war, and not of the "law of The Hague", which rested on this equilibrium, has been shaken.

In practice, this fundamental balance had been greatly facilitated by the fact that the technical means of war constituted the material limits of the idea which States had formed of the purpose of war and, above all, of the object in war. In fact, contrary to the superficial logical argument, as mentioned above, the existing relationship between the means of war and the conception of the purpose of war and of the object in war is not one of subordination, but rather a connection of correlation and interdependence. The nature and importance of the change which has taken place since the 1914-18 war in this complex relationship should be considered if one wishes to assess the influence of this transformation of the law of war. To do so, this relationship should be broken down into its components: the *object*, considered in the three meanings which have been given it, and the *means*. One should first take the development of each of these factors separately; then the reciprocal action of the two factors in their respective development should be considered. Finally, the point of impact of the incidence of these transformations and their combination on the law of war should be discovered.

"Purpose of war", "object of war", are *ideas*. These are not, however, views of the mind, but are formed by known geographical, demographic and military facts, by the economic, social and political conditions of the belligerent societies. They are linked with the dominant political philosophy of these societies and are in relationship with the level and standards of the civilization of the period. On this level of the conception of the object of or in war, international practice and legal doctrine have long been marked by opposition between what is known as the *continental concept* and the *Anglo-American concept* of war.

The name of Rousseau is bound with the former, although it should more authentically be known as the "continental concept", since it has only been able to be adopted by European continental States because they were adapted by their strategic situation to conditions of land warfare. The famous formula of the *Contrat*

social is known: " War is not a personal matter between individuals but between States. It is only by accident that men become enemies and then not so much as individuals or even as citizens; not as members of a country but rather as its defenders ". What is here being considered as connected with war, are in reality the three typical situations of *land warfare*: the battle, capture and occupation. Indeed in this sphere there has never been any conflict between the concept of Great Britain or the United States and that of the continental countries. This conflicting view originally chiefly concerned the sphere of *economic warfare* which is the vital strategic sphere of the maritime powers. The objective in war at sea is to cut the enemy's maritime communications. The enemy State is not only affected through its *soldiers*, its military forces and means, but also, and above all, through its *civilians*, their property, way of life and thus, indirectly, through their very lives. As a question of the law of economic and maritime warfare the Anglo-American conception has prevailed. On the other hand, the law of war has not permitted the attempt made by these same maritime powers to transpose to air warfare the rules which originated in a maritime environment and adapted to conditions of war at sea. It refused, in particular, to sanction the assimilation which had been attempted to establish between the *blockade* and the practice of *strategic air bombing*.

The continental conception could not fail to be shaken by the *development of the belligerent societies*. This has been characterized by the appearance of highly industrialized countries, whose war effort involves an economy under State control and the mobilization of all material resources and of human, physical and moral, energy. The distinction between combatants and non-combatants, the corner-stone of the classic law of war, has been maintained in principle, but its application has found itself considerably restricted by the extension of material objectives of a military nature and importance, considered to be legitimate targets. Upon this development of the economic and social infrastructure of States at war have been grafted new ideologies, whose main characteristics are hatred and proselytism. This social, political and ideological transformation of war which, in its main lines, appeared to have been

completed in the 1914-18 war, has led to what is known as "total war".

How can this phenomenon of total war be interpreted in the three meanings of the expression "object of war"?

1. The *war aims* have not become more excessive than they were in the past. Conquest, *subjugation*, annexation; these have long been aims. States can add refinements concerning the content they wish to give this object, but they cannot exceed the idea of these extreme aims.

2. The *purpose of war* is such an abstract notion that at first sight it does not seem to be susceptible of being extended. However, total war has not only made its impress on the conception which the belligerent States have of the concrete form of the peace which they propose imposing on the *defeated* enemy. It should be asked whether the very concept of the "purpose of war" has not undergone a modification. It should at least be seen that *peace*, which constitutes the *purpose* of war in the double sense of *object* and *end*, of the *cessation* of hostilities, has become ambiguous. In classic international law, peace does not only mean the termination of fighting, but the *outcome*, the *settlement*, the *solution* of a conflict in which belligerent States have opposed each other. Indeed, it can be observed that at a time of total war, States have a tendency to keep of peace only its meaning as the halting of armed hostilities, whilst a peace-settlement becomes an object ever more difficult to attain, because it is less and less sought. To this incapacity of States to terminate a war by the conclusion of a peace, there exists a corresponding deficiency in international law. The latter has, in the *jus ad bellum*, grappled with the task of limiting the legitimate motives of resorting to war. In the *jus in bello*, it has succeeded in imposing discipline on the development of a war, but has been completely powerless to regulate the conclusion of a war. This is a strange and most serious gap.

3. In the conception of the *object in war*, "total war" has effected the most striking changes. The war potential of States no longer residing solely in their armed forces and their material resources for these, anything which is now capable of contributing

to the enemy's power of resistance is liable to become an objective. The point has been reached when it is proposed to strike at the enemy State in its vitals, in its human and material *substratum*. Since the distinction between combatants and non-combatants is no longer completely valid from the *active* point of view, as regards the capacity of States to wage war, it is considered to be out of date from the *passive* angle, concerning the definition of permitted targets. It can now be seen that the point of impact of incidence on the law of war of the conception of the object in war is the problem of the *delimitation of legitimate targets* for hostile acts. It is certainly not through any caprice of language that to the three meanings of the notion of the "object of war", enumerated above, is attached this practical meaning, where the word *object* denotes, in a most concrete way, the *objective*, in the sense of *target*. This link between the object in war and permissible targets already appears in the wording of the Declaration of St. Petersburg in which "the only legitimate object which States should endeavour to accomplish during war" is defined in relation to an *objective*, presented as the sole legitimate target.

The conception of the object in war inherent in total war already constituted a threat to the law of war. This threat, however, was only really able to materialize, to the point of compromising the survival of the law of war, thanks to the *technological revolution* which has taken place in connection with the means of waging war. It was only when aviation was able to reap destruction and death far behind the front lines that the property and lives of civilians, until then only objectives in economic warfare, became possible direct targets. Starting with the strategic air bombing of the Second World War, this development was transformed into a veritable *revolution of war* with the invention of the atomic arm. This has been not only a quantitative change but also a qualitative mutation of war brought about by the association of nuclear explosives and rockets. By its very nature, the new weapon with a power of massive, blind destruction, is radically incompatible with the selective idea of a military objective.

There has been a dual influence of this new method of warfare on the "object of war". In the first place, it is this which has *enabled modifications to the "object" to be fully realized* which

were contained as a tendency in "total war". Secondly, the new method *modifies the object*, either because the latter has been the subject of rethinking, or else the content of the object has been transformed independently of man's intention. The whole of this action of the means on the object is dominated by the characteristic of the new arm, that of massive destruction. The *object in war* has thus been reduced to indiscriminate destruction. Having become an end in itself, destruction tends to substitute itself to the *purpose of war* itself. Rousseau, in the same chapter in which he set forth, in terms which have become classic, the founding of the most restrictive conception of the legitimate object in war, has defined the purpose of war in a formula which appears to us today to be shattering, but which, belonging as he did to his century, he found perfectly normal: "The purpose of war is to destroy the enemy State . . .". By this, he obviously did not mean the physical destruction, but the political and juridical annihilation of the conquered State. This expression has now taken on a precise and literal meaning. *Peace*, henceforth one of ruined cities, cannot be considered beyond a void, putting a stop to all thought. Even *political war aims* are dragged into this general destruction.

New methods and new objects in warfare support each other mutually. Extended by this development in belligerent societies which we have characterized by the term "total war", given excessive growth by the revolution in weapons, the *object in war* and the *purpose of war* in their turn enlarge these means. If the latter, the products of the imagination and of technical effort, have pushed back the material limits of the idea of the object in war and the purpose of war, the new inordinate conception of this object and purpose extends the traditional mental and moral boundaries set up around the methods of warfare. The new methods, with their extreme effects require to be "justified" which they will be by the conception of the extreme objects of war. This extension of the object and the purpose of war gives free passage intellectually morally, politically—and financially—to the development of new methods of unlimited destruction.

What is more important to note is that if the new conception of the purpose of war and the object in war, henceforth to be defined by utter destruction, is principally the result of the nuclear

revolution, it is independent of the nuclear arm. Once created, such a conception lays claim to control all wars. Forged by nuclear weapons, but prepared by the practice of target-area bombing in the Second World War, the new conception maintains its exorbitant character, even when, in order for it to be realized, it only employs conventional weapons. In this way, it can be said that conventional warfare has, intellectually speaking, been nuclearized.

IV.

The evolution which we have just described in broad outline of the "object of war" in relation with methods of warfare has led to a most disturbing situation. Athwart the question of the survival of the law of war, it calls in question the survival of civilization, the very survival of mankind. To this evil, for it is not a question of an eventual peril, but of a real, precise and present evil, is there then a remedy? Can this be found in political sagacity alone or public conscience or law? Without doubt there must be support from all three. All things considered, however, it is international law and the law of war in particular which is in a position to provide the most useful contribution to this vital task of rectification.

In the present state of international society, an agreement on the *legitimate political objects of war* does not appear to be realizable. The new international law has indeed proscribed certain objects of war by prohibiting wars of aggression. This interdiction, however, is affected on the one hand by the uncertainty surrounding the notion of aggression. On the other hand, and this is still more serious, the objects which international law forbids the aggressor belligerent, it tolerates for the latter's opponents. It has in fact to be admitted that international law can have no influence on the objects of war. As regards the definition of the *legitimate or purpose of war*, an international agreement is theoretically difficult to achieve, politically unlikely and would be practically of little use. This disillusioned observation certainly does not mean that one should resign oneself to leaving the conception of the objects and purpose of war in the disordered state in which it finds itself at

present. However, direct moderating action in this sphere is not a matter of law, but one of public conscience.

As we have seen, what is more serious than the development of the objects and the purpose of war is the transformation of the *object in war*. Now, the object in war *comes entirely under international law*, namely under *jus in bello*. Therefore, the law of war must be aware of the function and power devolving on it to regulate the object in war. It will succeed in having a hold on this object by carrying out its action on two points. The first concerns the *methods of war* of which we have noted that they constitute the most important factor in the enlargement which the object in war has known. The second, closely linked with the first, is precisely the point of impact of the incidence of this enlargement of the object in war on the law of war: the *delimitation of the legitimate objectives* of acts of armed hostility.

In connection with these two key points of the law of war: the *methods of war* and *objectives*, the standards are not lacking. It is rather man who has failed by not opposing existing standards to illegal development. It is not true to say that the law of war has stopped at the technological level and social state reigning in 1868, 1899 and 1907. This law is sufficiently flexible to take technical progress in armaments and the development of belligerent Societies into account. To *adapt oneself* does not however, mean resignation. The law of war should not forget that its essential function is *normative* and not one of recording. The principle of the Hague Regulations set forth at the head of Section II on "hostilities" remains unchanged: "Belligerents have not got an unlimited right as to the choice of means of injuring the enemy". This principle, referred to in recent military manuals on the law of war, marks out the unpassable limits, both quantitative and qualitative, at the same time for *weapons*, *methods* of employing arms and *objectives* against which use of weapons is permitted.

Without doubt, sociological and technological developments have led to a considerable extension of the notion of *military objectives*, which because of their nature, destination and use, constitute permitted targets. This extension, however, has its limits. Even in totalitarian regimes, the economic, social and ideological transformation of the State at war does not go so far as objectively

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to abolish the distinction between combatants and non-combatants. On the other hand, there is a point where the law of war refuses to follow the technical spirit without restriction. It does not allow civilian objectives to be designated as targets, under the pretext that swifter and more effective annihilation can be expected of political will-power and consequently of the enemy State's power of resistance by attacking its civilian elements (*civilian objectives purposely selected*). It does not accept that targets be determined, not on account of the character of the objectives, but because of the nature of the weapon (*civilian objectives selected by necessity*). It does not authorize the employment of *weapons* whose general effects, whether direct or indirect, are such as to exclude the idea of discrimination between military and civilian objectives (*weapons of massive destruction, intrinsically blind in their effects*), nor resorting to methods of using weapons practically excluding the selection of objectives (*massive bombing deliberately or necessarily blind*).

Finally, it is by *controlling the methods* and *limiting the permitted objectives* that the law of war controls and directly limits the *object in war* and, indirectly, the *purpose of war*.

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