

# Traditional Asian Approaches — The Chinese View

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## Introduction

In Ancient China, especially in the Spring and Autumn Period (770-476 BC) and the Period of the Warring Kingdoms (475-221 BC), norms existed already that kept war operations within bounds and protected war victims (prisoners of war, wounded and sick personnel, and civilians). Although at that time they were not treaty provisions in the modern sense of the term, these norms came into existence in large numbers in the form of custom. Not only were they mentioned in many academic works of the time, such as *The Spring and Autumn Annals*, *Zuo Commentary*, *Guo Yu*, *Zhan Guo Ce*, etc., but some of them had already been turned into codes, among which the most consolidated was the “Code of Si Ma Rang Ju” (also called the “Si Ma Code”).

According to the *Biography of Si Ma Rang Ju* from the *Historical Records* Rang Ju was the Minister of War under Prince Jing of Qi principedom (?-490BC) and had been author of a code of war. During King Wei's reign in Qi (?-320 BC) when all other kings and princes were paying tribute to Qi, King Wei had given orders to compile and revise the codes of war, including the “Codes of War” by Rang Ju. Another work of historical research claims that Rang Ju was the Minister of War under King Min of Qi (?-284 BC). Whatever the versions, the “Si Ma Code” is considered by all as a code of war which codified rules of law on warfare in Ancient China. Besides, the *Article on War* (or “Yi Bin Pian”) by Master Xun (313-238 BC) and the one on nonaggression or *Fei Gong Pian* by Master Mo (468-376 BC) as well as the work called *Master Sun's Art of War*, etc., have all covered customary rules of law on warfare in ancient times.

These rules relate to the various aspects of war, which include Theories of War, the Nature of War, Justifications for War, Rules on the Declaration of War, the Means and methods of War, the Protection of War Victims, the Termination of War, Neutrality, etc. Although they were inevitably conditioned by the age and the class limitations of the world in those days, these rules were yet quite developed and advanced at the time.

This article here will be confined only to the question of the Protection of War Victims.

## Rules on the protection of war victims

### 1. *On the protection of civilians*

Great importance was attached to the protection of civilians in Ancient China, and it was considered necessary then to distinguish the tyrants from the innocent civilians. The purpose of resorting to force was “to overcome tyranny and root out evils”; as Master Zun said in *Yi Bin Pian*: “Do not kill the common people,

kill those who misrule the people'. So, "when attacking the country", it was necessary "to love its people" (see "Ren Ben" from the "Si Ma Code"). Cases in that fashion which were very many have been recorded in history. For example, according to the *Book of Songs* ("Shi jing") as early as 1136 BC, when he waged a punitive war against the principedom of Chong, King Wen of the Zhou dynasty had given orders not to kill the people, nor to burn the houses. Also when the central government of the Zhou dynasty took punitive action against the Huai and Hsu principedoms in 1112 BC, orders were given not to harm the people, stating that whoever did harm to cattle and horses put out to pasture, committed housebreaking, and whoever took part in plundering livestock, rapes, burnings and killings, would be punished (see *The Book of History* "Shang Shu - Zhou Shu - Fei Shi"). When Chu attacked Chen, Chu posted a notice, telling the people of Chen not to panic (see *Zuo Commentary*: The reign of prince Xuan of Lu, 11th year). Once Jin laid siege to Gu in 528 BC and not a single civilian of Gu was killed (see *Zuo Commentary*: The reign of prince Zhao of Lu, 15th year). And many were the examples of that kind.

The provisions for the protection of civilians of the "Si Ma Code" laid down not only that the old and the underaged must not be harmed, but also that the adults should not be set upon as long as they showed no hostilities; not only that but the burning of private dwelling houses, plundering of livestock owned by private individuals, of grain and of farm implements were not allowed; in addition buildings publicly-owned, animal husbandry and forests must not be destroyed; nor should local religious creeds be interfered with (see "Ren Ben" from the "Si Ma Code").

In the article *Yi Bin Pian* by Master Zun, it was mentioned also: "Not to massacre the city inhabitants, not to put the old and the weak to the sword" and "not to seize grain from the people by force", etc.

Besides, there were accounts in academic works of Ancient China of not attacking open cities. For example, according to the *Zuo Commentary* (the reign of Prince Wen, Lu 12th year), Qi once laid siege to Gao Tang, but when they found out after making enquiries that the city was not defended, Qi withdrew its army. This incident took place in the year 552 BC.

Even certain accounts were found in the academic works of Ancient China of occupant powers helping cure the wounds of war of, and restore normal life to, the occupied territories. For example, according to the *Zuo Commentary*, after Zheng defeated Chen, Zheng did its best to heal Chen of its war-scars (553 BC), following the precedent, so it was declared, of the war waged by Zhou against Yin, which meant, in other words, that it was already accepted as a custom in those days.

## 2. *On the protection of prisoners of war*

Custom existed already in Ancient China of prohibiting the killing of prisoners of war and of releasing them after the cessation of war or on conclusion of peace. There was also the custom of exchanging prisoners of war and paying ransom for them.

The article *Yi Bin Pian* by Master Zun mentioned: "Those who surrendered would not be captured; those who resisted would not be pardoned; those who took flight would not be pursued."

There were innumerable cases concerning the release of prisoners of war, among whom figured monarchs and high officials as well as soldiers.

For example, in September, 643 BC, Qin won in a war against Jin, captured its monarch and had him imprisoned at Lin Tai. But in October of the same year he was removed to the guesthouse, where he was well treated, and by November he was set free.

In 628 BC, after Lu defeated Sung, the captured Sung general, Nan Gon Chang Wang, was released by Lu (see *Zuo Commentary*: The reign of Prince Zhuang, 11th year). Lu set at liberty the captured Jin general, Xie Yang, on the battle field.

In regard to releasing captured soldiers, many were the examples. In 573 BC, after it put to rout the Chu army at Yan Lin, Jin released all the captured Chu soldiers. When it beat the Chu army at Mi Gu in 571 BC, again Jin released all the captured Chu soldiers. Also, when it won in a war against Chen in 553 BC, Zheng released all the captured Chen soldiers (see *Zuo Commentary*: The reign of Prince Xiang, 26th year). And there were numerous other examples of that kind.

Moreover, there was the custom of mutually releasing prisoners of war, of exchanging them and of paying ransom for them. For example, in 586 BC, Jin exchanged the captured Chu general, Gu Chen, and the corpse of Lian Yin Xiang Lao for the Jin general, Zhi Ying, captured by Chu. Also, according to an account in the *Zuo Commentary*, Sung paid a ransom of 100 chariots and 400 strong horses to Zheng for its general, Hua Yuan.

### 3. *On the wounded, the sick and the dead*

Custom was formed in Ancient China of giving lenient treatment to the disabled in war, the wounded, the sick and the dead. When engaged in war with Chu, prince Xiang of Sung spoke of not harming again the wounded soldiers as a long-standing custom (see *Zuo Commentary*: The reign of Prince Xi, 23rd year).

It was stated in the "Si Ma Code": "Our wise elders do not pursue the disabled, but take compassion on the sick and wounded. This is to show considerations of humanity." It was stated also: "If the enemy is wounded, treat him with medical care" (see "Ren Ben" from "Si Ma Code").

There were also many cases of burying the dead and taking in the wounded by the victors in wars. For example, in the war between Qin and Jin, the Qin army took flight, and in the Jin army there were some who proposed hot pursuit and inflicting heavy casualties on enemy troops. But the Jin generals Xu and Zhao Chuan said: "The dead have not yet been buried. It is not humane to abandon them" (see *Zuo Commentary*: The reign of Prince Wen, 12th year). They did not continue the chase.

### **The characteristics of the rules on the protection of war victims in Ancient China.**

Compared with the customary rules of the modern law of war, the rules on the protection of war victims in Ancient China are, of course, more general and sketchy in character; as a system they are not even complete. However, from the examples given above, it can be seen that the customary rules in Ancient China

on the protection of war victims have their own marked characteristics, which are even of significance to the world of today.

First of all, the rules attach great importance to the protection of civilians, as the aim of war is to defeat those persons responsible for the war, not the innocent civilians. In this respect, some of the rules are quite detailed, such as, for example, those rules mentioned above in the "Si Ma Code", which even if they are compared with Article 46<sup>1</sup>, 47<sup>2</sup> and 56<sup>3</sup> of the Hague Regulations respecting the Laws and Customs of War on Land of 1907 that regulate similar problems (and even the respective Articles of Geneva Convention (IV) 1949), are no lesser in quality. Yet those rules existed more than 2000 years ago!

Secondly, special attention is paid to killing as few and causing as little damage as possible. In one instance there was reference to what was called "fight the enemy with considerations of humanity" (see the *Book of Songs*: "Shi Jing-Da Ya-Huang Yin). Another example is "make no push on the enemy when he is already in calamity", including not to attack a principedom in distress, in natural disaster, in disturbance; not to attack an army in a desperate position, etc. In 567 BC Chu attacked against Chen near Fan Yang, but when he learnt that the prince of Chen had died, Chu ceased hostilities and turned back (*Zuo Commentary*). Another exhortation was "chase not the enemy in flight". Thus, for example in 596 BC Shan Chu fought Jing near Bi, the army of Jing suffered a crushing defeat and fled to the bank of the Bi River. Some suggested to the Prince of Chu to launch a final attack and wipe out the Jing army. The Prince of Chu said: "We two princes are at enmity with each other, what guilts do the people have?" He then ordered the Chu army to give up the pursuit and not to attack ("The Gong Yang Commentary" to the *Spring and Autumn Annals*). The *Zuo Commentary* also puts forward the precept "take no action to flood the enemy". All these illustrations became part of the custom of abstaining from a "ruthless and spare-none" policy.

Thirdly, strict army discipline and the policy of not harassing enemy civilians are associated with the idea of being "civilised". A famous case was the attack by the Zheng army headed by the generals Zi Zhan and Zi Chan against Chen, in which the generals gave orders to their troops not to enter the royal palace of Chen, for which Zi Chan even personally stood guard at the door of the palace. Violation of such a principle was denounced as barbarous (*Zuo Commentary*).

Of course, the rules of the law of war for the protection of war victims in Ancient China, like the rules of the law of war of other ancient nations, were sometimes violated. But observance or not of such rules in Ancient China and in

1. Article 46 reads:

"Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.  
Private property cannot be confiscated."

2. Article 47 reads:

"Pillage is formally forbidden."

3. Article 56 reads:

"The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings."

later times was always a matter of public feeling, popular sympathy and support, which, also of course affected the outcome of the wars themselves. In China, this mainstream of tradition has come down from generation to generation. The wise kings and noble generals of China have all followed these fundamental rules of the law of war, which are certainly of reference value even to the development of modern international humanitarian law today.

## **The attitude of the Chinese People's Liberation Army**

### *1. Rules on the protection of civilians*

The People's Liberation Army (PLA) is an army of the people. Chinese army leaders have all along compared the relationship between the army and the people as that between fish and water; the army is the fish, the people is the water in which they thrive. It has been strongly believed that without the support of the people, the army itself cannot exist. Therefore, from the early beginning, to protect both the people and whatever they have was taken as a matter of the first importance in any war areas. The traditional ideal of protecting civilians in armed conflicts in ancient China has been realised and developed by the PLA.

During the very early stage of establishing the Red Army, there were regulations stipulated for the treatment of civilians. They were: do not press civilians into service, pay fairly for what you buy (needless to mention that killing or hurting the civilians was forbidden). In the spring of 1928, when the Red Army was at Jing Giang mountain, the three main Rules of Discipline were promulgated, the second of which concerned the protection of civilians. It prohibited taking anything from the civilians. In the summer of the same year six points of attention were stipulated (as fundamental disciplines), which were all about the protection of civilians:

1. Put back the door boards you have taken down for bed boards.
2. Fasten the straw bundles you used for bedding. (According to the Red Army's discipline, soldiers were not allowed to go into the peasants' rooms to sleep at night, but were allowed to borrow door boards or straw bundles for making beds.)
3. Speak politely to civilian persons.
4. Pay fairly for what you buy.
5. Return everything you borrowed.
6. Pay for anything you damaged.

These rules of discipline were then developed in 1929 as the famous "Three Main rules of Discipline and Eight Points for Attention". The Second Rule in wording was modified as "Do not take a single needle or a piece of thread from the masses." As to the original six points of attention, the 3rd, 4th, 5th and 6th were preserved, but rearranged as Points 1-4: the original Points 1 and 2 were cancelled, while 4 new points were added, they are: 5. Don't hit or swear at people; 6. Don't damage crops; 7. Don't take liberties with women; 8. (Concerning treatment of Prisoners of War).

The "Three Main Rules of Discipline and Eight Points for Attention" constitute the most important policy of the PLA. It is the highest discipline and basic code of conduct of every officer and combatman. In peacetime, it is one of the main contents of education; in war time, there usually are detailed and

concrete regulations made according to the specific situation. It is always repeatedly emphasised before any battle during mobilisation; checked up during battles; and summarised after each battle.

As the Red Army became larger and larger, and many towns and large cities were entered or occupied, regulations combining the protection of civilians with the characteristics of cities were stipulated. For instance: 1. Quarters in civilians' houses and shops was not allowed; theatres and places of entertainment must not be disturbed. (This tradition has been kept strictly. All the world knows the fact that when they entered Shanghai in 1949, the PLA (officers as well as soldiers) slept at the roadsides at night.) 2. The policy of protecting all the law-abiding foreigners and missionaries regardless of their nationalities was adopted. 3. No unit of the army was allowed without permission from headquarters to buy things in a town, and those who violated this rule were punished.

One of the most important characteristics of the measures taken by the PLA was that they were not limited only to passive ones but also to initiative ones. For example, not only was there a prohibition on certain conduct (e.g. swearing at civilians), but also rules were made that civilian persons, especially the aged and women, had to be respected; children treated with loving care; local customs and habits respected. Not only were private and public properties not to be damaged but every "one blade of grass and one tree of the locality must be taken good care of." Furthermore, the army is required to render service to the civilians (even during the intervals between battles, the officers and the soldiers are encouraged to help the civilians).

All the above-mentioned stipulations are not only applied to civil strifes but also extended to international armed conflicts. For example, during the defensive counter-attack against Vietnam the regulations issued by the General Political Department of the PLA stated *inter alia* that troops should conscientiously carry out the "Three Main Rules of Discipline and Eight Points for Attention"; protect the civilians and their properties; not take one needle or piece of thread; take care of every hill and every river, every blade of grass and tree; render service to the people; respect the local customs, and habits and religious beliefs; protect temples, churches, schools and sight-seeing spots; and do not enter private homes.

Besides, it was also ordered that in war zones Chinese money must not be used. All foods, vegetables and fodder for horses bought must be paid with Vietnamese money or exchange in kind.

All these policies and stipulations are not only in accord with the principles and regulations stated in the Protocols and Conventions of Geneva, but also surpass the requirements in some aspects.

## *2. Policy of giving lenient treatment to prisoners of war*

The People's Army has always distinguished strictly the leading clique and common officers and soldiers of the enemies. Soldiers are treated as innocent common people cheated by the leading clique. This is because of the fact that the majority of soldiers of any army of any country are from the labouring peoples. Therefore, any enemy soldiers having stopped resisting and having become

prisoners of war are treated leniently. This policy is stipulated as the eighth point of the so-called "Eight Points for Attention".

At the early stage of the Red Army, it was made clear as one of the fundamental disciplines: "Fight against the warlords, but not their soldiers, and give lenient treatment to prisoners of war". The detailed regulations are:

1. Do not search the prisoners' pockets for money or anything they have.
2. Welcome prisoners with deep enthusiasm in order to make them feel at ease. Any insult towards them by either speech or action is forbidden.
3. All prisoners of war must be given the same material treatment as the soldiers of the Red Army.
4. Those prisoners who do not want to stay with the Red Army may leave and should be given a certain amount of money for use on their way back.
5. The above stipulations are also applied to officers captured, with certain exceptions.

Along with the development of the Red Army, the policy of treating the prisoners of war has become more and more complete and appropriate. Synthetically speaking, the following three respects are stipulated:

1. Person of the Prisoners of War (including soldiers and officers): no killing, no insulting, no maltreating. Personally respected, and consolation given. During periods of transportation and temporary imprisonment, protection must be provided by such means as appropriate trenches or hiding places prepared beforehand.
2. Property of Prisoners of War: anything belonging to prisoners of war must be recorded clearly in certain forms. Confiscation, "purchase", "receive as a gift", or "make a present of what one has been given" are all strictly forbidden. Those who have done any such things must be punished as having violated discipline. During the detention period, all prisoners' personal belongings including money, golden ornaments, etc. are recorded and kept safely. It can be drawn from the officer-in-charge whenever the prisoners are in need of money, and anything left should be given back when they are leaving.
3. Treatment given to Prisoners of War: the lowest level of treatment given to prisoners of war is the same as the common soldier of the Red Army, and it should be improved whenever possible (officers can get better treatment according to their ranks).

The policy of giving lenient treatment to prisoners of war adopted by the People's Liberation Army reflects revolutionary humanism and helped win the great victory in the civil war. This revolutionary humanism has also been extended to international conflicts.

During the defensive war against the invasion of Japanese militarism, the "Directions for the treatment of Prisoners of War" despatched to all units by the General Political Department of the 8th Route Army stated that:

1. Strictly follow the discipline in battle fields. Shooting enemy soldiers who have already stopped resisting is strictly prohibited. Japanese prisoners of war are not to be insulted. During the Korean war (1950-53) stipulations were in more detail: (a) those who killed prisoners of war under any circumstances would be punished as violating the war prisoner

policy; (b) the more severe the battle is the more aware should troops be of the prisoner of war policy; (c) officers as well as soldiers should be thoroughly educated to obey conscientiously the prisoner of war policy. The same was stipulated for during the armed conflicts in Vietnam.

2. The belongings of prisoners of war, except military articles, should not be confiscated.
  3. As to the treatment of prisoners of war, the Political Department of the 18th Group Army stipulated in 1941 that (to Japanese prisoners of war): money for daily mess be double the amount received by our own soldiers; give a dinner party on New Year's Eve or other memorial days; give part of the ration as wheat and rice (at that time the 18th Group Army had as their ration only coarse grains, as millet, corn, etc); each prisoner be given five dollars each month as pocket money; clothes, blankets, boots and socks be distributed according to need; that prisoners be given pencils, paper, note books, and books (officers were more favourably treated in this regard).
  4. As to religious belief, prisoners be permitted to keep their own religion and hold religious ceremonies.
  5. If possible, writing letters home be permitted.
  6. Prisoners of war be allowed to express their opinion about their treatment to the authority in charge of the camp.
3. *Policy and stipulations about giving lenient treatment to wounded and the sick (prisoners of war)*

As early as the Red Army period, it was stipulated that wounded and sick prisoners of war be treated in the same way as the Red Army wounded and sick. What was more, wounded or sick prisoners were to be treated with the best medicine and to be given a certain amount of money before being sent back.

The Political Department of the 18th Group Army had stipulated that the Japanese wounded, sick, or weak prisoners of war be given horses to carry their luggage and for riding. A certain amount of extra money was given to the wounded and sick for improving their health.

In May 1953, the Headquarters of the Chinese Volunteers fighting in Korea was strictly required, if possible, to bring all prisoners of war from the frontier. If that was impossible, prisoners should be released at the place where they were captured or if they had died after having left the frontier, prisoners were to be buried at proper places and marks were to be made at the tomb. In the armed conflict with Vietnam, there were also stipulations about treating wounded prisoners of war leniently, including medical treatment, the keeping of records, and proper burial if any of them died.