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Laws of War: The Developing Law of Armed Conflict--Some Current Problems

Walter Reed
Laws of War: The Developing Law of Armed Conflict — Some Current Problems

by General Walter Reed*

INTRODUCTION

EARLY LAW did not impose many rules on a military commander limiting the manner in which he carried out his combat operations. Pillage was a recognized practice. Enslavement of victims was looked upon as an accepted fate for the vanquished. It was not considered unreasonable to plunder, rob, or enslave someone that you had the right to kill. These so-called rights to plunder, rob, and murder the enemy have been abolished by certain humanitarian considerations, practiced and now codified in international conventions currently recognized by the civilized nations of the world.

Since the mid 1800’s, there have been significant initiatives to develop the humanitarian aspects of the law of armed conflict. The Lieber Code, which President Lincoln promulgated during the U.S. Civil War, had a major impact on the development of international humanitarian law.1 The establishment of the International Committee of the Red Cross in 1863 and the conclusion of the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field on August 22, 1864,2 formed a foundation on which to widen the scope of legal protections to cover other fields affected by combat operations. Built on that foundation were numerous conferences which sought

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to serve the interest of humanity and the progressive needs of civilization. The objectives were not only to relieve the sufferings of the sick and wounded in the field, but also to formulate and codify accepted practices to govern military operations.

The period that followed World War II has been marked by many wars of various intensities. Some have spanned decades, and were of both a bilateral and a multilateral character. These conflicts have shattered the hopes and expectations of the world community that the wisdom of the U.N. Charter, constructed on the experience of the League of Nations and the Paris Pact, would somehow eliminate or reduce the armed conflicts which threaten the peace of the world. It became apparent to the world community that conflicting interests of the highest priorities resulted in situations where armed conflict could not be averted.

International humanitarian law, applicable in armed conflict, consists, for the most part, of the four Geneva Conventions of 1949 For the Protection of War Victims, the Hague Conventions of 1907, and the customary law. Efforts to update this body of law were given impetus by resolutions adopted at the XXth and XXIst International Conferences of the Red Cross, held respectively in Vienna in 1965, and in Istanbul in 1969. Additionally, the United Nations General Assembly by resolution in 1969 asked the Secretary General, in consultation with the International Committee of the Red Cross, to do two things: First,

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to study steps for better application of or compliance with existing law, and second, to study the need for new agreements to better protect civilians and prisoners, and prohibit the use of certain methods and means of warfare.

The International Committee of the Red Cross took the lead and sponsored conferences of government experts. They developed draft protocols which would redefine and supplement the 1907 Hague Regulations and the 1949 Geneva Conventions. The draft protocols were forwarded to the Government of Switzerland. The Swiss Government convened the Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law Applicable in Armed Conflicts to consider the draft protocols. Three sessions of the conference have been held and a fourth will convene in March 1977.

The development and formulation of rules in a multilateral conference attended by over 120 nations is a monumental undertaking. The problems associated with efforts to identify that common element of mutuality of interest were complicated by several factors which would seriously impede the work of the conference.

The first factor was the sheer breadth of the draft protocols. They included not only humanitarian protection for innocent victims, but also applied to all conventional means and methods of warfare on land or involving targets on land. The draft included provisions on the treatment of prisoners of war; the status and protection of civil defense personnel; limitations on attacks on dams, dikes, and nuclear power plants; restrictions on environmental warfare; the punishment of war criminals; the protection of medical personnel and facilities; prohibitions on crop destruction; measures in relief; the protection of cultural objects; the protection of medical transports and aerial transports; and restrictions on the use of certain weapons, such as napalm.

The difficulties in dealing with the broad scope of the draft agreements were aggravated not only by the number of countries

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7 I.C.R.C., Draft Additional Protocols to the Geneva Conventions of Aug. 12, 1949 (1973). The Diplomatic Conference was charged with examining two draft additional Protocols to the Geneva Conventions of Aug. 12, 1949:

- draft additional Protocol to the Geneva Conventions of 1949, and relating to the protection of victims of international armed conflicts;
- draft additional Protocol to the Geneva Conventions of Aug. 12, 1949, and relating to the protection of victims of non-international conflicts.

[N.B.: All references to provisions of the draft Protocols in this article will be to the Protocol relating to the protection of victims of international armed conflicts.]
involved, but also by the vast disparity in the experience and knowledge of the subject matter among the various delegations. A majority of countries represented had no advisors experienced or knowledgeable in combat operations.

The law of armed conflict is unique in several aspects. It does not come into effect until other legal procedures have been abandoned, and unless the issue involved is of such fundamental importance that the parties will resort to force as a means of self-help. To secure general acceptance and practical compliance with rules applicable in armed conflict, such rules must provide an acceptable balance of mutual interest for the parties to the conflict. One aspect of that mutual interest is that the rules must be reasonable in their terms and practical in their application in actual combat operations. Failure to take into account the realities of combat may result in humanitarian rules which are largely ignored. Certain articles of the 1923 Draft Hague Rules of Air Warfare8 are good examples. For example, Article 24(3) provided that, "...the bombardment of cities, towns, villages, dwellings or buildings not in the immediate neighborhood of the operations of land forces is prohibited."9

Some delegates to the Conference tended to equate war with a contest in which there must be a fair balance of power. For example, at the first session of the Diplomatic Conference in 1974, a delegate from one developing country suggested that there should be an article which would prohibit the use of air power by a party to a conflict, if that party were superior militarily, economically, or technically to its enemy. It is apparent that because many countries sent representatives with no practical experience or training in the realities of warfare, the work of the Conference proceeded more slowly than it otherwise would have. The preliminary work of the Conference took place primarily in the 1969-1973 period. Consequently, the Vietnam War had a particularly disproportionate effect on the first session of the Diplomatic Conference. Representatives from countries who sought to criticize the practices in Vietnam introduced provisions on the use of napalm and defoliants, and restrictions on bombardment, especially in free fire zones or jungle areas. The Vietnam syndrome seems to be diminishing and the Conference seems more inclined to develop humani-

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8 Draft Hague Rules of Air Warfare, 1923. For full text, see M. Greenspan, The Modern Law of Land Warfare 650 (1959). The rules were drafted by eminent jurists but were never adopted by any country.

9 Supra note 8, at Art. 24(3).
tarian principles rather than provide for what they perceived to be the illegal or immoral practices of the last war.

In addition to the wide scope of the draft agreement, the limited experience of many delegates, and the Vietnam syndrome at the outset of the Conference, one additional problem slowed the work of the Conference. It would seem basic that if the law of armed conflict is to be followed in practice, the obligations that it imposes must apply without discrimination to all parties to the conflict. It has been the U.S. position that the humanitarian rules for protecting civilians and for carrying out combat operations must apply equally to all parties to the conflict irrespective of which party is the unlawful aggressor. It would do no credit to a diplomatic conference dedicated to humanitarian principles to formulate rules permitting one party to the conflict to be less humane or have a lesser degree of obligation to protect innocent civilians (or combatants who are hors de combat) than another party to the conflict. Nonetheless, the issue of the "just war" continues to be raised at the Conference. The obvious purpose of the effort is to secure preferred treatment or exclusive safeguards for liberation movements or others deemed to be fighting against aggression or unlawful domination. It is a basic principle, long recognized in all systems of law, that for there to be any reasonable expectation of adherence to the law, it must provide that all the rights, duties, and obligations in the law apply without distinction to all parties to the conflict.

PRISONERS OF WAR AND THE PROTECTING POWER

U.S. prisoners of war, both in Korea and Vietnam, were denied humanitarian treatment and prisoner of war rights by their captors. One of the high priority objectives of the United States in the 1974 Diplomatic Conference was to strengthen the system of Protecting Powers or their substitutes and ensure that P.W.s received the protection and treatment required by the 1949 Geneva Prisoner of War Convention [hereinafter cited as GPW Convention]. The common articles of the 1949 Geneva Conventions on appointment of Protecting Powers or substitutes are Articles 8, 9, 10, and 11 of the first, second, and third Geneva Conventions and Articles 9, 10, 11 and 12 of the fourth Geneva Convention, supra note 3.

10 Supra note 3.

11 The common articles on Protecting Power or substitutes are Articles 8, 9, 10, and 11 of the first, second, and third Geneva Conventions and Articles 9, 10, 11 and 12 of the fourth Geneva Convention, supra note 3.
This is a command... The command is addressed in the first instance to the parties to the conflict. They are bound to accept the cooperation of the protecting power; if necessary, they must demand it. In the course of the discussion, there was ample evidence of the desire of those participating to establish a stricter control procedure and to make it obligatory.12

The concept of a Protecting Power did not originate with the Geneva Convention. It is an application of a long-standing practice where one State (Protecting Power) is instructed or authorized to safeguard the interest of another State (Power of Origin) in relation to a third State (Detaining Power). The clear attempts in the 1949 Geneva Conventions to provide for an obligatory system for a Protecting Power or substitute failed for two reasons. First, the Detaining Power could exercise the power of disapproval of a Protecting Power, citing the second sentence of Article 8 of the 1949 GPW Convention. When a Protecting Power is rejected, an effort is then made to secure a substitute under Article 10. Paragraph 3 of Article 10, qualified in its language by the phrase "Subject to the provisions of this Article," can be read as making the obligation in that paragraph subject to the first sentence, which provides that the "high contracting parties may at any time agree to entrust to an organization... the duties incumbent on the Protecting Powers..."13 When applied in this manner, both the acceptance of the International Committee of the Red Cross or a substitute for the Protecting Power requires consensual agreement by the parties, and is not, therefore, obligatory. The second reason for the failure of the obligatory system is related to the first reason. The Soviet Union and other Eastern bloc countries can withhold approval of any Protecting Power or substitute.14 This reservation is consistent with the interpretation of Articles 8 and 10 of the 1949 GPW Convention set forth above.

The United States and Western States sought a provision at

13 GPW, supra note 3, at Art. 10.
14 The reservation by the USSR to Art. 10 of the first Geneva Convention, supra note 3, is representative of the reservation made by most Eastern bloc countries to the provision on Protecting Power:
   — Art. 10: The Union of Soviet Socialist Republics will not recognize the validity of requests by the Detaining Power to a neutral State or to a humanitarian organization to undertake the functions performed by a Protecting Power, unless the consent of the Government of the country of which the protected persons are nationals has been obtained.
the 1974 Conference which would ensure that if a Protecting Power could not be obtained, the parties would have agreed in advance to accept the International Red Cross or another humanitarian organization as a substitute. The Article adopted by the Conference Committee falls short of requiring advance consent for such a substitute if no other Protecting Power could be agreed upon. The requirement for consent, before a Protecting Power or a substitute can act, remains. However, the proposal does provide for a more detailed appointment system, which, if adopted, will make it more difficult for a party to the conflict to reject a Protecting Power or substitute.

THE PRINCIPLE OF DISTINCTION

The principle has developed that attacks are to be directed at combatants and military objectives; that civilians should not be the object of attack and should be spared as much as possible from the risk and dangers of combat. In January 1969, the United Nations General Assembly enunciated that principle when it unanimously adopted Resolution 244, which states as follows:

a. That right of the parties to a conflict to adopt the means of injuring the enemy is not unlimited;

b. That it is prohibited to launch attacks against the civilian population as such; and

c. That a distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible.\(^5\)

The United States has expressly declared that it regards this resolution as an accurate declaration of existing customary law. The manner in which lawful combatants comply with the "rule of distinction" by their own appearance is set out in Article 4 of the 1949 GPW Convention. Except for a Levee en Masse, the combatants must wear a distinctive sign recognizable at a distance and carry arms openly.\(^6\)

In practical application, the penalty which now may be imposed on a combatant for failure to distinguish himself from civilians in


\(^6\) GPW, supra note 3, at Art. 4(A).
combat operations is that upon capture he is not entitled to P.W.
status, and he loses the immunity usually accorded combatants
for acts of violence in combat. Many representatives at the
Diplomatic Conference sought to liberalize the conditions and re-
quirements that must be met in order to obtain P.W. status (cur-
rent requirements are set out in Article 4 of the 1949 GPW Con-
vention). This effort to liberalize the requirements was primarily
for the benefit of guerrillas or members of resistance movements
in occupied territories. The proposals made by advocates of lib-
eralization directly raise the issue of whether and to what degree a
combatant carrying out combat operations is required to distinguish
himself from civilians in order to be a P.W. upon capture, and
avoid individual responsibility for his acts of combat. Some
States were of the view that there should be no requirement for
uniforms or a distinctive sign for members of resistance or liber-
ation movements. It was further advocated that guerrillas in oc-
cupied territory should not be required to disclose their comba-
tant status except during actual military operations. The represen-
tatives at the Conference were overwhelming in their support for
eliminating the apparent ambiguity in Article 4(A) of the 1949
GPW Convention and for stating a single standard of qualifica-
tion for P.W. status which would be applied to both regular and
irregular members of the armed forces.\textsuperscript{17} It remains to be deter-
mined what standard, or requirement, or manner of distinction
from civilians will be agreed upon. Indeed, whether a change in
the provisions of Article 4(A) of the 1949 GPW Convention can
be agreed upon at all remains to be determined. The purpose of
the requirement, obviously, is to protect the civilian population by
deterring combatants from concealing their identity and feigning
civilian noncombatant status in order to gain advantageous posi-
tions for an attack. Of course, the failure to distinguish puts the
civilian at great risk. It is understandable that if a soldier cannot
tell whether the person he sees is an enemy combatant subject
to attack or a civilian to be protected, the safety of civilians will

\textsuperscript{17} Id. Article 4(A) provides in separate subparagraphs for three categories
of combatants: 1) Members of the armed forces; 2) members of other militias,
and; 3) volunteer corps including resistance movements, and the levée en masse.
For members of regular armed forces there are no specified conditions to be
fulfilled to be eligible for P.W. status upon capture; see 4(A)(1). The absence
of the specific conditions requiring a fixed distinctive sign recognizable at a
distance and carrying arms openly has been cited as constituting a double
standard between regular armed forces and guerrillas or members of resistance
movements.
be seriously jeopardized. It is fundamental that if the armed forces are to give meaning to the protected status conferred on civilians, there must be an expectation that persons who look like civilians will act like civilians, and not use their appearance to gain advantage in carrying out attacks. To deter such conduct, it is vital that the law deny the privileged P.W. status to combatants who do not distinguish themselves from civilians in their military operations. In addition, and equally important, the law should render them individually responsible for committing acts of combat in violation of the laws of war. In summary, any attempt to liberalize the rule of distinction, by increasing the practical availability of P.W. status for guerrillas or members of resistance and liberation movements, will result in some increased risk to civilians and the civilian population. Hopefully, representatives at the Conference can reach a compromise which satisfies the needs of captured guerrillas and members of liberation and resistance movements without jeopardizing basic protections for civilians.

The Rule of Proportionality

There are two basic rules necessary to reduce civilian casualties in combat operations to the maximum extent feasible. The first is the rule of distinction briefly discussed in the preceding paragraphs. This rule requires an attacking force to separate combatants and military objectives from civilians and civilian objects, and direct the attack only against the former. The second is a rule often called the "rule of proportionality." It recognizes that in directing attacks at military objectives, civilian casualties and damages to civilian objects, although regrettable, may occur. The application of the rule requires the exercise of subjective judgment on the part of responsible combatants. If they find that the anticipated incidental or accidental loss of civilians or civilian property is disproportionate to the military advantage expected to be gained by the attack, then the attack must be cancelled. The incidental or accidental danger to civilians or civilian objects arises from such factors as their proximity to the military objective, the configuration of the terrain, the relative accuracy of the weapons used, the existing meteorological conditions, the nature of the military objective, and the attacking force's technical ability in handling weapons and delivering ordnances to the target.

18 For a brief discussion, see U.S. Air Force, Int'l Law — The Conduct of Armed Conflict and Air Operations, Pamphlet 110-31, ¶¶ 5-2 & 5-3 (Nov. 19, 1976), and authorities cited therein.
The debates at the Conference reveal two significant objections to codifying the rule of proportionality in an international agreement. The first objection was primarily philosophical. The rule of proportionality is recognized by many countries as a part of the law of armed conflict. For those countries that do not recognize it as a rule of law, they must accept it as part of the practical aspects of military operations. Nonetheless, humanitarians seeking to achieve humanitarian goals in the law of armed conflict found it difficult to formulate a rule of law which recognized the lawfulness of civilian casualties in combat operations. The U.S. representatives at the Conference, although in full accord with the position that the law cannot authorize attacks directed at civilians, supported the codification of the rule of proportionality. It was a widely held view that a general affirmative obligation on the part of combatants to consider in advance the relationship between incidental civilian losses and expected military advantage, would inure to the benefit of civilians and provide increased protection. The second objection was to an effort to limit incidental or accidental loss of civilian life or property to the immediate vicinity of the military objective. The Conference generally found such limitations impractical in application and rejected such proposals.

The Conference Committee finally agreed upon a formulation of the rule of proportionality as follows:

Those who plan or decide upon an attack shall refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damages to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage.19

To assure that this provision could not be construed as an authorization for attacks against civilians, the Conference Committee, immediately following the codification of the rule of proportionality, included the following statement: "No provision of this Article may be construed as authorization for any attacks against the civilian population, civilians, or civilian objects."20 Should the Diplomatic Conference adopt the rule of proportionality as formulated by the Committee, it can be anticipated that there will

19 Proposed ¶ 2(a)(iii) of Article 50, Precautions in Attack, adopted by Conference Committee III by a vote of 66 in favor, none against, with 3 abstentions. For the full text of Article 50 as adopted, see Report of Committee III, Doc. CDDH/215/Rev. 1, annex.

20 Supra note 19, at Art. 50, ¶ 5.
be varying views as to the meaning of the term "concrete and direct military advantage." Certainly, it cannot be expected in a practical application of the rule that any significant military objective could long be shielded because of anticipated civilian casualties or losses.

**Repression of Breaches — Education and Training**

It is the obligation of each country to ensure that the international law of armed conflict is observed and enforced by its armed forces. They are further obligated to establish a system to prevent violations in armed conflict in which they may be participating. Several methods or systems are available to facilitate compliance with the law and deter its violations. The threat of some form of punishment or sanction is most often thought of as the primary method to deter violations of the law. The Military Justice Codes for most countries include a method for punishing violations of orders in combat and the laws and customs of war.\(^1\)

The parties to the 1949 Geneva Conventions accept an obligation to enact legislation to provide effective penal sanctions for persons committing, or ordering to be committed, certain serious offenses against persons protected by the Conventions. The Conventions recognize the universal jurisdiction of each High Contracting Party to punish offenders, regardless of their nationality, and to take necessary measures to suppress all acts contrary to the Conventions.\(^2\)

Although the threat of punishment is a recognized deterrent to violations of the law, "preventive law" should be applied to most effectively prevent violations of the law of armed conflict.\(^3\) Applying a preventive law program to combat operations requires the recognition of three basic factors. First, the international law applicable to armed conflict must be widely disseminated to all persons, especially members of the armed forces. Second, the objectives of the law must be understood (the reduction of the risk to innocent victims and civilian objects). Third, adherence to the law must be recognized as consistent with time

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\(^1\) For example, see 10 U.S.C. §§ 890-893, 899-905 (Arts. 90-93 and 99-105 Uniform Code of Military Justice).

\(^2\) GWS, supra note 3, at Arts. 49-50; GWS-SEA, supra note 3, at Arts. 50-51; GPW, supra note 3, at Arts. 129-130; and GC, supra note 3, at Arts. 146-147.

\(^3\) L. Brown & E. Rubin, Preventive Law (1950); see also Air Force Regulation 110-27, Oct. 1, 1974, reprinted in Appendix A.
honored military doctrines, such as economy of force and concentration of effort.

The obligation to disseminate the law is the first and perhaps the most important factor. Violations can be prevented by a knowledge of the rules and their origin. This factor has been recognized in current international agreements. The 1907 Hague Convention on the Laws and Customs of War on Land provides, in Article I, that: "The contracting powers shall issue instructions to their armed land forces which will be in conformity with the regulation respecting the laws and customs of war on land annexed to the present convention."24 A common article in the 1949 Geneva Conventions provides for dissemination of the texts for military and civilian instruction, so that the humanitarian principles may become known to all the armed forces and the civilian populations of the parties to the conventions.25 Similarly, the draft provision adopted by the cognizant Committee in the current negotiations in Geneva not only provides for dissemination and instruction, but also requires the High Contracting Parties to report to the Depository of the Conventions and to the International Committee of the Red Cross every 4 years on the measures that have been taken to meet their obligations to disseminate and instruct members of the armed forces and the civilian population.26 All countries, including the United States, can do a better job in carrying out their obligation to inform their armed forces and populations of the humanitarian principles to follow during armed conflict.

The second factor in the application of a preventive law program requires a program of education and training. The United States' experience in Vietnam revealed that when alleged combat offenses in violation of the humanitarian law were investigated, the individuals involved too frequently asserted that they were never taught that their alleged conduct was wrong. There is no question that a large segment of the armed forces does not have sufficient knowledge of the law to which they must adhere when

24 Supra note 4, at Art. 1.
25 GWS, supra note 3, at Art. 47; GWS-SEA, supra note 3, at Art. 48; GPW, supra note 3, at Art. 127; and GC, supra note 3, at Art. 144.
26 Proposed ¶ 3 of Art. 72, Dissemination, adopted by Conference Committee I on Apr. 9, 1975, by a vote of 49 in favor, none against, and 10 abstentions. It should be noted that after Art. 72 was adopted the 10 countries abstaining on the vote stated that they did so in opposition to ¶ 3 which provides for the report every 4 years on measures to disseminate and instruct. For the text of Art. 72 as adopted, see Report of Committee I, Doc. CDDH/219/Rev. 1, ¶ 135.
called upon to carry out combat operations. The improved programs which are now being carried out in all services indicate that members of the armed forces want to know more about the law and how problems can be avoided.27

An essential element of successfully reducing or avoiding violations of the law of armed conflict is the willingness and the ability of the officers and men of the armed forces to apply the law under the stress of combat operations. An awareness of the consistency of the law of armed conflict to recognized military principles provides, in my view, essential support for compliance with the law, and is not dependent on the somewhat emotional reaction to the manner of compliance by the enemy. Identifying the object being attacked as a military objective requires sound target intelligence. Military effectiveness requires that the target selected and the risk undertaken be militarily worthwhile. The need to conserve vital resources is apparent. Traditional military principles such as economy of force, concentration of effort, target selection for maximization of military advantage, accuracy in delivery, and conservation of resources all encourage observance of the requirement that attacks be directed at military objectives and that feasible precautions be taken to avoid or minimize incidental civilian casualties.

The close relationship between military effectiveness and the observance of the International Law of Armed Conflict must be emphasized. An armed force that is disciplined, well trained, and fighting efficiently in accordance with the traditional military principles and doctrines, will not usually violate the law. It is the undisciplined, ineffective or uncontrolled use of force that more frequently raises problems. The element that distinguishes a nation’s armed forces from an armed mob is that the armed forces are regulated and controlled, and act for public purposes in the service of the nation. The major element of that control is discipline. Discipline means leadership, purpose, organization, and above all, the use of controlled or regulated force. Discipline and control are not only indispensable to the effective use of military force, they are central concepts in the law of armed con-

27 DEP’T OF DEFENSE, Directive No. 5100.77, DoD PROGRAM FOR THE IMPLEMENTATION OF THE LAW OF WAR (Nov. 5, 1974) (see Appendix B), provides that the Armed Forces of the United States will comply with the law of war and will ensure that programs to prevent violations (including training and dissemination) are instituted and implemented. AFP 110-31, supra note 18, provides a comprehensive analysis of the current requirements of the law of armed conflict.
Conflict. Leadership and discipline are, to a large extent, the product of education and training. The law of armed conflict must be an integral part of that training.

CONCLUSION

The current initiatives at the Diplomatic Conference at Geneva should be applauded and supported. There is no question that greater efforts can be made to develop the humanitarian rules as to what is right and what is wrong in combat operations. The problems associated with the current Diplomatic Conference are great, but not insurmountable, and progress has been made. However, success will not be measured solely on whether humanitarian rules are formulated. To be successful, the Conference must not only formulate humanitarian rules, but also apply those rules equally to all parties or participants in the conflict; apply them practically; and apply them so as not to result in military advantage to one party or military disadvantage to another party. If the military practicality of the rules is not taken into account, the sole monument to the Conference will be idealistic rules to which diplomats and professors can point, rather than the monument of less suffering for the innocent victims, improved humanitarian treatment for the sick, wounded and captured, and greater justice for the accused offenders.

APPENDIX A

DEPARTMENT OF THE AIR FORCE
AF REGULATION 110-27
Headquarters US Air Force
Washington DC 20330
1 October 1974

Judge Advocate General Activities

PREVENTIVE LAW PROGRAM

This regulation establishes the Air Force Preventive Law Program. It is a program of problem avoidance through communication. It includes advising Air Force people of potential legal problems and helping them to avoid those problems before they arise. This regulation applies to Air Force military and civilian personnel, worldwide.

1. Air Force Policy. All commanders will establish and actively support an effective Preventive Law Program in accordance with this regulation. Avoid duplication of preventive law programs at station or base level, except for supervisory activities.
2. Program Responsibilities:
   a. Under the Chief of Staff, USAF, staff supervision of the Preventive Law Program is assigned to The Judge Advocate General of the Air Force. He maintains liaison with the American Bar Association and other civilian bar organizations that he deems advisable.
   b. In the office of The Judge Advocate General, the Chief, Preventive Law and Legal Aid Group (JACA) supervises the program and furnishes technical guidance.
   c. The staff judge advocate of each command exercises staff supervision over the program within his command.
   d. The staff judge advocate at base level may appoint a preventive law officer who, under the direction and control of the staff judge advocate, plans, coordinates, operates, and evaluates the Preventive Law Program within the command.

3. Program Objectives. The overall Program objective is to improve the accomplishment of the Air Force mission by the enhancement of discipline and morale through education and information. The secondary objectives are to:
   a. Educate and inform Air Force people in such a way that the objectives of the law may be achieved largely by self-discipline;
   b. Persuade Air Force people to seek professional legal guidance in learning and exercising their legal rights and obligations;
   c. Provide commanders and Air Force people with a broad channel of communication on the subject of avoiding problems.

4. Methods. The methods used in conducting the Preventive Law Program include all means of communication.
   a. Oral presentations may include:
      (1) Military law seminars.
      (2) Commanders' Calls.
      (3) Newcomers orientations.
      (4) Club and brotherhood meetings.
      (5) Family Service Orientations.
      (6) Premarital seminars.
      (7) Briefings on command emphasis items.
   b. Media presentation may include:
      (1) Base newspapers.
      (2) Installation bulletins.
      (3) Unit bulletin boards.
      (4) Base radio and television stations, where available.
   c. Publications that may be employed are:
      (1) Handbooks.
      (2) Pamphlets.
      (3) Newsletters.
      (4) Flyers and handbills.

5. Military Law Seminars. A large segment of Air Force people do not know enough about the system of military law under which we live. A great percentage of these people want to know more. By knowing more, both the United States Air Force and the individual service member benefit. Commanders therefore are encouraged to establish and
regularly conduct military law seminars. Experience has shown that these are most effective when conducted personally by the staff judge advocate and when attendance at each seminar is limited to about 30 people. The seminars should include all officer and airmen grades. Separate seminars may be held for officers, senior noncommissioned officers, and other airmen grades if this method appears more productive.

The seminars should include at least these topics:

a. Comparison of military and civilian judicial systems.

b. Recent reforms in the military justice system.

c. Nonjudicial punishment.

d. Adverse administrative actions.

e. Foreign criminal jurisdiction (limited to bases outside the United States).

f. Board for Correction of Military Records.

g. Your lawyer — The Judge Advocate.

6. Command Emphasis Items. The Preventive Law Program should not only assist in avoiding problems in the first instance, but it should also prevent the recurrence and proliferation of problems that have already arisen. Thus, when a problem which could widely affect morale or discipline arises at one of its bases, the major command should assure that all preventive law methods are used throughout the command for a brief period to highlight the problem and the measures necessary to avoid it; and to prevent the proliferation of the problem. This action requires full communication between staff judge advocates at all levels of command.

7. Preventive Law Topic List. As an aid to commanders and staff judge advocates a Preventive Law Topic List is attached as a basic nonexclusive outline of subjects which may be used in the various Preventive Law Programs other than military law seminars.

8. Direct Communication Authorized. The Judge Advocate General of the Air Force and all staff judge advocates are authorized to communicate directly with each other and with appropriate organizations and persons concerning preventive law matters.

9. Implementation. Commanders will incorporate existing preventive law programs into the program created by this regulation.

BY ORDER OF THE SECRETARY OF THE AIR FORCE

OFFICIAL

JACK R. BENSON, Colonel, USAF
Director of Administration

DAVID C. JONES, General, USAF
Chief of Staff
Attachment 1
Preventive Law Topic List
PREVENTIVE LAW TOPIC LIST

I. Criminal Law
   A. Military Justice
      1. Briefing Articles
      2. Results of Trial
   B. Criminal Law
      1. Unusual Local Offenses
      2. Foreign Criminal Jurisdiction (if appropriate)

II. Descent and Distribution
    A. Intestacy
    B. Testate Distribution
       1. Wills
       2. Trusts
       3. Insurance and jointly held property

III. Domestic Relations
     A. Marriage
        1. Rights and duties of spouses
        2. Divorce and annulment
     B. Dependents
        1. Duties to support
        2. Adopted and illegitimate children

IV. Commercial Affairs
    A. Contracts
       1. Rights, duties and enforcement
       2. Installment and conditional sales contracts
    B. Consumer protection
    C. Powers of attorney
    D. Soldiers' and Sailors' Civil Relief Act
    E. Indebtedness

V. Property
   A. Real Property
      1. Sales
         a. Vocabulary
         b. Financing arrangements
         c. Closing
         d. Tax aspects
      2. Leases
         a. Usual clauses
         b. Insurance
   B. Personal Property
      1. Automobiles
         a. Purchase contracts
         b. Registration and title
         c. Insurance
      2. Saving Bonds
3. Bank Deposits
4. Community property (as applicable)

VI. Taxes
A. Federal
   1. Income taxes
   2. Estate taxes
   3. Gift taxes
B. State and Local Taxes
   1. Soldiers’ and Sailors’ Civil Relief Act
   2. Income taxes
   3. Estate, gift, and personal property taxes

VII. Servicemen’s Rights
A. Retirees
   1. Conflict of interest
   2. Dual compensation
   3. Reports of employment
B. Soldiers’ and Sailors’ Civil Relief Act
C. Incidents of Discharge

VIII. Civil Rights
A. Open Housing
B. Voting
C. Public Accommodations and Facilities
D. Education
E. Equal Employment Opportunity

IX. Local Laws
A. State and Host Country Laws
   1. Traffic and Vehicles
   2. Taxes and Residence
   3. Criminal Laws
B. Command Regulations and Policies
C. Base Jurisdictions, Exclusive/Concurrent

X. Special Subjects
A. Administrative Discharges
B. Civilian Personnel
   1. Regulations, Manuals, Policies
   2. Labor Unions
   3. Amenability to Local Laws
   4. Contractor’s Employees
DEPARTMENT OF DEFENSE DIRECTIVE

SUBJECT: DoD Program for the Implementation of the Law of War (Short Title: DoD Law of War Program)

Refs:
(b) Naval Warfare Information Publication 10-2, Law of Naval Warfare, September 1955
(c) DoD Directive 5100.69, “DoD Program for Prisoners of War and Other Detainees,” December 27, 1972
(f) Hague Convention No. IV Respecting the Laws and Customs of War on Land, 18 October 1907
(g) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949
(h) Geneva Convention for Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949
(i) Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949
(j) Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949

I. PURPOSE
This Directive provides policy guidance and assigns responsibilities within the Department of Defense for a program to insure implementation of the law of war.

II. PROGRAM OBJECTIVES
Its objectives are to:
A. Ensure that the law of war and the obligations of the United States Government under that law are observed and enforced by the Armed Forces of the United States.
B. Ensure that a program, designed to prevent violations of the law of war, is implemented by the Armed Forces of the United States.
C. Ensure that alleged violations of the law of war, whether committed by U.S. personnel or enemy personnel, are promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action.
III. APPLICABILITY
The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, Defense Agencies, and the Unified and Specified Commands (hereinafter referred to collectively as "DoD Components").

IV. DEFINITION AND SCOPE
A. The law of war encompasses all international law with respect to the conduct of armed conflict, binding on the United States or its individual citizens, either in international treaties and agreements to which the U.S. is a party, or applicable as customary international law.

B. There is excluded from the scope of this Directive that part of the law of war relating to the acquisition and procurement of weapons and weapons systems for the armed forces of the United States, which is the subject of DoD Instruction 5500.15 (reference (d)).

V. POLICY
A. The Armed Forces of the United States will comply with the law of war in the conduct of military operations and related activities in armed conflict however such conflicts are characterized.

B. The Armed Forces of the United States will insure that programs to prevent violations of the law of war to include training and dissemination as required by the Geneva Conventions (GWS Art. 47 (reference (g)), GWS Sea Art. 48 (reference (h)), GPW Art. 127 (reference (i)), GC Art. 144 (reference (j)), and by Hague Convention IV (Art. I) (reference (f)), are instituted and implemented.

C. Violations of the law of war alleged to have been committed by or against members of, or persons accompanying or serving with, the Armed Forces of the United States will be promptly reported, thoroughly investigated, and, where appropriate, followed by corrective action.

D. Violations of the law of war alleged to have been committed by or against allied military or civilian personnel will be reported through appropriate command channels for ultimate transmission to appropriate agencies of allied governments.

VI. RESPONSIBILITIES
A. The Assistant Secretary of Defense (Manpower and Reserve Affairs) will maintain overall coordination of and monitor the service plans and policies for training and education in the law of war.

B. The Assistant Secretary of Defense (International Security Affairs) will coordinate DoD positions on international negotiations of the law of war.

C. The Assistant Secretary of Defense (Public Affairs) will monitor the public affairs aspects of the DoD law of war program and provide public affairs policy guidance as appropriate, to include coordination with the Department of State on matters of mutual public affairs concern.

D. The DoD General Counsel will provide overall legal guidance
within the Department of Defense pertaining to the DoD law of war programs, to include review of policies developed in connection with the program and coordination of special legislative proposals and other legal matters with other Federal departments and agencies.

E. The Secretaries of the Military Departments will develop internal policies and procedures consistent with this Directive in support of the DoD law of war program in order to:

1. Provide publication, instructions, and training so that the principles and rules of the law of war will be known to members of their respective departments, the extent of such knowledge to be commensurate with each individual's duties and responsibilities.
2. Provide for the prompt reporting and investigation of alleged violations of the law of war committed by or against members of their respective departments in consonance with directives issued pursuant to paragraph VI.H.4. of this Directive.
3. Provide for the appropriate disposition, under the Uniform Code of Military Justice, of cases involving alleged violations by persons subject to court-martial jurisdiction of their respective departments.
4. Provide for the central collection of reports and investigations of violations of the law of war alleged to have been committed by members of their respective military departments.
5. Insure that programs within their respective departments to prevent violations of the law of war are subject to periodic review and evaluation, particularly in light of any violations reported.

F. The Secretary of the Army is designated as the Executive Agent for the Department of Defense for the administration of the DoD law of war program with respect to alleged violations of the law of war committed against U.S. personnel. In this capacity he will act for the Department of Defense in the development and coordination of plans and policies for the investigation and, subject to the provisions of DoD Directive 5000.19, collection, recording, and reporting of information related to enemy violations of the law of war.

G. The Joint Chiefs of Staff will:

1. Provide guidance to the commanders of unified and specified commands conforming with the policies and procedures contained in this Directive.
2. Insure that a primary point of contact in the Organization of the Joint Chiefs of Staff is designated to handle actions concerning activities under the provisions of this Directive.
3. Issue and review appropriate plans, policies, and directives as necessary in consonance with this Directive.
4. Insure that rules of engagement issued by unified and specified commands are in consonance with the law of war.

H. Commanders of unified and specified commands will:

1. Institute necessary programs within their respective commands to prevent violations of the law of war and insure that they are subject to periodic review and evaluation, particularly in light of any violations reported.
2. Implement Joint Chiefs of Staff guidance for the collection and investigation of reports of enemy violations of the law of war.

3. Designate an authority within the command to supervise the administration of those aspects of this program dealing with alleged enemy violations.

4. Issue appropriate plans and directives to insure that war crimes allegations to which this Directive applies are reported promptly to the appropriate authorities and investigated.

5. Insure that initial reports and reports of investigation of alleged war crimes committed by U.S. personnel are forwarded to the appropriate military departments.

6. Insure that rules of engagement issued by the command conform to the law of war.

I. The Director, Defense Intelligence Agency, will provide appropriate information from the intelligence community to the Secretary of the Army and the commanders of unified and specified commands pursuant to Paragraphs VI.F. and H. above, concerning violations of the law of war perpetrated against captured or detained United States nationals.

VII. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Two copies of implementing documents and notification of designated representatives, in accordance with Section VI, above, and any revisions, changes or reissuances of appropriate directives or other documents thereafter, will be forwarded to the General Counsel and the Assistant Secretary of Defense (Manpower and Reserve Affairs) within 6 months.

Deputy Secretary of Defense