LEGAL CHARACTER OF THE CAPITULATION
OF NORWEGIAN ARMED FORCES
ON JUNE 10, 1940 *)

By Dr. VLADIMIR DEDIJE, Belgrade.
Simon Senior Fellow, Manchester University.

On the question of the legal character of the military convention entered into between Generalleutnant Dietl, the Commandor-in-Chief of the German Armed Forces in North Norway, on one side, and General Ruge, commander-in-chief of the Norwegian Armed Forces, on the other, at Spionkop by Bjornefell, on June 10, 1940, as well as on the convention entered into between Colonel Berschenhagen of the German High Command in Norway, on one side, and Lieutant-Colonel R. Roscher Nielsen of the Norwegian High Command, on the other, at Trondheim, also on June 10, 1940, there exist different opinions in literature.

The majority of the writers call these military conventions capitulations, while in the History of the Second World War (United Kingdom Military Series, The Campaign in Norway, T. K. Derry) uses the term preliminary armistices. The third group of writers prefer the term surrender.

At the same time there are sharply different opinions on the question of whether these military conventions brought to an end the state of war between Norway and Germany or not. Haakon Meyer and some other writers defend the former view, while Halvdan Koht and many others defend the latter.

In view of these controversial opinions, before going on to the concrete analysis of the above mentioned military conventions, I shall try to give an assessment of the practice and doctrine of International Law on the question of the character of a surrender and a capitulation, of the character of an armistice agreement, and on the question

*) Lecture-seminar held at the Law Faculty, Oslo University, December 9, 1959.
of what these three legal acts have in common and what are the differences between them.

Further, my analysis will have to answer the question whether military conventions, either capitulation or armistice, necessarily preclude a state of war between belligerents.

I

1- In war the military forces of one or the other belligerent carry on operations in order to overpower each other. Both sides utilise the maximum of fighting forces to subdue the opponent, but it sometimes occurs that both of them arrive at the conclusion that their forces are equal and that each of them is sufficiently strong to defend itself, even though not strong enough to win. In such cases peaceful solutions of controversial disputes are sought. Such situations usually lead to military conventions (cease-fire or armistice).

The fortunes of war, however, do not lead always to stalemate between the armed forces of belligerents. The outcome of the struggle can be the result of the physical superiority of the victor. In such a case, the possibility arises of the surrender or the capitulation of the loser, or of an armistice.

In the course of the fighting the armed forces of a belligerent, either in its entirety or in its parts, may arrive at the conclusion that further resistance would be useless and in order to end pointless shedding of blood find itself compelled to admit to the opponent the effect which the latter wants to achieve militarily through fighting. This can be done in two ways; by means of a simple surrender or by an agreement on capitulation.

The side that has decided to effect the simple surrender does it by the simple one-sided declaration of its will, e.g. by putting out the white flag, etc.

The surrender is a one-sided juridical act in which the will of the person who surrenders is clearly declared. By this one-sided declaration of the will, juridical consequences immediately follow. The side that is overpowered is eliminated from further fighting by its action.

Accordingly, simple surrender is not a contract. It does not contain the consent of both sides. It is an unilateral act, for it is sufficient that one side perform the act of surrender; out of this develop the expected legal consequences. The surrender is a real legal act, and its substance is actual cessation of fighting. And the form of this legal act is real — rebus ipsis et factis — cessation of fighting.