THE WAR OF LAWS*)
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January 4, 1915, a notice by the German government for the occupied parts of Belgium proclaimed that the Orders issued from this day onwards by the King of Belgians and the Belgian ministers have not the force of law within the domain of the German Government of Belgium." However, the Belgian government-in-exile in Saint Adresse continued to make its decrees applicable also within this same domain. October 11, 1916 it enacted, inter alia, special penal provisions applying to any acts committed there which were considered to

*) This paper is published with the support of the Swedish Social Science and Legal Research Council — No regard is taken to materials not having appeared before the summer of 1957 — The abbreviations refer to the following publications: AD = Annual Digest and Reports of Public International Law Cases AJIL = The American Journal of International Law BYIL = The British Yearbook of International Law GC = The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 Grotius Society = The Grotius Society, Transactions HR = Regulations Respecting the Laws and Customs of War on Land, Annex to the IV Hague Convention October 18, 1907 ILR = International Law Reports, London (Continuation of AD) LQR = The Law Quarterly Review NJA = Nytt Juridiskt Arkiv (Stockholm, Swedish Supreme Court Law Reports) NTfIR = Nordisk Tidsskrift for International Ret, Acta Scandinavica Juris Gentium (Copenhagen) Recueil = Academy of International Law, Recueil des cours (Paris) RM = Riksadvokatens Meddeelseblad (Norwegian Reports of post-war cases dealing with treason and collaboration) Rt = Norsk Retstidende (Norwegian Supreme Court Law Reports) SOU = Statens offentliga utredningar (Public investigations by the Swedish Government) Statsv Tidskr = Statsvetenskaplig Tidskrift (Lund, Sweden) SvJT = Svensk Juristtidning (Stockholm) TFR = Tidsskrift for Rettsvidenskap (Oslo) Uhler, Der volkerrechtliche Schutz = Uhler, Der völkerrechtliche Schutz der Bevölkerung eines besetzten Gebiets gegen Massnahmen der Okkupationsmacht unter besonderer Berücksichtigung der Genfer Zivilkonvention vom 12 august 1949, Dissertation, Zürich 1951

Otl(h) prp and Indst O are the abbreviations used in the proceedings of the Norwegian Parliament (Stortinget) and KProp the one used in the publications of the Swedish Parliament (Riksdagen)
be acts of treason and aid to the enemy. After Belgium was liberated violations of this legislation were punished. And in 1941, in a statement to the Norwegian government, being at that time itself in exile and planning to enact similar decrees, the Belgians asserted that their legislation, far from being criticized, on the contrary had been appreciated by both lawyers and politicians. But some years later legal scholarship pointed out that the question of the legality of an occupant's act under international law, in the deliberations of the Belgian courts administering the legislation-in-exile, sometimes had been even entirely neglected. — Proclamations of the same kind as the above mentioned German edict have been issued by both Frenchmen and Britishers during the two World Wars; during the same time most exiled governments have made laws on the Belgian pattern. What are then the rules of international law for this situation: has the belligerent occupant violated the law of nations by exacting obedience to his edict and his subsequent regulations for the occupied territory? Or is the exiled government in the wrong because of its legislation for its own State territory under hostile occupation? Or perhaps are both parties in their rights in acting this way? In fact, do the laws have their wars as well as the wars have their laws?

2. If you consider all the means by which States wage war, you might ask why, among all these means, an exceptional position should be retained by legislation, the State's principal instrument. In the bitter struggle between two belligerents both sides would seem to be entitled to use almost any means by which they could win — international law only prohibits the use of a few weapons As long as you do not challenge the legitimacy of the method of inciting the population of the enemy State to insurrections against its government, it would not seem possible to forbid a belligerent to direct the acts of its own nationals, even should they be in a territory occupied by the enemy. On the other hand, it is hard to believe that any prohibition

1 AD 1919-1922 No 310 Ot prp No 92/1945-1946, p 73
2 ibid — Cf Fraenkel, Military Occupation and the Rule of Law, Washington 1944, p 86
4 Proclamation of Marshal Foch for the Rhineland in 1919 and proclamation of the British Military Administration of Tripolitania May 2, 1945: both as cited by Stein, op cit p 353
5 Cf Andenaes, TFR 1948 p 10 Ludendorff appears to have been of an other opinion Fraenkel, op cit, p 52