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BOOK REVIEWS

VÖLKERRECHTLICHER SCHUTZ DER FRIEDLICHEN PERSONEN UND SACHEN GEGEN LUFTANGRIFFE. DAS GELTENDE KRIEGSRECHT. By Dr. Jur. Alex Meyer. Königsberg Pr. and Berlin: Ost Europa Verlag, 1935. Pp. viii, 257.

In 1938 the Senate of the United States passed a resolution recording unqualified condemnation of the bombing of civilian populations. Therefore, when the world is faced with a new war crisis every week, it may be interesting to study this book written in 1935 by one of the oldest German experts on air law. In it he discusses the peaceful persons and things of belligerent parties, and he follows his discussion with an excellent bibliography and index.

After a short survey of the rules and laws actually in operation governing aerial attacks, he explains that protection of peaceful persons and things is necessary, considering the dangerous and almost limitless potentialities of air power, which we might add, has since been displayed in Spanish and Japanese air attacks. Next he surveys Germany's weak geographical position against air attacks, her preparations for protection, and some of the principles developed by the International Red Cross. He concludes pessimistically that it is impossible to achieve protection against air attacks by technical measures.

The European Continental doctrine¹ and the British and the English-American doctrines are contrasted and Dr. Meyer points out that the latter (which he says maintains that enmity extends also to private citizens) was the rule of the World War. It is not possible in the limits of this review to discuss whether Dr. Meyer's delineation of the problems arising in the World War is always correct in the historical sense. (Cf. review of Meyer's book in the 1935 *Revue de droit aérien*, edited by Professeur de la Pradelle, p. 185.) However, whether such a doctrine is generally acknowledged today or not is a mere theoretical problem.

Dr. Meyer has no doubt that the World War rule will be adopted in future wars, too. In this connection he refers to Art. 16 of the Covenant of the League which provides economical sanctions against "the nationals of the Covenant-breaking State." Whenever protection of peaceful persons and things is desired, the problem of giving a definition of such persons and things arises. Meyer devotes an interesting and detailed chapter to reporting different opinions including the decisions and opinions of the Mixed Claims Commission of the United States and Germany (Washington, 1925). He believes that there is not yet a satisfactory definition and gives his own. He goes back to the theory of adequate causality which is generally acknowledged in German civil jurisprudence:² "Objectif militaire" is all that is causative to the success of warfare; hence, peaceful persons and things are those

1. The European Continental doctrine is first found in Rousseau, *Contrat social*, I. c. 4, and was adopted by Portalis at the opening session of a French prize court in 1801 (or 1806). He declared that war is only a relation between States; subjects of belligerent States are only enemies as soldiers, not as citizens. Cf. Mérignac, *Traité du droit public international*, Vol. III, 1, p. 12—Oppenheim-McNair, Vol. II, p. 57; Hyde, p. 598.

2. A casualty in the legal sense exists only in reference to such facts by which the effect may be probably expected regarding a reasonable perception under the natural course of events.

which are not causative to this success. From this point of view, Dr. Meyer examines peaceful persons and things with the result that he differentiates between objects absolutely military and mixed objects ("objectifs mixtes"); Zublin, *La protection des populations civiles contre les bombardements*, Genève, 1930, p. 252). He deals particularly with vessels, aircraft, buildings, cultivated grounds, bridges, highways, public supply undertakings, factories, and so on. In the same manner he examines the situation of persons, especially workmen in war supply factories and different non-combatants. Dr. Meyer's undertaking is interesting and inspiring, but some doubt may be expressed as to whether or not his definition will be of any practical use.³

The theory of adequate causality is typically German and, although partly similar ideas are to be found in English and American laws, (Salmod-Stallyvrass, *Law of Torts*, p. 137; *Hadley v. Baxendale* (1854) 9 Ex. 341) outside of Germany the principle has been adopted only by Switzerland, Japan and China. As every book dealing with German civil law demonstrates, many doubts and difficulties arise in German civil cases notwithstanding the fact that the German judge is familiar with the theory and has all the necessary facts. Even provided that the experts of the enemy State are honestly willing to decide fairly under such rules, this can scarcely be possible, because the enemy will not have the indispensable facts for his decision: A railway, yesterday used exclusively for military transport, may be useless today for all military purposes because a tunnel has made a shorter way available, and the belligerent has every interest to keep the new way secret. Generally the cases will not be so strongly marked, but for our feeling, Dr. Meyer's definition in solving the problem raises another one. Dr. Meyer discusses further the possibilities for absolute protection by abolition of war or suppression of air power, but he feels that at the present time there is no way of realizing this. He is also very pessimistic about the possibilities of relative protection. Discussing the different "regions of war" (Oppenheim) on land, sea, and in the air, he finds that under the actual war laws and rules, there is practically no protection, if the use of aircraft for the purpose of terrorizing the civilian population is admitted. The rules of the Hague Convention IV (Land Warfare Regulations) Art. 22, and of the Naval Bombardment Convention, Art. 5, and of the Geneva Convention, protect hospitals, churches, art buildings, etc., only "as far as possible" and Dr. Meyer points out that any otherwise lawful attack during which protected buildings are inevitably hit does not violate the international law because of such consequences. He concludes that a relative protection would be possible only if an agreement were made forbidding the use of aircraft for the purpose of terrorizing the peaceful population. (Cf. *Air Warfare Rules*, The Hague, 1923.) Dr. Meyer reviews the different cases of protection on land and sea; in the air he believes only aircraft used as means of medical transport are actually protected.

After an examination of the ammunition to be used including asphyxiating, poisonous and other gases, bacilli and pathogenic germs, he discusses the problems connected with necessity as justification for abrogation of the laws of war and reprisals. A concluding chapter gives the results of Dr. Meyer's research work. The results regarding the actually existent protection are really fearful to behold. It seems that no real protection exists under the rules of international law, because even the few rules generally recognized

3. Opposing Meyer, cf. von Unruh, 51 *Niemeyer's Zeitschrift für Internationales Recht* 309 (1935-1936); Victor Niemeyer, 5 *Archiv für Luftrecht* 187.

are to be abrogated in case of necessity of war or reprisals. It may be that the necessity of war generally gives no power to set aside all laws of warfare, but the decision sets the belligerent apart—he is party as well as judge.

The author reserves for another volume a research as to whether and to what extent the protection of peaceful persons and things is to be realized by international agreement. In this volume he has given a comprehensive and clearly arranged view of the voluminous materials and his work cites suitable references. But it may be called into question whether his pessimistic conclusions are not even too optimistic. There was and will be the divorce between precept and practice. (Cf. Spaight, *Air Power*, p. 240.) The conclusions drawn by Dr. Meyer for Germany are of a political kind: development of passive prevention by the population, and active prevention by a strong air force eliminating the restrictions of Part V of the Treaty of Versailles.⁴ He is convinced that such a task will be undertaken in the right way for Germany, and he bases his conviction on the Führer and the direction of the Ministry of Aviation.

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4. The latter aim was reached for Germany in the Spring of 1935.
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