THE LEGAL POSITION OF THE BRITISH ARMY IN FRANCE

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An expeditionary force invading an enemy territory brings with it an entire organization, and judiciary methods which are in accordance with the law of its own country. It imposes its will upon the inhabitants and deals with property in conformity with its needs. The situation is quite different when an expeditionary force is in the territory of an allied country; it then becomes necessary for such a force to obey its own military law and at the same time respect the *lex loci* and the public opinion of the country from which it receives hospitality.

Such a situation is a delicate one on account of the necessary intercourse between the allies and the inhabitants, and the mutual dealings between individuals. The military force establishes important bases in the vicinity of the firing line; hires land for the erection of camps, pastures for remounts and veterinary hospitals, buildings for headquarters, billets and offices, and workshops for the repair of mechanical transports, lorries, wagons, locomotives, etc. It makes contracts with local builders for the erection of huts, arranges for the purchase of local supplies, and obtains native professional assistance to settle questions of damage to property and the like.

When there are numerous civil and commercial transactions between an expeditionary force and the inhabitants, a proportional number of contentions arise through injuries, thefts, assaults, and acts committed by the soldiers to the prejudice of civilians and *vice versa*—in a word, every offence which comes within the scope of criminal law.

If the British Army in France could be considered as a foreigner, it would be treated legally as a person. It should act legitimately as an alien. But such is not the case. The British Army is an integral part of the British Government. It would be incorrect to allege that the said army has a legal personality. An army is the executive power of a nation. It remains under the supervision of its national authority and depends upon the Cabinet and Parliament. The British Army, when it makes a contract in France, does so in the name of the British Government.

An army such as this, numbering millions of men defending a large front, necessarily interferes with the economic life of

the allied nation; the establishment of British police, censorship, courts-martial, etc., is inconsistent with the principle of the sovereignty of the state. Abnormal conditions are created and established rules overthrown.[1]

In peace times, no kind of interference by a foreign nation with the internal life and policy of another nation would be tolerated for a moment. Any decision rendered by a foreign court would have no legal value in France, and any such matter would have to be submitted to the control of French judges for revision. Hence, any criminal offence committed by foreign subjects in France are referred to French tribunals.

We may find the application of the principle of sovereignty in old customs which form the basis of modern private international law—viz., *locus regit actum, lex loci rei sitae.* During many years, for instance, *locus regit actum* was considered by French authorities as imperative, and foreigners in France were bound to make their wills pursuant to the legal French form. Similarly, and in conformity with the *lex loci rei sitae,* any contention in connection with real property in France must be submitted to a French court, even if such property is of foreign ownership. In all such cases is seen the care each country exhibits to maintain its own customs, laws and practices in its possessions, and to exclude any encroachment upon its national rights.

It is obvious that the existence in France of an important expeditionary force tends to interfere with these rights. However, it cannot be said that the principle of sovereignty in France is in any way abandoned by permitting the British Army to enter its territory; as a matter of fact, France has authorized Great Britain to send its army, and this decision was taken without any kind of compulsion. Therefore, the sovereignty of the French State has been respected and in no sense impugned.

The matter is more complicated when its practical side is considered together with the legal relationship between this foreign army and the French civil population. Disputes will certainly arise, and failing an amicable settlement, it will be necessary to submit them to a superior authority for final decision. What shall be this authority? Let us take an example: Twenty acres of pasture are let to the British Army, a camp is installed, roads, drainage and water pipes are laid all over the ground. After, say, six months the site is vacated and given up to the freeholder. It is necessary to value the damage and to pay a fair indemnity. If the freeholder accepts the

[1] This article does not deal with the legal position of the British Army in France from a criminal point of view.

indemnity proposed by the lessor, the question is settled without difficulty. Should he refuse it, the point is to know whether French courts are competent to deal with the case, to appoint experts, and to give judgment accordingly, if necessary, against the British Army. In other words, is the freeholder in a position to summon the British Army before a French judge? Strictly speaking, the claimant cannot sue the British Army, the latter not being "a legal person" in itself, but acting in the name of a foreign state. The French courts have no right to discuss the matter, and the proper way to claim redress is through the diplomatic channel. Therefore, as the British Army is to be considered as the British State, it becomes impossible to abide by the *lex rei sitae,* according to which the French courts ought to be competent to judge in the case, say, of a building occupied by British troops being burnt down by their own gross negligence. The courts, however, would be unable to give a decision, as a foreign state is a party in the case.

French courts having no jurisdiction over a foreign state, may a French plaintiff bring his action in England? Such a proceeding, even when practicable, would give rise to endless difficulties. The dispute arising in France, British judges would not be in a position to know all the details of the case. It would be difficult to obtain evidence, to appoint experts, to make enquiries on the spot. The procedure would be lengthy and expensive; during war, communication between the two countries is abnormal and costly. Nor would the claimant be very desirous of calling upon a jurisdiction quite unknown to him. As a general rule, he would rather accept a disadvantageous amicable settlement than run the risk of a foreign law suit. It should also be borne in mind that British courts would, in many instances, refuse to deal with any such action brought before them. They would also be bound to respect the *lex rei sitae,* and would be incompetent to decide upon questions concerning real property in France on these grounds.

French plaintiffs being unable to obtain redress by instituting proceedings against the British Army in France, is it not possible for them to sue the French Government direct? It might be argued that the French Government must be held responsible for all kinds of offences committed by a foreign expeditionary force which has been permitted to land on its territory. A diplomatic convention between France and Great Britain was signed about the end of 1915 based upon the above hypothesis, thus settling the question open for nearly one and a half years. It must be recognized that the British Army has made every possible attempt during this period to meet the French claimant. Special services have been either instituted

or increased for the careful examination of all claims, and it may truly be said that the great majority of claims have been settled either directly or through arbitration. Some special cases have, of course, been submitted to law courts, but they are very few. The branches of the British service which have to deal with claims are: first, the commanding Royal Engineer of each base, for all hiring of houses, buildings or lands for which contracts have been made; second, the Central Requisition Office, for personal and real property for which a requisition order has been issued; third, the Claims Commission, for all claims where there is no written document.

What is the policy of the diplomatic convention between France and Great Britain? When the British authorities have tried by every means to settle a claim amicably and failed, all the documents are forwarded to the French Minister of War. As soon as they are in the possession of the French authorities, the French Government in its own name institutes proceedings before the competent tribunals. The British services, however, keep in touch with the case; they must be consulted when an appeal is possible, and they may give their opinion as to the desirability of accepting the decision of the court. They may appoint representatives to follow the procedure and to see that British interests are carefully guarded. As regards the indemnities to the plaintiff, if any, they are paid by the British to the French Government, which takes the necessary steps to have the sums handed over in the usual way. Therefore, the British authorities do not appear in court. The French Government acts, and wins or loses the case. This diplomatic convention was not only useful to meet a situation which obviously could not be allowed to continue, but it became a legal necessity. Had no convention been arranged, French courts might allege their incompetence on the ground that the French Minister of War acts as agent for the British Government. Diplomacy overcame this difficulty. A nation which agrees to accept decisions in the courts of a foreign country relinquishes its privileges of sovereignty.

The system adopted may work satisfactorily during the war, chiefly because claimants rarely resort to legal proceedings. This is due to the patriotic and equitable spirit animating British authorities and French citizens. But it is doubtful whether such a procedure will work smoothly after the cessation of hostilities, when camps, lands and buildings will be speedily vacated and the proportion of claims naturally increased. Note also, that the allied armies are mostly centralized in certain regions, and that the courts concerned would be inundated with actions. In Rouen alone, where thousands of acres have been leased

and hundreds of houses rented, the existing courts would have to deal with all the British cases as well as execute their local civil functions. Similar disability would occur at Havre, Boulogne, Calais and all the other bases.

It therefore appears desirable to organize a new scheme capable of meeting whatever conditions are created by the declaration of peace. Needless to say, any such scheme must present guaranties for both sides. Each region of France where the allied forces have important establishments might be provided with a local tribunal which should deal with all matters in which allied interests are concerned. This local tribunal should be composed of French judges assisted by British and American lawyers especially appointed by their respective governments. Two or three appeal courts should be created on similar lines, and the general jurisdiction should be legally assimilated with that of the established French tribunals.