THE STATUS OF REBEL ARMIES

It is often said that municipal lawyers have little or no interest in problems of international law since, it is claimed, such problems seldom if ever come before the civil courts.

This, however, is not absolutely true. On May 27, 1960, Rigby J. was faced with a *habeas corpus* petition brought on behalf of a number of individuals found within Malayan territorial waters without lawful excuse. Having served their sentences for being in unlawful possession of firearms and ammunition, they were detained for committing an offence under s.15(l) of the Immigration Ordinance. The substance of the case does not interest us here. What is interesting is that they described themselves as 'members of the Revolutionary Government of the Republic of Indonesia', and in his judgment Rigby J. said, 'They are members of a Revolutionary Indonesian Organisation bearing arms against the established Government of that country'.[1]

Apparently no attempt was made by the Indonesian authorities to secure the extradition of these individuals. It is true that any such claim would have been met by the plea that the detainees were in fact political offenders and as such not liable to extradition.[2] In fact, they would satisfy the definition of political offenders both as laid down in *Re Castioni*[3] — namely, members of an organised political movement seeking by force of arms to overthrow the established government — and in *Ex p. Kolczynski*[4] — in which Lord Goddard C.J. recognised that at the present time, and particularly in the conditions prevailing in Eastern Europe, it has become necessary to adjust the concept of political offences to the nature of the acts of the individual applicant as such, rather than to whether he happens to be a member of an organised political movement.

This was not the first time that a problem concerning Indonesian rebels came before a local court. In *Ex p. Westerling*[5] a request for the extradition of a leader of a rebel movement in Indonesia was denied in

1. *Ex p. Johannes Choeldi & Others* (1960) 26 M.L.J. 184.
2. Federation Extradition Ordinance (No. 2 of 1958), s.5.
3. [1891] 1 Q.B. 149.
4. [1955] 1 Q.B. 540.
5. (1951) 17 M.L.J. 38 (the Extradition Act is still valid in Singapore).

Singapore on the ground that the 1898 Extradition Treaty between the United Kingdom and the Netherlands,[6] to the benefits of which Indonesia claimed to have succeeded, had not been extended by Order in Council to the Republic of Indonesia as distinct from the dominions of the Queen of the Netherlands.[7]

Problems concerning military operations do, in fact, frequently come before the courts. Thus, in contractual relations it may well be necessary to know, from the point of view of frustration, whether a 'war' exists or not. In *Kawasaki Kisen Kabushiki Kaisha of Kobe* v. *Bantham S.S. Co.,*[8] it was important to know, during the China incident, whether Japan was at war with China, for the charterparty in question was frustrated if Japan were involved in war. As is normally the case when problems of foreign relations are involved, the court asked the executive for an authoritative statement on this matter. In its reply, the Foreign Office pointed out that H.M. Government did not recognise any state of war as being in existence, nor did it concede that either Japan or China was entitled to exercise belligerent rights. Further, the statement pointed out that neither Japan nor China had declared war on the other, and that each State kept an ambassador at the other's capital. The Foreign Office accepted, however, that some form of hostilities was being engaged in. Finally, the statement pointed out that while there might not have been a 'war' in the sense of international law, it was feasible that a 'war' did exist from the point of view of the law of contract. On the basis of this statement, the court held that Japan was engaged in war and the charterparty was frustrated. Similarly, in *R.* v. *Burns*[9] the Australian courts were concerned to know whether or not Australia was at war with North Korea or in Korea.

These two cases make it clear that not every military engagement between opposing forces amounts to war.[10] It is by no means uncommon for a government to be faced with hostile activities by armed groups within its own territory. By international law, however, what happens within the territory of a State is, normally speaking, a matter of domestic jurisdiction and as such outside the competence of international law. It is true that Article 15 (8) of the Covenant of the League of Nations expressly stated that the test as to whether a matter was to be regarded

6. Piggott, *Extradition,* 1910, p. 217.

7. See, however, *In re Said Mohd. b. Mohsin* (1911), in de Mello, *A Manual of the Law of Extradition applicable to the Straits Settlements,* 1933, p. 587. The Treaty is at p. 413.

8. [1939] 2 K.B. 544.

9. *Sydney Morning Herald,* Nov. 14-15, 1950. This case is fully discussed in Green, 'The Nature of the "War" in Korea', 4 I.L.Q., 1951, p. 462.

10. See, *e.g.,* Green, 'Armed Conflict, War and Self-Defence', 6 *Archiv des Völkerrechts,* 1957, p. 387.

as falling within this reserved domain was by the measuring rod of international law. Article 2 (7) of the Charter of the United Nations has omitted this limitation and simply provided that the United Nations is unable to intervene in any matter which is essentially within the domestic jurisdiction of a State. What is more, in its practice, as illustrated by the *Norwegian Loans* case, [11] the International Court of Justice has recognised the right of a State to define for itself what matters fall within its domestic jurisdiction. For this reason, therefore, we are interested in this paper only in those military operations which have acquired some measure of international significance, over and above that of pure ideological sympathy.

The years since the Second World War have seen civil wars and military operations not amounting to war in the strict legal sense of the word — the United Kingdom was not at war in Korea [12] and was only in a 'state of armed conflict' with Egypt at the end of 1956.[13] In addition, there have been rebellions and mutinies. In the case of the two latter, there have been some members of the armed forces who have either joined with or themselves raised a force regarded as an enemy by the authority to which those persons normally owed allegiance.

It must not be thought, however, that the problem of the legal status of such forces has only been a matter of significance since 1945. As long ago as 1758 Vattel wrote, in words which are equally apposite today:

> 'The name of *rebels* is given to all subjects who unjustly take up arms against the ruler of the society, whether with the design of deposing him from the supreme authority, or of merely resisting his orders in some particular instance and making him accept their terms. . . . All [their] acts of violence . . . are crimes against the State .... But how is the sovereign to treat the insurgents? I answer, in general in the manner that is at once most in accord with justice and conducive to the welfare of the State. . . . The number of the guilty forces the sovereign to show mercy. Shall he depopulate a town or a province in order to quell its rebellious citizens? Certain forms of punishment, however just in themselves, become cruelty when extended to too great a number of persons. . . . Only a tyrant will treat as rebels those brave and resolute citizens who exhort the people to protect themselves from oppression and to maintain their rights and privileges. . . .
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> 'When a party is formed within the State which ceases to obey the sovereign and is strong enough to make a stand against him, or when a Republic is divided into two opposite factions, and both sides take up arms, there exists a *civil* war. Some authors limit the term to a just uprising on the part of subjects against their sovereign, in order to distinguish such lawful resistance from the open and unlawful resistance which is termed a *rebellion.* . . . Custom applies the name of civil war to every war between members of the same political society; if the war is between a body of the citizens on the one hand and the sovereign with those loyal to him on the other, nothing further is required to entitle the insurrection

11. *I.C.J. Reports 1957,* p. 9.

12. See *loc. cit.,* n.9 above, p. 462.

13. Mr. Eden in the House of Commons, Nov. 1, 1956, *Hansard,* vol. 558, col. 1645.

to be called *civil war,* and not *rebellion,* than that the insurgents have cause for taking up arms. . . . The sovereign never fails to stigmatise as *rebels* all subjects who openly resist his authority; but when the latter became sufficiently strong to make a stand against him, and to force him to make formal war upon them, he must necessarily submit to have the contest called civil war. . . .

'Civil war . . . gives rise, within the Nation, to two independent parties, who regard each other as enemies. . . . Of necessity, therefore, these two parties must be regarded as forming thenceforth, for a time at least, two separate bodies politic, two distinct Nations. . . . They are in the situation of two Nations which enter into a dispute and, being unable to agree, have recourse to arms.

'That being so, it is perfectly clear that the established laws of war, those principles of humanity, forbearance, truthfulness, and honour, . . . should be observed on both sides in a civil war. The same reasons which make those laws of obligation between State and State render them equally necessary, and even more so, in the unfortunate event when two determined parties struggle for the possession of their common fatherland. . . . Whenever a large body of citizens believe themselves justified in resisting the sovereign, and are sufficiently strong to take to arms, war should be carried on between them and the sovereign in the same manner as between two different Nations, and the belligerents should have recourse to the same means for preventing the excesses of war and for re-establishing peace as are used in other wars.

'When the sovereign has conquered the party in arms against him, when he has brought them to submit and to sue for peace, he may except from the amnesty the authors of the disturbance, the leaders of the party, and may judge them according to the laws, and punish them if they are found guilty. . . . The heat of passion attending civil strife is not favourable to the administration of pure and sacred justice; a time of greater tranquillity must be awaited. The prince will act wisely in keeping the rebels prisoners until, having restored tranquillity to the country, he is in a position to have them judged according to the laws. ...

'Foreign Nations must not interfere in the domestic affairs of an independent State. It is not their part to decide between citizens whom civil discord has driven to take up arms, nor between the sovereign and his subjects. . . . Those Nations which are not bound by treaty obligations may, in order to determine upon their own conduct, decide for themselves the merits of the case, and assist the party which seems to have justice on its side, should that party ask for their help or accept the offer of it. ... As for the allies of a State which is torn apart by civil war, they will find the rule for their conduct in the nature of their alliances considered in the light of existing circumstances. . . .'[14]

Not long after Vattel had published his *Droit des Gens,* there was, at the end of the eighteenth century, the American War of Independence. The revolutionaries were recognised by, for example, France which signed a Treaty of Amity with the colonists. 'France had *declared* war when she announced her Treaty with the rebellious subjects ... of Great Britain; . . . and no one cognisant of the principles of International Law can seriously doubt that it was perfectly competent to England, upon the announcement of that Treaty . . ., to have immediately commenced open hostilities. ... It was simply a question of discretion on the part of England as to the moment at which she would choose to order the first cannon to be fired'[15]. British official statements at the time made it

14. *Le Droit des Gens,* Liv. III, Chap. 18 (Carnegie translation, pp. 336-340).

15. Phillimore, *International Law,* vol. 3, 1885, p. 103.

clear 'that the lives of rebels "by the law of the land are destined to the cord", implying that any fate better than this was an act of pure British charity. [Further], George III by royal proclamation on August 23, 1775, termed those resisting his troops as "traitors", destined for "condign punishment". In spite of these statements, and regardless of whether Vattel's statements were actually known, the practical logic embodied in his arguments and the immediate circumstances of conflict inhibited the conduct of the British toward the American rebels. There were simply too many taking part in the civil war to indulge in any hanging bees. And the Americans had captured enough British officers and men in 1775 to be in position to retaliate against such severities. In practice, then, the British accorded the status of regular belligerents to the American troops. The tenor of the communications between the two forces indicated this'[16].

Although the revolutionary troops may have been treated as if they were regular belligerents, Britain did not recognise the revolutionary authorities as being a government. The hostilities ended, however, with the revolutionaries being recognised and accepted as a foreign independent State by the home government against which they had risen in arms. Problems that might have arisen in connection with the status of the rebels were averted by the Peace Treaty of 1783[17] between England and the colonists. By Article 6 it was expressly provided that no one was to be prosecuted 'for, or by reason of the part which he or they may have taken in the present war'. It has been said that the Treaty did not grant independence nor create a new State, but constituted a separation of two parts of the same Empire, 'each taking with it its territorial rights as previously enjoyed'[18]. Nevertheless, it must be remembered that, by Article 1, 'His Britannic Majesty acknowledges the said United States to be free, sovereign and independent States'. Some of the humanitarian motives reflected in Vattel's comments appear to have found their way into the Paris Treaty of 1783. In addition to the non-prosecution article, Article 3 protected the rights which the colonists had enjoyed as British subjects in so far as fishing was concerned, while the Jay Treaty, 1794 [19], recognised the right of British subjects in the United States and Americans in England to hold land as if they were natives, and this right continued even after the War of 1812.[20]

16. Clancy, 'Rules of Land Warfare during the American War of the Revolution', 2 *World Polity,* 1960, p. 203, at pp. 212-213. See, also, Siotis, *Le Droit de la guerre et les conflits armés d'un caractère non-international,* 1958, p. 59 *et seq.*

17. 1 Malloy, *Treaties,* p. 586.

18. Wharton, *International Law Digest,* vol. 3, 1886, pp. 40-41.

19. 1 Malloy, *Treaties,* p. 590.

20. See, *e.g., Sutton* v. S*utton* (1830) 1 Russ. & M. 664.

The nineteenth century saw many examples of rebellions possessing international ramifications.[21] This was the period of the revolt of the Spanish colonies in South America, when England made it clear that she intended doing all she could to make it difficult for Spain to preserve her position, while the Monroe Doctrine indicated that, for the future, the United States would seek to prevent any European power maintaining territorial authority or intervening in the western hemisphere. Perhaps the low-water mark in the treatment of rebels during this period is reflected by the decision in *The Magellan Pirates.*[22] A number of unrecognised Chilean rebels had attacked and seized ships in the harbour of Punta Arenas, killing foreign nationals in the process. Ultimately, they were captured by an English man-of-war which handed them over to the government against which they were carrying arms. Presumably, they received short shrift from this authority. When the English seamen returned home, a claim was lodged for prize money on the ground that the persons captured were pirates.[23] This claim succeeded. It might be interesting to question whether a similar decision would have been rendered if the ships and the victims of the rebels had been of their own nationality, and if the captured ships had never left the territorial sea for the high seas. In 1961 many, especially shipping interests, suggested that the Portuguese rebels who had seized the *Santa Maria* should be treated as pirates. The Brazilian Government, however, afforded them asylum.

1848 was the year of revolutions in Europe. The situation arising therefrom hardened the views of the members of the Holy Alliance. They had agreed that none of the sovereigns of Europe would recognise or have dealings with any authority that had been established as a result of the overthrow of one of the crowned heads of Europe.[24] A different situation prevailed in connection with the American Civil War. Almost immediately intelligence was received in England that this had commenced, Queen Victoria's Government recognised the Confederate States as belligerents and afforded to them the rights of war as against neutrals.[25] The Federal Government protested at this 'intervention', but without success.[26] In fact, it was during this War that much of the law of war at sea developed. It was then that the doctrine of continuous voyage evolved,[27] and it became clear, as finally laid down in the *Alabama*

21. Siotis, *op. cit.,* pp. 64-96.

22. (1853) 1 Spinks 81.

23. Piracy Act, 1850, 13 & 14 Vict. c. 26.

24. Thomas, van Wynen, and Thomas, *Non-Intervention,* 1956, pp. 8-10.

25. May 13, 1861; 51 B.F.S.P., p. 165.

26. See, for some of the relevant documents, Moore, *Digest of International Law,* vol. 1, 1906, pp. 185-186.

27. See, *e.g., The Stephen Hart* (1863) Blatchford's Pr. Cas. 387.

arbitration,[28] that a neutral must show 'due diligence' in preventing aid from reaching one of the belligerents. Even the United States Supreme Court, in such decisions as *The Prize Cases,*[29] tended to apply the international law of war, and in *Coleman* v. *Tennessee*[30] limited the power of a state court to punish a member of the United States forces for acts done while the force of which he was a member was in occupation of the state territory, thus applying the principles of the ordinary law of war as exemplified in *Re LoDolce* in 1952.[30a]

In Latin America the twentieth century began with a major rebellion. In 1903 a rebellion against Colombia broke out in the region of the Panama isthmus. Almost immediately the United States informed the Colombian Government that she had recognised the rebels as an independent State called Panama, and warned the former sovereign that any attempt to crush the rebellion and re-establish Colombian sovereignty would be opposed.[31] The new State recognised the debt that it owed to the United States by entering into the Hay-Varilla Treaty with regard to the Panama Canal.[32] When, however, Colombia entered the League of Nations in 1920 she declared that acceptance of Article 10 of the Covenant[33] did not imply recognition of an independent Panama.[34]

During the First World War, the problem arose in a new form. Since 1871 Alsace-Lorraine had been incorporated in Germany and the German authorities treated the nationals of those two territories, many of whom served in the German armed forces, as Germans. France, on the other hand, treated the property of such persons in France on a privileged basis, although the Germans liquidated or subjected to forced sales property in Alsace-Lorraine belonging to French nationals, as well as to 'German subjects in Alsace-Lorraine whose sons had emigrated to France or were serving in the French army, [and to] Alsatian families who were "affiliated" with individuals or families of French nationality'[35]. The two provinces were restored to France by the Treaty of Versailles

28. (1872) 1 Moore, *International Arbitrations,* p. 653.

29. (1862) 2 Black 635.

30. (1878) 97 U.S. 509.

30a. 106 F. Supp. 455 *(I.L.R. 1951,* p. 318).

31. Moore, *Digest,* vol. 3, p. 46, and Message of President Roosevelt to *Congress* Dec. 7, 1903, *ibid.,* p. 49.

32. 2 Malloy, *Treaties,* p. 1349.

33. 'The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League'.

34. *U.S.For.Rel,* 1920 (1), p. 825.

35. See 22 R.G.D.I.P., 1914—pp. 1Od, 15, 134d; 23d *ibid.,* 1916, p. 152d; Garner *International Law and the World War,* 1920, p. 91. See, also, *Peace Handbook* vol. 6, Alsace-Lorraine, Chap. 2, sec. xiv — Feb. 1919.

and similar problems arose during the Second World War when a number of Alsatians were 'forcibly enlisted' in the German army after Germany had occupied Alsace and, in 1940, annexed it to the Reich. Thus, the United Nations War Crimes Commission held that German judges who had sentenced Alsatian deserters to death had committed a war crime.[35a] The problem really came to a head at the *Oradour* trial in 1953. At first the Alsatian accused were tried at the same time as the Germans. During the trial, however, the proceedings were severed and the Alsatians were tried in a separate military trial. The defence that they had been 'forcibly enlisted' was rejected, especially as it was pointed out by the prosecution that, being French, their offences were covered by the penal code. To meet the popular outcry in Alsace after they had been sentenced, the French parliament passed an amnesty which extended to all who had been 'forcibly enlisted'.[35b]

Far more important during the First World War than the problem of inhabitants of Alsace-Lorraine, was the position of persons embodied in the Czech or Polish National Forces. The Allied and Associated Powers had made it clear that after the termination of hostilities they intended restoring Poland as an independent sovereign State and creating the new State of Czechoslovakia out of part of the Austro-Hungarian Empire. In view of these promises, Czech[36] and Polish[37] National Committees were established with forces at their disposal. These armed forces were treated by the Allied and Associated Powers as if they were the forces of independent governments, even though, as yet, they had no defined territory over which to exercise their sovereignty. Incidentally, this is evidence of the fact that it is not a *sine qua non* of international law that territory, let alone defined frontiers, must exist before Statehood and international personality. In so far as the Central Powers were concerned, they refused to concede any status to the two National Committees in question. In fact, when the Permanent Court of International Justice was seized of a dispute between Germany and Poland it refused to allow Poland to take advantage of the terms of the Armistice Agreement or of the Treaty of Versailles, on the grounds that, in so far as Germany was concerned, Poland did not come into existence until after the ratification of the Peace Treaty, to which she had not been a party.[38]

35a. H.M.S.O., *History of the United Nations War Crimes Commission,* 1948, p. 495.

35b. *The Times,* January 2, 13, 14, 16, 17, 19, 20, 21, 29, 30, 31, February 4, 9, 10, 11, 12, 13, 14, 19, 20 and 23, 1953.

36. Smith, *Great Britain and the Law of Nations,* vol. 1, 1932, p. 236; Hackworth, *Digest of International Law,* vol. 1, 1940, p. 203 *et seq.*

37. Smith, *ibid.,* p. 234; Hackworth, *ibid.,* p. 214 *et seq.*

38. *German Interests in Polish Upper Silesia* (1926), Series A/7, p. 4, at pp. 27-28 (Green, *International Law Through The Cases,* 1959, p. 454, at p. 459).

The experience with the Polish and Czech National Committees emphasises the subjective character of international personality. Entities exist as international persons only to the extent that they are recognised by other international persons. For those States which refuse to recognise the existence of the new entity, international law — at least customary international law — imposes no limitation on the free exercise of their discretion. If aliens are injured by rebels it may happen that even a non-recognising State is able to recover damages from the home State. This would occur, for example, if the rebel authorities established a temporary *de facto* administration which was effective for the whole territory and entered into concession arrangements with alien nations, as happened in the case of the Tinoco regime which governed Costa Rica from 1917 to 1919. The United Kingdom had refused to recognise this government, but in the case concerning the *Tinoco Concessions* [39] was able to recover against the restored and recognised government. When the rebel authority is not in effective control of the whole territory, it may still be administering part of the State, in which case the restored government may be called upon to honour such things as postal orders issued by the rebel authority and held by aliens.[40] It may also happen that a rebellion breaks out in a protected territory and the rebels may cause damage to alien interests. Then, on the basis of the award of Huber in the arbitration concerning *British Claims in Spanish Morocco,*[41] the protecting power may itself be liable.

From the legal point of view, perhaps the most important rebellion to take place before the Second World War was that which became known as the Spanish Civil War.[42] At an early date it became clear that this was not a civil war of a normal kind, for third States were intervening, especially on the side of the rebels, on a grand scale. In so far as the Republicans were concerned, there is nothing in international law to preclude a government from being supplied with arms or troops from other governments with which it is in friendly relations. On the other hand, for the rebels to be supplied amounts to unlawful intervention in the domestic affairs of the State concerned. The intervention in Spain was on a scale to indicate that the decision in the war was likely to rest with the intervening States, rather than with the people of Spain. The grave risk that the interventionists on both sides might clash and thus bring about a European war, led to international action by a number of European States.

39. (1923) 1 U.N. *Reports of International Arbitral Awards,* p. 369.

40. *Hopkins Claim* (1926) U.S.-Mexican General Claims Commission, 4, *ibid.,* p. 41.

41. (1925) 2, *ibid.,* p. 615 (Eng. tr., Green, *op. cit.,* p. 646, at pp. 651-652).

42. See, *e.g.,* Padelford, *International Law and Diplomacy in the Spanish Civil Strife,* 1939, and Siotis, *op. cit.,* pp. 150-170.

Without conceding in any way that there was a war being fought in Spain, the parties to the Nyon Agreement[43] set up a committee whose task it was to supervise the withdrawal of 'volunteers' from that country and to watch that reinforcements in men or materials were not being sent to either side. There was one further major international reason for their concern. In accordance with international law, military acts against the ships of non-participants in hostilities are only permissible on the high seas if the actual contestants are recognised as possessing belligerent rights. Neither the Spanish Republicans nor the Franco Nationalists enjoyed such rights, nor did General Franco possess any Spanish submarines. Nevertheless, foreign ships, particularly those carrying food to Republican ports, were being attacked in the Mediterranean by unidentified submarines, generally believed to be Italian. When it was laid down in the Nyon Agreement that any submerged submarine in the Mediterranean that did not identify itself on demand, as well as those on the surface without any flag, would be liable to attack at sight the predatory activities of these submarines ceased.

It may be said of the non-intervention experiment that it proves conclusively that 'non-intervention' is merely another name for 'intervention', and if one accepts that a legitimate government — and from the point of view of international law, it is irrelevant whether the government in question enjoys the support of the people or not, legitimacy depends on the attitude of the head of State — is entitled to receive support from its friends to keep itself in power, this is undoubtedly true.[44] At this point, one ought perhaps to emphasise that the political colour of the established government is irrelevant. International law recognises that it is a purely domestic matter whether a State is monarchist or republican, a dictatorship or a democracy, fascist or communist. So long as there is a head of State accepted by other countries, he and the government acknowledging his authority are entitled to all the respect and support due to sovereign powers.[45]

In the case of Spain, the situation was a little complicated. Germany, Italy and Portugal had recognised the Franco regime as being the legitimate government of Spain. From their point of view, the Republicans were the rebels. In accordance with what has just been said,

43. Sept. 4, 1937; 7 Hudson, *International Legislation,* p. 831. See Finch, 'Piracy in the Mediterranean', 31 A.J.I.L., 1937, p. 659, and Lauterpacht, 'Insurrection et Piraterie', 56 R.G.D.I.P. 1939, p. 513.

44. See Lauterpacht, 'Inasmuch as Italy and Germany undertook not to supply the rebellious forces with munitions of war, these agreements constituted an undertaking on the part of certain Powers to refrain from committing an international illegality in consideration of the promise of other Powers to refrain from acting in a manner in which they were entitled — and, according to some, legally bound — to act', Oppenheim, *International Law,* S. 134, fn.

45. This partly explains the attitude to the dynastic struggle in the Congo as between M. Kasavubu and the partisans of the late M. Lumumba — and in Laos in 1961.

therefore, it would appear that these States could assert that they were lending aid to a friendly government. This ignores, however, that Spain was a member of the League of Nations and, as such, entitled to the benefits accruing under the Covenant. All members of the League were under an obligation to do nothing to threaten the political integrity or territorial independence of another.[46] To recognise a rebel authority cannot be said to be in accordance with this obligation. To those who may argue that Germany and Italy had resigned from the League by the time of the Spanish Civil War, it is enough to mention that, in accordance with the Covenant, resignation was only effective after two years' notice, and then only provided the resigning State had carried out all its obligations as a member.[47] Neither Germany, which had reoccupied the Rhineland and torn up the disarmament clauses of the Treaty of Versailles, nor Italy, which had committed aggression against Ethiopia, had satisfied these conditions.

The legal status of the participants in the Spanish Civil War also raised problems in municipal law.[48] This was particularly so in the United Kingdom. In the first place, in January 1937 the Government invoked the Foreign Enlistment Act, 1870, so that persons enlisting in the forces of either side in the conflict would commit an offence. This was in accordance with section 30 which assimilated insurgents, whether granted belligerent rights or not, to a foreign "State" for the purposes of the Act. It was considered that "war" in the statutory sense was not necessarily "war" in the technical sense.[48a] An interesting factor in this connection is the different attitude adopted to the Spanish Civil War of 1835. On that occasion, in accordance with the Treaty of Quadruple Alliance, an Order in Council exempted British nationals in the service at Queen Isabella from the operation of the earlier Act of 1819. In fact, a Spanish Legion of British soldiers under a British officer fought on behalf of the legitimate government.[48b] This earlier case was affected by the Treaty, but, as already indicated, under the League Covenant the Republican Government could have been considered to be in the same privileged position.

The problems involved were made especially clear when the courts were faced with questions as to the immunity from suit of ships claimed by either the Republic[49] or the Nationalists.[50] The most important of these cases concerned *The Arantzazu Mendi.* It was

46. Covenant, Art. 10.
47. Art. 1 (3).
48. See, *e.g.,* Chen, *The International Law of Recognition,* 1951, pp. 318-323.
48a. See McNair, 'Law relating to the Civil War in Spain', 53 L.Q.R. 1937, pp. 318-323. For a discussion on the meaning of the word "war", see Green, *loc. cit.,* n.10 above, pp. 341-408, 413-5, 418-24.
48b. Phillimore, *op. cit.,* n.15 above, vol. 3, p. 243.
49. *The Cristina* [1938] A.C. 485.
50. *The Arantzazu Mendi* [1939] A.C. 256.

alleged that for the High Court to hear the case would implead a foreign sovereign, namely the Franco regime. When the Foreign Office was asked for its opinion, it replied that the British Government only recognised the Republican administration in Madrid as the *de jure* Government of Spain. It pointed out, however, that the 'Nationalist Government' at Burgos constituted an effective administration over the territory which it controlled, and that in this territory the writ of the Republican Government did not run. Further, 'the Nationalist Government is not a Government subordinate to any other Government in Spain'. In the light of this opinion, the Court, sustained by the House of Lords, held that the Nationalist authorities constituted a foreign sovereign State impleaded by the action, and as such entitled to the same immunity from suit as any other government. On the other hand, it was made perfectly clear that there were not two *de jure* governments in Spain, and that neither of the governments was entitled to exercise belligerent rights outside Spanish territorial waters. The attitude of the Court in this case is in marked contrast with the view taken of rebels in the case of the *Magellan Pirates*[51] and emphasises the significance, from the point of view of third States, of the recognition of rebel, as of other, entities.

The Second World War brought problems of its own. Never before had so many countries been occupied by an enemy force, wherein the local population organised armed forces which continued the struggle against the invader,[52] even after the government of the country concerned had either left the territory or surrendered. The German authorities sought to treat those underground forces as criminal bands, but the attitude of the wartime United Nations,[53] as well as the practice of the war crimes tribunals which tried enemy personnel for offences against partisans,[54] indicates that so long as such persons comply with the terms of the Hague Regulations and observe the rules of warfare, they are entitled to be treated in accordance with the rules of war. The difficulty is, however, that, by the Hague Regulations,[55] armed forces, in order to come within the protection of the laws of war, should carry their arms openly, wear a distinctive emblem recognisable at a distance, and conduct their hostilities in accordance with the laws and customs of war. With many of the partisan forces, none of those conditions was fulfilled. Nevertheless, since the occupation of their territories was

51. See text to n. 22 above.

52. See, *e.g.,* Trainin, "Questions of Guerrilla Warfare in the Law of War," 40 A.J.I.L. 1946, p. 534.

53. H.M.S.O., *Punishment of War Crimes, 2:* Collective Notes presented to the Governments of Great Britain, the U.S.S.R. and the U.S.A. and Relative Correspondence, 1942.

54. *E.g., In re Bauer* (1945) 8 *Law Reports of Trials of War Criminals,* p. 15, and *In re List* (Hostages Trial) (1948) *Annual Digest 1948,* p. 632, at pp. 638-641.

55. Art. 1.

illegal as an act of aggression contrary to the Kellogg-Briand Pact,[56] it can be argued that the occupant could not complain if those against whom he was waging his illegal war did not pay scrupulous attention to the provisions of the law in so far as their activities against the occupying forces were concerned. On the other hand, it could not be expected that only one belligerent — the aggressor — would agree to be bound by the law of war when his enemy was not so bound. [57]

Any attempt made by the German authorities to treat such personnel as rebels or traitors was contrary to law. By international law, occupation of territory during war does not suffice to transfer the sovereignty over that territory, nor do the inhabitants become nationals of the occupant, nor do they cease to owe allegiance to their true sovereign. This is especially true in the case of a country whose government has gone abroad and, with the main body of its troops, continues to wage war with a view to the liberation of the national territory. It is equally true if the allies of the country continue their war and the allied military command treats the liberation forces as if they were part of the Allied armies.[58] In the case of the Netherlands, resistance forces were declared part of the regular armed forces and made liable to military law. As a result, Dutch courts martial were able to assess whether they conducted their hostilities in accordance with the laws of war.[58a] In these circumstances there seems little doubt that national liberating forces are entitled to be treated in accordance with the laws of war, a principle which is embodied in the 1949 Geneva Conventions. [59] Further, these Conventions have, to the extent that they refer to combatants who have surrendered, or are sick, wounded or detained, been made directly applicable to 'armed conflict not of an international character, occurring in the territory of one of the High Contracting Parties'.[60]

The situation is somewhat different in the case of guerrilla forces raised by civilians. It is in the very nature of such forces that they

56. See, *e.g., Nuremberg Judgment* (1946) Cmd. 6964, pp. 39-40; *In re Zuhlke* (1948) *I.L.R. 1948,* p. 415; *In re Christiansen* (1948), *ibid.,* p. 412; *N.V. de Bataafsche Petroleum Maatschappij* v. *War Damage Commission* (Singapore Oil Stocks) (1956) 22 M.L.J. 155, *I.L.R. 1956,* p. 810. See, also, Lauterpacht, 'Rules of Warfare in an Unlawful War', in Lipsky, *Law and Politics in the World Community,* 1953, p. 89, and 'The Limits of the Operation of the Laws of War', 30 B.Y.I.L., 1953, p. 206.

57. See Lauterpacht, *loc. cit.,* pp. 92 and 220.

58. See Nurick and Barrett, 'Legality of Guerrilla Forces under the Laws of War', 40 A.J.I.L. 1946, 563, at p. 581, which reproduces the Eisenhower proclamation of July 16, 1944.

58a. *State of the Netherlands* v. *B.* (1954) *I.L.R. 1954,* p. 431.

59. Red X, Art. 13, Red X (Sea), Art. 13, Ps.W., Art. 4. The texts of these Conventions are to be found as Schedules to the Geneva Conventions Act, 1957, 5 & 6 Eliz. 2, c. 52, and as App. 3 to Draper, *The Red Cross Conventions,* 1958.

60. Art. 3 of each of the four Geneva Conventions (including that on Civilians).

operate clandestinely, in disguise, often without even an identifying armlet, without carrying their weapons openly — to do so would suffice to betray them — and using methods of killing not only not always to be found in Military Manuals, but frequently expressly condemned by such handbooks. With such forces, protection will depend more on principles of humanity than of law — in fact, most Military Manuals state that the laws of war rest on principles of humanity[61] — and on the clarity with which the belligerent on whose behalf they have taken up arms indicates its determination to punish offences committed against them.[62]

In time of war, particularly when the enemy is in occupation of part of the national territory, it often happens that dissident nationals make common cause with the enemy occupant in opposition to their legitimate sovereign. Any civil war is fought with a measure of hatred and viciousness that is often absent in normal wars, and this is especially true when what would otherwise be regarded as rebels have joined forces with the enemy occupant. In an attempt to limit the barbarity that so often accompanies a civil war, of which the Spanish Civil War offers an excellent example, the 1949 Geneva Conventions have attempted to extend the protection of the rules of war to the parties involved in any form of armed conflict, including civil war.[63] It is expressly stipulated, however, that the application of the Conventions 'shall not [in the case of non-international war] affect the legal status of the parties to the conflict'.[64] This means that although the forces engaged in hostilities against the legitimate government are entitled, during hostilities to be treated as if they were belligerents, they are not in fact belligerents in the true sense of the law of war. This is tantamount to saying that their wounded are to be treated in accordance with the Red Cross Convention, and that any captured personnel are, subject to one fundamental

61. British *Manual of Military Law,* Part III, The Law of War on Land, 1958, para. 3; U.S. *Army Field Manual,* The Law of Land Warfare, 1956, para. 6; U.S. *Law of Naval Warfare,* 1955, Art. 220. See also Preamble to Hague Regulations, 1907, and 1949 Geneva Conventions, Red X, Art. 63, Red Cross (Sea), Art. 62, Ps.W., Art. 142, Civilians, Art. 158.

62. H.M.S.O., Declaration of St. James's, London, Jan. 13, 1942. See, also, H.M.S.O., *History of the U.N. War Crimes Commission,* 1948, pp. 87-94. For a similar statement by rebels directed to their sovereign, see Statement by Subhas Chandra Bose, May 30, 1945 (in Toye, *The Springing Tiger,* 1959, p. 220).

63. 'The present Convention[s] shall apply to all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them. [They] shall also apply to all cases of partial or total occupation of the territory of a H.C.P., even if the said occupation meets with no armed resistance.' 'In the case of an armed conflict not of an international character occurring in the territory of one of the H.C.Ps., each party to the conflict shall be bound to apply, as a minimum . . .' (Arts. 2 and 3 of each Convention).

64. Art. 3.

exception, entitled to be treated as if they were prisoners of war and protected by the relevant Convention. Since, however, their legal status is not altered, they may when captured, or after the termination of hostilities, be brought to trial for treason. In this, their status is very different from that of the normal belligerent, for the only way in which a captured prisoner who obeys the laws of his captor may be brought to trial is if war crimes are alleged against him. In the absence of such a charge, or of offences while in captivity, including attempting to escape, the captor is unable to exercise criminal jurisdiction over him.[65] Without the Conventions, government forces could, unless forbidden by municipal law, execute captured rebels peremptorily and without trial.

Such peremptory treatment was often meted out during the Second World War to so-called collaborators or members of what some of the partisan units regarded as rebel formations, such as the Chetniks or Ustashis in Yugoslavia, or the Ukrainians who joined forces with the Nazi occupants of the Ukraine. Different treatment was accorded to the members of the Burmese and Indian National Armies. A large proportion of the members of both these forces had been in the British imperial armies and had taken individual oaths of allegiance. By joining a force that claimed to be fighting for the independence of Burma or of India, either alone or with the assistance of the Japanese, such personnel were automatically guilty of waging war against the Crown, contrary to the Burma or Indian Army Acts.[66]

It is sufficient here to draw attention to some of the problems connected with the Indian National Army, which was by far the largest rebel force to be created during the Second World War. The fact that the British High Command had handed the Indian personnel over to the Japanese and had instructed them to obey their captors, did not entitle the latter to interfere with the allegiance of these forces. It did not alter their status in any way when the Japanese transferred them to the command of an Indian officer, Mohan Singh of the 14th Punjab Regiment, who embodied them into an Indian National Army. Nor was their continuing status as members of the British Indian Army held prisoner by the Japanese altered when Subhas Chandra Bose in October 1943 proclaimed the Provisional Government of Free India, which 'is entitled to, and hereby claims, the allegiance of every Indian'.[67] This Government was immediately recognised by Japan, and declared war on Great Britain and the United States and it was reported by the *Domei* News Agency that the Prime Minister of Eire, then a British dominion, sent a telegram of congratulation to Subhas Bose on this

65. Ps.W. Convention, Chap. III.

66. Problems relating to both these National Armies are examined by Green, 'The Indian National Army Trials', 11 M.L.R., 1948, p. 47, and 1 *Indian Law Review,* 1947.

67. Toye, *op. cit.,* p. 203, at p. 205.

declaration.[68] If this were in fact the case, it would raise its own interesting problems in connection with the law of treason. Japan was not the only country to recognise the Provisional Government. Germany, Italy, Burma, Thailand, Manchukuo, the 'Empire' of China, the Philippines and Croatia — all, except Germany and Italy, at that time puppet administrations — followed suit. Furthermore, the Japanese handed over to its administration the Andaman and Nicobar Islands, as well as parts of North-East India which were temporarily in Japanese occupation. This territory was administered by a Governor appointed by the Provisional Government and issued its own currency and postage stamps. Although the latter figured at one time in philately catalogues they never went into circulation. Even had they done so, this would not necessarily mean that the issuing authority was in any way a sovereign entity.[69] At most, it would indicate that a particular postal administration was purporting to issue stamps for a particular region — in the same way as the so-called Republic of South Moluccas attempts to do today.

None of the United Nations recognised the Provisional Government, nor were they in any way affected by the recognition extended to it by their enemies. The recognition afforded by the latter could, as in the case of the Czech and Polish National Committees, have effect only for those States which had granted it.[70] For the United Kingdom the Provisional Government and the Indian National Army had no existence. The Burmese or Indian military authorities, as the case may be, were fully entitled to treat their members as rebels liable to be charged with waging war, regardless of what the attitude of the Japanese may have been. In so far as any of them were accused of murder or atrocities against fellow-prisoners, they were in exactly the same position as any other soldier charged with war crimes or an offence under the relevant Army Act. [71]

Any rebel army of substantial size will issue regulations for its administration. When a member of such an army — and the troops of the Indian National Army were no exception — is accused of an offence against his national law, he will frequently plead that he was only obeying superior orders. This defence, however, is no more available to him than it is to an alleged war criminal. By joining the rebel army and making himself subject to its military law, he has already, as he well knows, broken his own municipal law, or the municipal system of military law to which he is subject.[72] Having done so, he cannot plead that he

68. Green, *loc. cit.,* M.L.R., p. 48 and n.10. Also Toye, p. 91.
69. An attempt to use these postage stamps and the catalogue as evidence of sovereign independence was made by defence counsel at the trial of I.N.A. leaders in 1945, Ram, *Two Historic Trials in Red Fort,* 1946, pp. 150-151, and Desai, *I.N.A. Defence,* 1946, pp. 20-21.
70. See text to notes 36-38 above.
71. See refusal of *habeas corpus* in *Mohd. Mohy-ud-Din* v. *The King Emperor* (1946) 8 F.C.R. 94, *Annual Digest 1946,* p. 94.
72. See, e.g., *Axtell's case* (1661) Kelyng 13 (Green, *loc. cit.,* n.66, M.L.R., pp. 53-54).

is obeying the law of an army which owes its very existence to a breach of law.

Another point that it will be of importance when rebel troops are charged and defence counsel seek to prove the legality of their acts, attempting to show that the force of which they were members was in fact entitled to wage war as a belligerent, is the degree of independence enjoyed by the rebel force as a separate entity distinct from the main enemy force. Too often, however, documents or some enemy action illustrate that this independence is far from real.

In the case of most of the occupied territories of Europe, there was little attempt made to suggest that the local quisling forces were completely independent of the Nazis. Quislings themselves were anxious, when it came to their trials to suggest that they were acting under coercion and were not free agents.

The first war crimes trial to be held in the Pacific area showed how little independence the Japanese themselves considered to be the portion of the Indian National Army. At the same time, it throws light on another problem of international law. In the *Gozawa Trial*[73] a Japanese officer was accused of murdering an Indian prisoner of war by executing him without trial for failing to obey an order. This apparently was recognised practice in the Imperial Japanese Army. The defence contended that the soldier was not a prisoner of war at all, as he had volunteered to join the Indian National Army and had thus become an auxiliary of the Japanese forces and liable to Japanese military discipline. This line of defence, which was contrary to what had always been considered as part of the *raison d'être* of the Indian National Army, failed, it being held that when a soldier was taken prisoner there was a *prima facie* presumption that he remained in that status for the duration of hostilities. The contention that he had lost this status and acquired another would have to be clearly proved, and would in fact shift the burden of proof from the prosecution to the defence. This burden the accused was unable to discharge.

On the other hand, it must be remembered that members of a rebel force like the Indian National Army do not become prisoners of war when captured by the State of whose armed forces they were formerly members. The Trials held in India exemplify this, and it is confirmed by the Geneva Conventions, which expressly declare that although the Conventions apply to civil wars their application in no way affects the legal status of the participants. In this, the Conventions and the treatment of the Indian National Army are fully in accord with the position under international customary law going back more than 150 years. Thus, when General Lee was captured by the English in 1776, General

73. Sleeman, *The Gozawa Trial,* 1948.

Washington was informed that, being a deserter, he could not be considered as a prisoner of war, even though it had been argued by the Americans that Lee had resigned his commission in the English army before the commencement of hostilities. In this the Lee case differed from those connected with the Indian National Army, many of whose officers appeared at their courts-martial wearing British badges of rank and proclaiming their loyalty to the English Crown. It was only the fear of reprisals against English prisoners held by the American rebels that saved Lee from execution and led to his ultimate release.[73a] The Indian National Army, on the other hand, was treated with clemency purely for political reasons, for the trials, for the main part, took place while Indian independence was under active discussion.

The Indian National Army has been dealt with at length because of its size, and because the problems involved reproduce themselves to a greater or lesser extent in the case of every rebel army, while the attitude of the British Indian Government was fully in accordance with the principles laid down two centuries earlier by Vattel — generally speaking, only the leaders were tried and they were treated with clemency — and with the provisions stipulated later in the Geneva Conventions.

Since the Second World War, rebel armies have appeared in, among other places, Indonesia, Indo-China and Algeria, while the problem of the Congo presents issues peculiar to itself and more correctly analysed within the framework of the United Nations.

As to Indonesia, the United Nations speedily recognised the United States of Indonesia, and later the Republic of Indonesia, as an independent sovereign State and took steps to prevent the Netherlands from re-establishing authority within the territory. Since that time, the Republic of Indonesia has itself been confronted with rebellions, but none of these has received international recognition, although foreign courts have been called upon to consider the status of some of the rebels. In Singapore there was the extradition claim in respect of Westerling,[74] and in Malaya the Choeldi *habeas corpus* petition.[75] In addition, Dutch courts have had to consider whether the 'Republic of the South Moluccas' is to be considered as an independent sovereign State. In 1951, the Court of Appeal at Amsterdam evaded this particular issue by holding that, irrespective of recognition, 'the Republic could be admitted as a party to legal proceedings in Holland if it existed *de facto,* as was in fact the case'. Further, it found that 'the authority of the Republic of the South Moluccas and its Government over the inhabitants of the territory of the South Moluccas, from the point of view of duration, nature and extent, satisfied . . . the condition of stability and effectiveness sufficiently to be regarded as the authority of an existing State. The possibility

73a. Phillimore, *op. cit.* n.15 above, para. CIV.

74. See note 5 above.

75. See note 1 above.

that this authority might ultimately not be able to maintain itself against the superior might of the Republic of Indonesia did not prevent the recognition for the time being, in summary proceedings, of the Republic of the South Moluccas as an independent State . . . .'[76]. A similar decision was reached by the court at Hollandia, Dutch New Guinea, in 1952, accepting a statement affirming the independence of the Republic put in by a witness described as the 'Prime Minister' of the Republic who had, however, had no contact with the Moluccas for nearly a year. [77] This judgment was followed by a Hague court in 1954, even though 'no further *prima facie* evidence has been submitted than that a number of former high Government officials of the claimant Republic are being held prisoner by Indonesia. The parties even fail to agree as to whether the Head of State of the Republic of the South Moluccas is still holding office and whether the claimant is exercising the functions of an established Government over any territory. In the absence of reliable data from which it would follow that the claimant has lost its legal personality ... it must ... be held to have legal personality'.[78]

In Indo-China, on the other hand, the civil war received special international attention. An international commission was invoked to help mediate between France and her rebellious colonists and, later on, to administer and supervise the armistice agreements drawn up to regulate the situation in future. In so far as Viet-Nam was concerned there were certain specific problems of a complex character.[79] Both France and the Soviet Union are members of the United Nations. As such, they are committed to 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or *in any other manner* inconsistent with the Purposes of the United Nations',[80] and among those Purposes is 'to develop friendly relations among nations' and 'to be a centre for harmonizing the actions of nations in the attainment of these common ends'.[81] At an early date the Soviet Union recognised the government of Ho-Chi-Minh as that of the independent State of North Viet-Nam. When this recognition was first granted, it was difficult to assert that Ho-Chi-Minh had yet shown himself able to administer the territory successfully against France, so that the act was one of premature recognition and, as such, contrary to international law.[82] Further, while France was busily engaged in trying to reassert its rule in the area it is difficult to see how the Soviet act of

76. *Republic of South Moluccas* v. *Royal Packet Shipping Co.* (1950/1) *I.L.R. 1950,* p. 143, at pp. 147, 151.

77. *Republic of South Moluccas* v. *Netherlands New Guinea* (1952) *I.L.R. 1952,* p. 4.

78. *Republic of South Moluccas* v. *Netherlands New Guinea* (1954) *I.L.R. 1954,* p. 48.

79. See Siotis, *op. cit.*, note 16, above, pp. 176-180.

80. Charter, Art. 2 (4) (italics added).

81. Art. 1(2) and (4).

82. Lauterpacht, *Recognition in International Law,* 1947, p. 95; Chen, *op. cit.*, note 48 above, pp. 50-51.

recognition can be made compatible with the Purposes and Principles of the United Nations. The Soviet action is thus contrary to both customary and conventional international law and also clearly falls within Vattel's concept of irregular conduct by a third State allied — for after all, as the Soviet Union is constantly pointing out, the Charter of the United Nations is an alliance — to the sovereign against whom the revolt is being waged. The situation in Laos in the early part of 1961 was not quite on all fours. The problem here was not simply that of the recognition, premature or otherwise, of rebels. This aspect of the situation was obscured by dynastic problems arising from the claims put forward by two persons, each claiming to be the lawful Prime Minister.

What happens inside a colonial territory is a matter of domestic jurisdiction and the United Nations is precluded from intervening in matters essentially within this field.[83] Nevertheless, in Viet-Nam, as in Laos and Cambodia, and, if it may be treated in the same way as a civil war situation, in Korea too, there has been some partial recognition of the situation by the United Nations as such. The same is, to an extent at least, true of the French campaign in Algeria. It may be contended, as France has done, that, since Algeria is part of metropolitan France under the French Constitution, and since France is recognised as a sovereign State, while, with but few exceptions, Algeria is not, any attempt by the General Assembly to discuss the situation in Algeria is a breach of the Charter as well as being an intervention in French domestic affairs and contrary to customary international law. On the other hand, in view of the fact that so many members of the United Nations consider that French actions in the area constitute a threat to the peace and affect the good relations between France and themselves, and are able to secure a majority to support this view, and in the light also of French recognition of Tunisian and Moroccan interest in the question, it may well be that the problem has now become internationalised. Further, by her action in removing an Algerian Nationalist leader from an aircraft transporting him from Morocco to Tunis,[84] as well as her constant habit of stopping, and sometimes diverting to a French port, foreign shipping on the high seas on the alleged ground that they are transporting war supplies to the rebels — allegations which have been denied by, among others, the Federal Republic of Germany, Poland, the United Kingdom and Yugoslavia — France cannot complain if third States claim to be interested in what is happening in French North Africa.[85] It must also be remembered that France has subscribed to the Universal Declaration of Human Rights and has extended the

83. Charter, Art. 2 (7).

84. XXX, 'L'Affaire du F.OABU', 4 *Annuaire Francais de Droit International,* 1958, p. 282.

85. For a discussion of some of the problems involved see Flory, 'Algerie et Droit International', 5 *Annuaire Francais de Droit International,* 1959, p. 817.

operation of Article 3 of the Geneva Conventions to the Algerian operations.[86] As a result, although a member of the Algerian Forces of Liberation is not treated as a prisoner of war when captured, but is interrogated and, if necessary, charged,[87] in much the same way as was done with the Indian National Army, certain humanitarian principles have been introduced to mitigate the treatment of combatants on both sides. Nevertheless, there have been numerous accusations, particularly by French nationals,[88] that French actions with regard to Algerian rebels leave much to be desired if measured by any of these international documents. At the same time, it must be pointed out that frequently the Algerians, although they too have accepted the Geneva Conventions as covering the war, have treated French soldiers and civilians falling into their hands in a fashion far removed from what was hoped for at the 1949 Geneva conference. The activities by both sides merely lend support to the warnings already issued by Vattel in the eighteenth century.

In so far as third States are concerned, the status of rebel armies will depend on the extent to which these forces have been recognised by such States. Even when recognised as *de facto* or *de jure* authorities they are rarely given belligerent rights — although it is equally true that the legitimate forces are also denied such rights. As for the home government, this is, for those that are parties to the Geneva Conventions, required to afford the rebels treatment in accordance with the laws of war, while remaining free to try them as traitors. Experience shows that the fate of rebel armies depends on a variety of factors, in which legal principles as such play a comparatively minor role. Far more important will be the hatred that the hostilities have aroused, the atrocities committed by the rebel forces, the general outlook of humaneness of the Government, whether the original Government or a successful rebel Government, the extent to which the Government is concerned with retaining international goodwill and conforming to the precepts of international morality, the political situation during and after the hostilities, and the extent to which the Government considers it can afford to be magnanimous.

L. C. GREEN. *

86. Flory, *loc.cit.*, p. 831; Siotis, *op.cit.*, p. 211.

87. Flory, *op.cit.*, p. 830.

88. Siotis, *op.cit.*, pp. 214-216.

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