

Humanitarian law in the *Articles of War* decreed in 1621 by King Gustavus II Adolphus of Sweden

by Kenneth Ögren

In July 1621 several regiments of the Swedish army were assembled at Årsta Meadow south of Stockholm awaiting transport by ship to the Baltic, where they were to fight the Russian forces which had invaded the provinces in early summer.¹ It was on this occasion that they heard for the first time the new *Articles of War* read to them by chancellor Axel Oxenstierna. The text had been drafted by King Gustavus himself and revised by Oxenstierna the preceding spring, and the final decree had been signed by the King at camp on 15 July.²

The *Articles* were indeed new in certain respects, but they were also based on familiar continental models and earlier Swedish texts. They borrowed something from the code of Ferdinand of Hungary (1526), something from the famous code of Maximilian II (1570) and something from the code of Maurice of Nassau (1590). The presence of numerous transcripts of continental codes in the Stockholm archives makes it clear that great care was taken to consult the systems used abroad. Yet the *Articles* differed in certain important respects from other codes of military law of that age. Earlier codes were closer in nature to an agreement between contracting parties, whereas King Gustavus' text comprised a set of orders. The *Articles* also differed from similar codes in that they

¹ F. Berner, *Gustav Adolf: Der Löwe aus Mitternacht*, Stuttgart, 1982, and M. Roberts, *Gustavus Adolphus: a history of Sweden 1611-1632*, London (vol. 1, 1953, and vol. 2, 1958).

² See text in *Annex*, and O. Brusiin, "Gustav Adolf Krigsartiklar: Några synpunkter", *Tidskrift — utgiven av Juridiska föreningen i Finland*, vol. 79, 1943.

established a hierarchy of military jurisdiction: inferior court martial, presided over by a colonel; superior court martial, presided over by a marshal; and final appeal to the King. This system was supplemented with special military prosecutors and a general auditor in charge of supervising the application of the rules, thereby strengthening the entire system of military justice. In other respects, the *Articles* did not differ much from existing codes: punishments were severe, at times draconian, and the death penalty was imposed for more than forty offences.

After the Swedish army entered the Thirty Years' War, the soldiers of King Gustavus maintained, for some time, a good reputation. However, despite abundant evidence that the officers did their best to maintain high standards of behaviour, discipline broke down in the early 1630s as a direct result of the King's inability to pay his troops. In April 1631, Frankfurt an der Oder — an allied Protestant town — was savagely sacked and the following year Göttingen was also plundered. King Gustavus vacillated a little in this state of affairs. To a complaint made in 1632 the King answered that "war is war and soldiers are not novices". But on the whole he continued to struggle for more humanity in warfare, and when asked by George William of Brandenburg what to do with some Swedish officers who had committed outrages, he replied: "Has my brother-in-law no gallows in his country, or is he short of timber?". At Mainz, in 1632, the King had the *Articles* published in German, with additions and changes, as a means of enforcing stronger discipline.

The *Articles of War* decreed by King Gustavus comprise 150 articles, only seven of which can be said to contain humanitarian rules. Article 88 stipulates: "He that forces any Woman to abuse her; and the matter be proved, he shall dye for it". This short and clear rule of law prescribes the same punishment as was found for that offence in most civil penal codes of the time. Article 90, which prohibits soldiers from setting fire to a town or village in a friendly country, clearly constitutes another fundamental humanitarian rule. Article 91 lays down the same rule for enemy territory, although it provides for one exception: a captain may order a town or village burned with the consent of the King or his marshal. The thinking behind this article is clear since the punishment for disregarding the prohibition is not penal but compensatory: a captain who wrongly ordered his troops to start a fire had to pay compensation for the loss of booty caused by the flames.

Articles 99 and 100 contain the most clearly defined humanitarian rules: Article 99 stipulates that no churches or hospitals may be pillaged even if a city is taken by force and general plundering allowed. An

exception to this rule is made for buildings used in defending the city. Article 100 prohibits the setting on fire of churches, hospitals and schools, and it forbids ill-treatment of clergymen, the elderly, women and children, provided they do not put up armed resistance.

Although the humanitarian rules contained in the *Articles of War* are of a very rudimentary nature, they nevertheless point to the ever-present need for a measure of humanity in the midst of warfare. They also give us an idea of what existed in the way of humanitarian law before the publication of Grotius' *De Jure Belli ac Pacis* in 1625 and appear to have been inspired by Gentili's 1612 *De Jure Belli*.

Gustavus' *Articles of War* were, as previously said, at least in part an innovation. Compared with the code of Maximilian II — which contained humanitarian rules only in Articles 8 and 9 — they gave broader and better protection to civilians against some of the horrors of war. Enforcement was as much a problem then as today, and in this respect the *Articles* constituted a major improvement. With the establishment of specific rules and a hierarchy of court martials, the behaviour of combatants became a matter of law and there is evidence that the rules were applied for all categories of both officers and enlisted men.

The impact of Gustavus' *Articles* should not, however, be overestimated. In much of Germany and Bohemia, the Swede, the Turk and the devil had much the same reputation. "Sveda" passed into the Czech language as a word for a criminal or ragged fellow. In Germany, a saying still goes *Bet Kind, bet Kind, morgen kommt der Schwede*.³ Nevertheless, the *Articles of War* had a considerable influence and served as a model for the later development of the law of war in Europe. Swedish commanders who served under Gustavus carried the *Articles of War* with them when they went abroad and thus spread the law and its fundamental rules on humanity and protection wherever they travelled.

³ "Pray child, pray child, the Swede is coming tomorrow"

Annex

*Articles of War
decreed in 1621 by King Gustavus II Adolphus
of Sweden⁴*

Article 88

He that forces any Woman to abuse her; and the matter be proved, he shall dye for it.

Article 89

No Whore shall be suffered in the Leaguer: but if any will have his owne wife with him, he may. If any unmarried woman be found, he that keeps her may have leave lawfully to marry her; or els be forced to put her away.

Article 90

No man shall presume to set fire on any Towne or Village in our land: If any does, he shall be punisht according to the importancy of the matter, so as the Judges shall sentence him.

Article 91

No Soldiour shall set fire upon any Towne or Village in the enemies land; without he be commanded by his Captaine. Neither shall any Captaine give any such command, unlesse hee hath first received it from Us, or our Generall: who so does the contrary, he shall answer it in the Generals counsayle of Warre, according to the importance of the matter. And if it be proved to be prejudiciall unto us, and advantageous for the enemy; he shall suffer death for it.

⁴ Extracts — Spelling modernized in places to facilitate understanding.

From the only known publication of the *Articles of War* in English: *The Swedish Discipline*, London, 1632. German translations of the 1621 and the 1632 versions of the *Articles of War* were published in *Entwicklungsgeschichte des Deutschen Heerwesens*, Dritter Band, I. Teil, Beilagen XXIV und XV, München, 1938.

Article 99

No man shall presume to pillage any Church or Hospital, although the strength be taken by assault, except hee bee first commanded; or that the soldiers and Burgers be fled thereinto and doe harme from thence. Who does the contrary, shall be punished as aforesaid.

Article 100

No man shall set fire upon any Church, Hospital, Schoole, or Mill, or spoyle them any way, except hee bee commanded. Neyther shall any tyrannize over any Churchman, or aged people, Men or Women, Maydes or Children, unlesse they first take Armes against them, under paine of punishment at the discretion of the Judges.

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