



National
Defence

Défense
Nationale

B-GJ-005-104/FP-021

Joint Doctrine Manual

LAW OF ARMED CONFLICT

AT THE OPERATIONAL AND TACTICAL LEVELS

(ENGLISH)

Issued on Authority of the Chief of Defence Staff

Custodian: JAG

2001-08-13

Office of the Judge Advocate General

Cabinet du Juge-avocat général

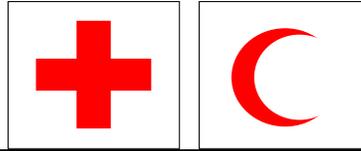
www.forces.gc.ca/jag



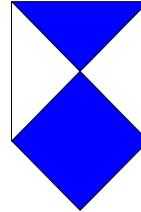
Canada

PROTECTIVE EMBLEMS AND SIGNS

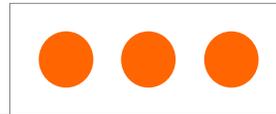
Medical and Religious Personnel and Medical Units and Establishments :
(Red on White)



Cultural Objects & Places of Worship :
(Blue on White)



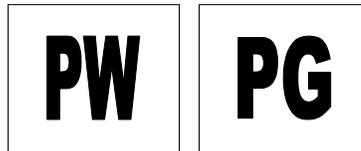
Dams, Dykes and Nuclear Power Plants :
(Orange on White)



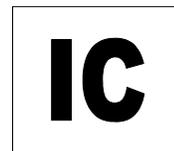
Civil Defence Installations, Materiel and Personnel :
(Blue on Orange)



Prisoner of War Camps :
(Black on White)

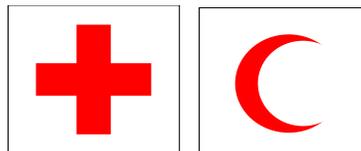
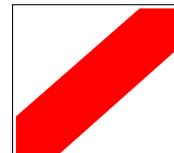


Internment Camps :
(Black on White)



Hospital & Safety Zone :
(Red on White)

A hospital & safety zone reserved exclusively for the wounded and sick may be marked with the Red Cross or Red Crescent. Otherwise, the hospital and safety zone should be marked with the oblique red band on a white background.



LIST OF EFFECTIVE PAGES

1. Insert latest changed pages, dispose of superseded pages in accordance with applicable orders.
2. Dates of issue for original and changed pages are:

Original.....0	2001-08-13	Change	3
Change.....1		Change	4
Change.....2		Change	5

3. Zero in Change No. Column indicates an original page. Total number of pages in this publication is 246 consisting of the following:

Page No.	Change No.	Page No.	Change No.
Title.....0		11-1 to 11-14.....0	
B.....0		12-1 to 12-12.....0	
i to xvii.....0		13-1 to 13-5.....0	
1-1 to 1-7.....0		14-1 to 14-4.....0	
2-1 to 2-4.....0		15-1 to 15-7.....0	
3-1 to 3-6.....0		16-1 to 16-10.....0	
4-1 to 4-3.....0		16A-1 to 16A-2.....0	
4A-1 to 4A-2.....0		16B-1 to 16B-2.....0	
4B-1 to 4B-4.....0		17-1 to 17-8.....0	
5-1 to 5-10.....0		A-1 to A-5.....0	
5A1 to 5A-4.....0		B-1 to B-2.....0	
6-1 to 6-8.....0		C-1 to C-2.....0	
7-1 to 7-10.....0		GL-1 to GL-20.....0	
8-1 to 8-21.....0		LA-1 to LA-2.....0	
9-1 to 9-8.....0		REF-1 to REF-2.....0	
10-1 to 10-12.....0		INDEX-1 to INDEX-10.....0	

This Page Intentionally Blank

PREFACE

GENERAL

1. The Law of Armed Conflict at the Operational and Tactical Levels is issued under the authority of the Chief of the Defence Staff.
2. This manual is effective upon receipt. It supersedes and replaces CFP 122 "Manual on the Geneva Conventions of August 12, 1949" issued on 31 Oct 73 and B-GL-318-004/FP-001 "Unit Guide to the Geneva Convention" issued on 4 Sep 1990.
3. The Law of Armed Conflict at the Operational and Tactical Levels was prepared by the Office of the Judge Advocate General, which is the office of primary interest for all matters related to the Law of Armed Conflict (LOAC). It is an updated and modified version of the "Canadian Forces Law of Armed Conflict Manual (Second Draft)".

AIM

1. The aim of the Law of Armed Conflict at the Operational and Tactical Levels is to provide a working level publication on the Law of Armed Conflict (LOAC) and a practical guide for the use of commanders, staff officers and LOAC instructors.
2. The Manual is designed to apply to the tactical/operational levels of doctrine related to the LOAC and to be used as the main source for the preparation of lesson plans required for the training of all members of the CF on the LOAC.
3. Although each chapter deals with a specific topic, it may be necessary to consult two or more chapters before formulating an opinion on a particular situation. For example, the chapters dealing with the law related to the conduct of hostilities (land, air or maritime) must be read in conjunction with the chapters on targeting and combatant status.

SCOPE OF APPLICATION

1. The Law of Armed Conflict at the Operational and Tactical Levels is a complementary publication to the Code of Conduct for CF Personnel. The manual amplifies the Code of Conduct which sets out, in accordance with the CF Policy on the LOAC, the basic principles and spirit of the LOAC to be applied, as a minimum, by all members of the CF taking part in all Canadian military operations other than Canadian domestic operations. Specifically, this Manual does not apply to domestic law enforcement operations.
2. The Law of Armed Conflict at the Operational and Tactical Levels covers the law related to the conduct of hostilities (Hague Law) and the protection of victims of armed conflict (Geneva Law). This Manual is an account of the law applicable to traditional state on state international armed conflicts (Chapters 1-16) and to non-international armed conflicts (Chapter 17). It is also Canadian perspective of the LOAC based on Customary International Law and Treaties binding on Canada.

BINDING EFFECT OF THE LOAC FOR INDIVIDUAL CF MEMBERS

1. The obligations binding on Canada in accordance with Customary International Law and Treaties to which Canada is a party are binding not only upon the Government and the CF but also upon every individual. Members of the CF are obliged to comply and ensure compliance with all International Treaties and Customary International Law binding on Canada. This manual assists CF members in meeting those obligations.

AMENDMENTS / MODIFICATIONS

1. Suggestions for amendments to the Law of Armed Conflict at the Operational and Tactical Levels may be submitted at any time. Recommended changes should be forwarded to:

**Director of Law / Training
Office of the Judge Advocate General
National Defence Headquarters
305 Rideau Street
Ottawa ON
K1A 0K2**

TABLE OF CONTENTS

List of Effective Pages.....	C
Preface	i
Table of Contents	iii
CHAPTER 1 - INTRODUCTION TO THE LAW OF ARMED CONFLICT	1-1
SECTION 1 – INTRODUCTION.....	1-1
101. Aim.....	1-1
102. Definitions	1-1
103. Purposes of the Law of Armed Conflict	1-1
104. Components of the Law of Armed Conflict.....	1-1
SECTION 2 - SOURCES OF LOAC	1-2
105. General	1-2
106. The Martens Clause	1-2
107. The Hague Conventions of 1907.....	1-2
108. Protocol for the Prohibition of The Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare	1-3
109. Convention on the Prevention and Punishment of the Crime of Genocide.....	1-3
110. The Geneva Conventions of 1949.....	1-3
111. 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict	1-4
112. 1977 Additional Protocols I and I To the Geneva Conventions of 1949.....	1-4
114. 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1-5
115. 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction	1-5
116. 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction	1-5
CHAPTER 2 - BASIC PRINCIPLES OF THE LAW OF ARMED CONFLICT.....	2-1
201. Aim.....	2-1
202. Primary Concepts	2-1
203. Fundamental Principles	2-2
204. Operational Principles.....	2-2
CHAPTER 3 - COMBATANT STATUS	3-1
SECTION 1 - INTRODUCTION	3-1
301. Aim.....	3-1
302. Operational Rationale	3-1
SECTION 2 - COMBATANTS	3-1

303.	General	3-1
304.	Armed Forces	3-2
305.	Militias, Volunteer Groups and Organized Resistance Movements	3-2
306.	Inhabitants of a Non-Occupied Territory	3-2
307.	Paramilitary or Armed Law Enforcement Agencies	3-3
308.	Conditions to Retain Combatant Status	3-3
309.	Combatants Who are Hors De Combat.....	3-3
SECTION 3 - NON-COMBATANTS		3-4
310.	Chaplains	3-4
311.	Medical Personnel	3-4
312.	Civilians	3-4
313.	Journalists.....	3-4
314.	War Correspondents	3-4
315.	Persons Who Accompany the Armed Forces	3-4
316.	Crews of Merchant Marine and Civil Aircraft	3-5
317.	Distinctive Emblem and Identity Cards.....	3-5
SECTION 4 - UNLAWFUL COMBATANTS		3-5
318.	Civilians Engaged in Hostilities.....	3-5
319.	Mercenaries	3-5
320.	Spies	3-6
321.	Determination of Status	3-6
CHAPTER 4 - TARGETING		4-1
SECTION 1 - INTRODUCTION		4-1
401.	Aim.....	4-1
402.	Application	4-1
403.	Distinction Principle	4-1
404.	Basic Rule.....	4-1
SECTION 2 - LEGITIMATE TARGETS		4-1
405.	Scope.....	4-1
406.	Definition of Legitimate Targets.....	4-1
407.	Examples of Objects Which are Military Objectives	4-2
408.	Combatants	4-2
409.	Airborne Troops	4-2
410.	Unlawful Combatants	4-2
SECTION 3 - TARGETING PRINCIPLES AND DEFINITIONS		4-3
411.	Protection of Civilians and Civilian Objects	4-3
412.	Definition of "Attack"	4-3

413.	Proportionality	4-3
414.	Proportionality and Multiple Targets	4-3
415.	Concrete and Direct Military Advantage	4-4
416.	Indiscriminate Attacks	4-4
SECTION 4 - OBLIGATIONS RELATED TO TARGETING.....		4-4
417.	Military Commanders, Planners and Staff Officers	4-4
418.	Standard of Care	4-5
419.	Cancellation or Suspension of an Attack	4-5
420.	Warning	4-5
421.	Obligation to Protect Civilians against the Effects of Attacks	4-5
SECTION 5 - CIVILIANS AND CIVILIAN OBJECTS.....		4-5
422.	Scope.....	4-5
423.	General Rule.....	4-6
424.	Definition of "Civilian"	4-6
425.	Civilians Who Accompany the Armed Forces	4-6
426.	Civilian Population	4-6
427.	Definition of "Civilian Object"	4-6
428.	Civilian Object Used For Military Purposes	4-6
429.	Cases of Doubt	4-6
430.	Prohibition on Reprisals.....	4-6
SECTION 6 - OTHER PERSONS ENTITLED TO PROTECTION		4-7
431.	Scope.....	4-7
432.	Medical and Religious Personnel	4-7
433.	Enemy "Hors De Combat"	4-7
434.	Personnel Bearing the White Flag.....	4-7
435.	Wounded, Sick and Shipwrecked.....	4-7
436.	Prisoners of War	4-8
437.	Parachutists from Aircraft In Distress	4-8
438.	Humanitarian Aid Societies	4-8
439.	Personnel Participating in Relief Actions.....	4-8
440.	Civil Defence Personnel	4-8
441.	Journalists Engaged in Dangerous Professional Missions.....	4-10
SECTION 7 - OBJECTS ENTITLED TO PROTECTION.....		4-10
442.	Scope.....	4-10
443.	Cultural Objects	4-10
444.	Dams, Dykes and Nuclear Power Plants.....	4-11
445.	Objects Indispensable to the Survival of the Civilian Population.....	4-12
446.	Natural Environment.....	4-13
447.	Medical Units and Establishments.....	4-13

448.	Medical Transports	4-14
449.	Vessels	4-14
450.	Civil Defence Buildings, Materiel and Shelters.....	4-15
451.	Prisoner of War Camps	4-15
452.	Internment Camps	4-15
SECTION 8 - AREAS ENTITLED TO PROTECTION.....		4-15
453.	Scope.....	4-15
454.	Hospital and Safety Zones	4-15
455.	Neutralized Zones	4-16
456.	Non-Defended Localities	4-16
457.	Demilitarized Zone.....	4-17
ANNEX A – PROTECTIVE EMBLEMS AND SIGNS.....		4A-1
ANNEX B – IDENTITY CARDS.....		4B-1
CHAPTER 5 - RESTRICTIONS ON THE USE OF WEAPONS.....		5-1
SECTION 1 - INTRODUCTION		5-1
501.	Aim.....	5-1
502.	General.....	5-1
503.	Superfluous Injury and Unnecessary Suffering.....	5-1
504.	Operational Rationale.....	5-1
505.	Limitations on the Use of Weapons.....	5-1
506.	Weapons and Ammunition Issued by the Canadian Forces	5-1
507.	Use of Captured Weapons and Ammunition	5-2
SECTION 2 - PROHIBITED WEAPONS AND AMMUNITION.....		5-2
508.	General.....	5-2
509.	Weapons Indiscriminate in Their Effect.....	5-2
510.	Prohibited Ammunition	5-2
511.	Anti-Personnel Land Mines	5-3
512.	Poison.....	5-3
513.	Non-Detectable Fragments	5-3
514.	Environment Altering Weapons.....	5-4
515.	Gas	5-4
516.	Bacteriological/Biological Weapons	5-4
517.	Chemical Weapons	5-4
518.	Riot Control Agents	5-4
519.	Blinding Laser Weapons.....	5-4
SECTION 3 - LIMITATIONS ON LAWFUL WEAPONS		5-5
520.	General.....	5-5
521.	Incendiary Weapons.....	5-5

522.	Booby Traps and Other Devices	5-6
523.	Use of Authorized Land Mines, Booby Traps and Other Devices.....	5-6
524.	Remotely-Delivered Mines.....	5-8
525.	Other Devices	5-8
526.	Nuclear Weapons	5-8
527.	Rockets, Missiles and Bombardment	5-9
528.	Sea Mines	5-9
529.	Torpedoes.....	5-9
SECTION 4 - NEW WEAPONS		5-9
530.	Development or Acquisition of New Weapons	5-9
ANNEX A – CANADA AND ANTI-PERSONEL MINES.....		5A-1
A001.	Canada’s Understanding with Respect to the Service of CF Members with the Armed Forces of Nations that Use Anti-Personnel Land Mines	5A-1
A002	Implications of the Anti-Personnel Mines Convention	5A-1
CHAPTER 6 - LAW RELATING TO THE CONDUCT OF HOSTILITIES ON LAND		6-1
SECTION 1 - INTRODUCTION		6-1
601.	Aim.....	6-1
SECTION 2 - LAWFUL AND UNLAWFUL TACTICS.....		6-1
602.	Ruses.....	6-1
603.	Perfidy.....	6-2
604.	Improper Use of the Red Cross or Red Crescent	6-2
605.	Improper Use of Other Emblems, Signs or Signals.....	6-3
606.	Flags, Military Emblems, and Uniforms of Neutral or Other States.....	6-3
607.	Flags, Military Emblems, and Uniforms of Adverse Parties	6-3
608.	Denial of Quarter	6-3
609.	Release of Prisoners Where Proper Evacuation Not Possible	6-4
610.	Sabotage	6-4
611.	Espionage.....	6-4
612.	Assassination and Bounty	6-4
613.	Indiscriminate Attacks.....	6-5
614.	Siege Warfare	6-5
615.	Use of Protected Persons to Render a Target Immune from Attack.....	6-6
616.	Cultural and Religious Objects	6-6
617.	Terrorizing the Civilian Population.....	6-6
618.	Starvation of the Civilian Population.....	6-6
619.	Scorched Earth Policy on National Territory.....	6-6
620.	Protection of the Environment	6-7
SECTION 3 - PROPERTY ON THE BATTLEFIELD.....		6-7

621.	Destruction or Seizure of Enemy Property	6-7
622.	Booty of War	6-7
623.	Enemy Private Property.....	6-7
624.	Pillage	6-8
CHAPTER 7 - LAW RELATING TO THE CONDUCT OF HOSTILITIES IN THE AIR.....		7-1
SECTION 1 - INTRODUCTION		7-1
701.	Aim.....	7-1
702.	General	7-1
703.	Areas of Operation in an Armed Conflict.....	7-1
704.	Combatant Status and Insignia	7-2
SECTION 2 - LAWFUL AND UNLAWFUL TACTICS.....		7-2
705.	Ruses.....	7-2
706.	Perfidy.....	7-2
707.	Quarter / Surrender	7-3
708.	Starvation of the Civilian Population.....	7-4
709.	Protection of the Environment	7-4
710.	Psychological Operations	7-4
SECTION 3 - AIR TO AIR OPERATIONS.....		7-5
711.	General.....	7-5
712.	Parachutists and Downed Aircrew	7-5
713.	Search and Rescue Operations	7-5
714.	Civil Aircraft.....	7-6
715.	Medical Aircraft.....	7-6
SECTION 4 - AIR TO LAND OPERATIONS.....		7-6
716.	Basic Attack Rules.....	7-6
SECTION 5 - AIR TO SEA OPERATIONS		7-7
717.	Enemy Warships and Naval Auxiliaries.....	7-7
718.	Enemy Merchant Vessels.....	7-7
719.	Neutral Merchant Vessels	7-8
720.	Enemy Vessels Exempt from Attack	7-9
721.	Conditions of Protection	7-9
722.	Loss of Protection by Hospital Ships.....	7-10
723.	Attack Against a Hospital Ship	7-10
724.	Attack against Other Protected Vessels.....	7-10
CHAPTER 8 - LAW RELATING TO THE CONDUCT OF HOSTILITIES AT SEA.....		8-1
SECTION 1 - INTRODUCTION		8-1

801.	Aim.....	8-1
802.	Geographical Terms	8-1
803.	Un Convention on the Law of the Sea.....	8-2
804.	Areas of Naval Warfare	8-2
SECTION 2 - MARITIME OPERATIONS IN NEUTRAL WATERS, TERRITORIAL SEAS AND ARCHIPELAGIC WATERS.....		8-2
805.	Neutral Waters and Airspace.....	8-2
806.	Hostile Actions from or in Neutral Waters.....	8-2
807.	Use of Neutral Waters as a Sanctuary	8-3
808.	Regulation of Passage Through Neutral Waters.....	8-3
809.	Actions Permitted in Neutral Waters.....	8-3
810.	Time Limit on Passage Through Neutral Waters	8-3
811.	Duty of State to Prevent Violations of Neutrality	8-4
SECTION 3 - MARITIME OPERATIONS IN INTERNATIONAL STRAITS AND ARCHIPELAGIC SEA LANES		8-4
812.	Transit Passage of Belligerents through Neutral International Straits and Archipelagic Sea Lanes	8-4
813.	Neutrality of Border States	8-4
814.	Neutrality of Archipelagic States.....	8-4
815.	Transit Passage of Neutrals Through Belligerent International Straits and Archipelagic Waters.....	8-4
816.	Transit Passage and Archipelagic Sea Lanes Passage.....	8-4
817.	Neutral Regulation of Transit Passage and Archipelagic Sea Lanes Passage.....	8-5
818.	Obligations of a Belligerent in Transit Passage or Archipelagic Sea Lanes Passage.....	8-5
819.	Defensive Measures by Belligerents in Transit Passage or Archipelagic Sea Lanes Passage	8-5
820.	Innocent Passage	8-5
SECTION 4 - MARITIME OPERATIONS IN THE EXCLUSIVE ECONOMIC ZONE AND OVER THE CONTINENTAL SHELF		8-6
821.	Regard for Rights of Coastal State.....	8-6
822.	Mines in the Exclusive Economic Zone or Continental Shelf	8-6
SECTION 5 - MARITIME OPERATIONS ON THE HIGH SEAS AND SEA-BED BEYOND NATIONAL JURISDICTION		8-6
823.	Regard for Rights of Neutrals	8-6
824.	Cables and Pipelines	8-6
SECTION 6 - TARGETING IN MARITIME OPERATIONS		8-7
825.	Targeting.....	8-7
826.	Submarines.....	8-7

827.	Indiscriminate Attacks.....	8-7
SECTION 7 - PROTECTED ENEMY VESSELS		8-7
828.	Enemy Vessels Exempt from Attack	8-7
829.	Conditions of Protection	8-8
830.	Loss of Protection by Hospital Ships.....	8-8
831.	Attack Against a Hospital Ship	8-8
832.	Attack Against Other Protected Vessels	8-9
SECTION 8 - ATTACKS.....		8-9
833.	Enemy Warships and Aircraft.....	8-9
834.	Enemy Merchant Vessels.....	8-9
835.	Neutral Merchant Vessels	8-10
SECTION 9 - RULES FOR THE USE OF SEA MINES		8-10
836.	Basic Rule.....	8-10
837.	Free Floating Mines	8-10
838.	Notification	8-10
839.	Prevention of Passage Between Neutral and International Waters	8-11
840.	Regard for the Use of the High Seas by Neutrals	8-11
841.	Transit Passage and Archipelagic Sea Lanes Passage	8-11
842.	Removal of Mines After Cessation of Hostilities.....	8-11
843.	Removal of Mines by Neutral States	8-11
SECTION 10 - BLOCKADE.....		8-11
844.	Definition.....	8-11
845.	Declaration of a Blockade.....	8-11
846.	Blockade Must Be Effective.....	8-12
847.	Capture of or Attack on Merchant Vessels.....	8-12
848.	Restrictions.....	8-12
849.	Cessation or Alteration of a Blockade	8-12
850.	Circumstances in Which a Blockade is Prohibited	8-12
851.	Food and Other Objects Essential to the Survival of the Civilian Population.....	8-12
SECTION 11 - ZONES.....		8-13
852.	General.....	8-13
853.	Obligations of a Belligerent Establishing a Zone.....	8-13
854.	Neutrals	8-14
855.	Operations Outside of the Zone	8-14
SECTION 12 - LAWFUL AND UNLAWFUL TACTICS.....		8-14
856.	Ruses of War	8-14
857.	Perfidy.....	8-15

SECTION 13 - INTERCEPTION, VISIT, SEARCH AND DIVERSION	8-15
858. Determination of Enemy Character of Vessels and Aircraft	8-15
859. Basic Rule for the Visit and Search of Merchant Vessels	8-16
861. Diversion	8-16
862. Measures of Supervision	8-17
SECTION 14 - CAPTURE OF ENEMY VESSELS AND GOODS.....	8-17
863. General Rule.....	8-17
864. Enemy Vessels Exempt from Capture.....	8-17
865. Conditions for Exemption from Capture	8-17
866. Capture of Enemy Merchant Vessels	8-18
867. Destruction Of Enemy Merchant Vessels.....	8-18
868. Destruction of Enemy Passenger Vessels	8-18
SECTION 15 - CAPTURE OF NEUTRAL MERCHANT VESSELS AND GOODS.....	8-18
869. General Rule.....	8-18
870. Prize for Adjudication.....	8-19
871. Capture of Goods on Board Neutral Merchant Vessels	8-19
872. Free Goods.....	8-19
873. Destruction of Captured Neutral Merchant Vessels	8-20
874. Destruction of Captured Neutral Merchant Vessels for Carrying Contraband	8-20
875. Destruction of Captured Neutral Passenger Vessels	8-20
CHAPTER 9 - TREATMENT OF THE WOUNDED, SICK AND SHIPWRECKED	9-1
SECTION 1 INTRODUCTION.....	9-1
901. Aim.....	9-1
902. General	9-1
SECTION 2 - COLLECTION AND TREATMENT OF WOUNDED, SICK AND SHIPWRECKED.....	9-1
903. General Provisions of Treaty Law	9-1
904. Collection of Wounded, Sick and Shipwrecked	9-1
905. Identification of the Wounded, Sick and Shipwrecked	9-2
906. Involvement of Local Inhabitants and Relief Societies	9-2
907. Treatment of the Wounded, Sick and Shipwrecked	9-3
908. Priority of Treatment	9-3
909. Medical Experiments	9-3
910. Blood Transfusions and Skin Grafts.....	9-3
911. Right to Refuse Surgical Operations	9-3
912. Acts or Omissions Endangering Health are Grave Breaches	9-3
913. Obligation When Compelled to Abandon Wounded and Sick.....	9-4

SECTION 3 - MEDICAL PERSONNEL, ESTABLISHMENTS AND TRANSPORTS	9-4
914. Medical and Religious Personnel	9-4
915. Distinctive Emblem	9-4
916. Hospital Ships Must Display the Distinctive Emblem	9-5
917. Medical Aircraft Must Display the Distinctive Emblem	9-5
918. Protection of Medical Establishments, Transport, Aircraft and Hospital Ships	9-5
919. Medical Units, Establishments, and Transports	9-5
920. Sick Bays and Hospital Ships.....	9-6
921. Medical Aircraft.....	9-6
922. Camouflage	9-7
923. Special Zones.....	9-7
924. Search for Missing and Dead	9-7
925. Care of Remains.....	9-8
 CHAPTER 10 - TREATMENT OF PRISONERS OF WAR	 10-1
SECTION 1 - INTRODUCTION	10-1
1001. Aim.....	10-1
1002. The Treatment of PWs is a National Responsibility	10-1
1003. All States are Bound by the PW Convention.....	10-1
1004. Definition of Protecting Power	10-1
1005. Persons Who May not be Made PWs	10-1
SECTION 2 - DETERMINATION OF STATUS	10-2
1006. Persons Entitled to PW Status	10-2
1007. Persons not Entitled to PW Status	10-2
1008. Medical and Religious Personnel	10-2
1009. Procedure for Determination of PW Status	10-2
SECTION 3 - RIGHTS OF PWs	10-3
1010. Duty to Release and Repatriate	10-3
1011. Prisoners Cannot Give Up Rights.....	10-3
1012. Special Agreements	10-3
1013. Standard of Treatment.....	10-3
SECTION 4 - TREATMENT OF PWs.....	10-3
1014. Responsibility.....	10-3
1015. Adverse Discrimination Prohibited	10-3
1016. Humane Treatment Mandatory.....	10-4
1017. Treatment of Female PW	10-4
1018. Interrogation.....	10-4
1019. Reprisals Prohibited	10-4
1020. Killing PW Prohibited	10-4

1021.	Property of PW	10-5
1022.	Protecting Powers.....	10-5
1023.	Evacuation of PW	10-5
1024.	PW Camps.....	10-5
1025.	Parole.....	10-6
1026.	Medical and Spiritual Care	10-6
1027.	Command of PW Camps	10-6
1028.	Use of Weapons against PWs.....	10-6
1029.	PWs' Representatives	10-6
1030.	Work of PWs.....	10-7
1031.	Capture Card	10-7
1032.	Correspondence	10-7
1033.	Death or Serious Injury of PWs	10-7
1034.	Wills of PWs.....	10-7
1035.	Release and Repatriation During or After Hostilities	10-8
1036.	Information Bureau and Central Agency	10-8
1037.	Visits to PWs.....	10-8
1038.	Breaches of PW Convention	10-8
SECTION 5 - PUNISHMENT OF PWs		10-8
1039.	Law Applicable to PW.....	10-8
1040.	Pre-Trial, Trial and Post-Trial Procedural Considerations.....	10-11
CHAPTER 11 - TREATMENT OF CIVILIANS IN THE HANDS OF A PARTY TO THE CONFLICT OR AN OCCUPYING POWER		11-1
SECTION 1 - INTRODUCTION		11-1
1101.	Aim.....	11-1
1102.	General	11-1
SECTION 2 - PROTECTED PERSONS AND PERIOD OF APPLICATION.....		11-1
1103.	Protected Persons	11-1
1104.	Exclusions.....	11-1
1105.	Period of Application.....	11-2
1106.	Protecting Power	11-2
SECTION 3 - GENERAL MEASURES FOR THE PROTECTION OF CIVILIANS		11-2
1107.	Application	11-2
1108.	Hospital and Safety Zones	11-2
1109.	Neutralized Zones.....	11-2
1110.	Special Protection.....	11-3
1111.	Civilian Hospitals and Medical Personnel.....	11-3
1112.	Medical Transports and Aircraft.....	11-3
1113.	Free Passage of Supplies	11-4

1114.	Care of Children	11-4
1115.	Family Correspondence	11-4
1116.	Censorship.....	11-4
1117.	Family Enquiries	11-4
SECTION 4 - PROVISIONS COMMON TO THE TERRITORIES OF THE PARTIES TO THE CONFLICT AND TO OCCUPIED TERRITORIES.....		11-5
1118.	Humane Treatment of Protected Persons.....	11-5
1119.	Equal Treatment Without Adverse Distinction.....	11-5
1120.	Humanitarian Organizations	11-5
1121.	Prohibited Acts	11-5
SECTION 5 - ALIENS IN THE TERRITORY OF A PARTY TO THE CONFLICT		11-6
1122.	Departure of Aliens.....	11-6
1123.	Treatment of Protected Persons.....	11-6
1124.	Employment of Protected Persons.....	11-6
1125.	Internment of Protected Persons.....	11-7
1126.	Transfer of Protected Persons.....	11-7
1127.	Responsible State	11-7
1128.	Cancellation of Restrictive Measures	11-8
SECTION 6 - TREATMENT OF INTERNEES		11-8
1129.	General.....	11-8
1130.	Enquiry Into Death or Injury of Internees.....	11-9
1131.	Release and Repatriation of Internees	11-9
SECTION 7 - INFORMATION BUREAU AND CENTRAL AGENCY		11-9
1132.	Information Bureau	11-9
1133.	Central Agency	11-9
SECTION 8 - ADDITIONAL PROTOCOL I		11-10
1134.	General.....	11-10
1135.	Fundamental Guarantees.....	11-10
SECTION 9 - CIVIL DEFENCE		11-11
1136.	General.....	11-11
1137.	Definition of Civil Defence	11-11
1138.	Civilian Civil Defence Organizations Entitled to Protection	11-11
1139.	Civilian Civil Defence Organizations in Occupied Territory.....	11-12
1140.	Civilian Civil Defence Personnel May Carry Weapons	11-12
1141.	Termination of Protection	11-12
1142.	Protective Emblems.....	11-13
1143.	Military Personnel and Equipment Assigned to Civil Defence Duties	11-13

CHAPTER 12 - RIGHTS AND DUTIES OF OCCUPYING POWERS	12-1
SECTION 1 - INTRODUCTION	12-1
1201. Aim.....	12-1
1202. General	12-1
SECTION 2 - COMMENCEMENT AND TERMINATION OF BELLIGERENT OCCUPATION	12-1
1203. Commencement	12-1
1204. Termination of Occupation	12-2
SECTION 3 - GENERAL EFFECTS OF OCCUPATION.....	12-2
1205. Limits on Legislative Power of Occupant.....	12-2
1206. Annexation Prohibited.....	12-2
1207. Maintenance of Public Order	12-2
SECTION 4 - ADMINISTRATION OF OCCUPIED TERRITORY.....	12-3
1208. General	12-3
1209. Law Applicable in Occupied Territory	12-3
1210. Occupying Force Exempt from Local Laws	12-3
1211. Occupation Costs	12-3
1212. Taxation	12-3
1213. Currency	12-3
1214. Commercial Restrictions.....	12-4
1215. Censorship.....	12-4
1216. Freedom of Religion	12-4
1217. Control Over Transportation	12-4
1218. Welfare Measures.....	12-4
1219. Relief Measures	12-4
1220. Population Movements Into Occupied Territory Prohibited	12-5
SECTION 5 - EFFECTS OF OCCUPATION ON THE POPULATION.....	12-5
1221. Duty to Occupying Power	12-5
1222. Rights of Inhabitants of Occupied Territory	12-5
1223. Control of Persons in Occupied Territory	12-6
1224. Forced Enlistment.....	12-6
1225. Compulsory Labour	12-6
1226. Public Officials in Occupied Territory.....	12-7
1227. Right of Non-Nationals to Leave Occupied Territory.....	12-7
SECTION 6 - ADMINISTRATION OF CRIMINAL LAW IN OCCUPIED TERRITORIES.....	12-7
1228. Content of Criminal Law	12-7
1229. Restrictions on Powers of Occupant with Regard to Criminal Law and	

	Punishment.....	12-7
1230.	Establishment of Special Courts.....	12-8
1231.	Imprisonment Pending Trial.....	12-8
1232.	Trial and Post-Trial Procedures.....	12-8
1233.	Treatment of Persons Undergoing Sentences of Imprisonment	12-9
1234.	Position after the Close of Occupation	12-10
1235.	Private and Public Property	12-10
1236.	Pillage Prohibited.....	12-10
1237.	Destruction.....	12-10
1238.	Confiscation	12-10
1239.	Seizure.....	12-11
1240.	Requisition	12-11
1241.	Contributions.....	12-11
1242.	Other Control Measures	12-12
1243.	Real Property of the State	12-12
1244.	Municipal and Charitable Property	12-12

CHAPTER 13 - RIGHTS AND DUTIES OF NEUTRAL POWERS13-1

SECTION 1 - INTRODUCTION13-1

1301.	Aim.....	13-1
1302.	General	13-1
1303.	Commencement of Neutral Status	13-1

SECTION 2 - RIGHTS AND DUTIES ON AND OVER NEUTRAL LAND AND WATER TERRITORY.....13-1

1304.	General Duty of Neutral States.....	13-1
1305.	Recruitment for Belligerent Armed Forces	13-2
1306.	Trade with Belligerent States.....	13-2
1307.	Treatment of Members of Belligerent Armed Forces	13-2
1308.	Medical Transports and Medical Aircraft.....	13-2

SECTION 3 - RIGHTS AND DUTIES ON AND OVER HIGH SEAS.....13-4

1309.	Obligation to Accept Exercise of Belligerent Rights	13-4
1310.	Belligerent Wounded, Sick and Shipwrecked on Neutral Ships.....	13-4
1311.	Neutral Mail.....	13-4

SECTION 4 - RIGHTS AND DUTIES IN BELLIGERENT CONTROLLED TERRITORY13-4

1312.	Role as Representative or Protecting Power Unobjectionable	13-4
1313.	Nationals of Neutral States in Belligerent Territory	13-4
1314.	Nationals of Neutral States in Occupied Territory	13-5
1315.	Humanitarian Activities	13-5
1316.	Neutral Aircraft.....	13-5
1317.	Individuals.....	13-5

CHAPTER 14 - COMMUNICATIONS AND CONTACT BETWEEN OPPOSING FORCES.....	14-1
1401. Aim.....	14-1
1402. Parlementaires.....	14-1
1403. Agreements	14-2
1404. Capitulation (Surrender)	14-2
1405. Passports and Safe Conducts	14-3
1406. Safeguards	14-3
1407. Special Zones	14-3
CHAPTER 15 - PREVENTATIVE AND ENFORCEMENT MEASURES AND THE ROLE OF PROTECTING POWERS.....	15-1
SECTION 1 - INTRODUCTION	15-1
1501. Aim.....	15-1
1502. General	15-1
SECTION 2 - PREVENTIVE MEASURES.....	15-1
1503. Dissemination	15-1
1504. Command Responsibility	15-1
1505. Legal Advisers	15-2
SECTION 3 - ENFORCEMENT MEASURES.....	15-2
1506. State Responsibility	15-2
1507. Reprisals.....	15-2
1508. Complaint Procedure Under the Geneva Co9nventions	15-3
1509. Fact-Finding Commission Under Protocol I.....	15-4
1510. Complaints, Good Offices, Mediation and Intervention	15-4
SECTION 4 - RIGHTS AND DUTIES OF PROTECTING POWERS	15-4
1511. General	15-4
1512. Development of the Protecting Power Concept	15-4
1513. Rights and Duties of Protecting Powers	15-5
1514. Duties of Protecting Powers Related to PWs	15-5
1515. Duties of Protecting Powers Related to Civilians	15-6
1516. Relations Between Protecting Powers and Other Agencies	15-7
CHAPTER 16 - WAR CRIMES, INDIVIDUAL CRIMINAL LIABILITY AND COMMAND RESPONSIBILITY.....	16-1
SECTION 1 - INTRODUCTION	16-1
1601. Aim.....	16-1
1602. General	16-1
SECTION 2 - WAR CRIMES IN THE BROADEST SENSE.....	16-1

1603. Crimes against Peace	16-1
1604. Crimes against Humanity	16-1
1605. Genocide	16-2
SECTION 3 - WAR CRIMES IN THE NARROW SENSE	16-2
1606. Definition.....	16-2
1607. Grave Breaches of the 1949 Geneva Conventions.....	16-2
1608. Grave Breaches of Additional Protocol I	16-3
1609. Violations of Hague Conventions and Customary Law	16-4
SECTION 4 - INDIVIDUAL CRIMINAL RESPONSIBILITY	16-5
1610. Who Can Be Prosecuted and Punished for War Crimes	16-5
1611. Responsibilities for Offences Within the CF	16-6
SECTION 5 - POSSIBLE DEFENCES	16-6
1612. Military Necessity.....	16-6
1613. Personal Necessity	16-7
1614. Duress	16-7
1615. Superior Orders	16-7
SECTION 6 - JURISDICTION FOR THE PROSECUTION OF WAR CRIMES	16-7
1616. Canadian Law.....	16-7
1617. International Law	16-8
SECTION 7 - TRIAL PROCEDURES.....	16-9
1618. Pretrial Considerations	16-9
1619. Post-Trial Considerations	16-9
1620. Trials of Foreign Civilians for War Crimes.....	16-9
SECTION 8 - RESPONSIBILITIES OF COMMANDERS.....	16-9
1621. Duty of Commanders.....	16-9
1622. Failure to Act.....	16-10
ANNEX A - CRIMINAL CODE OF CANADA. R.S.C. 1985, CHAP. C-46	16A-1
ANNEX B - 1997 ANTI-PERSONNEL MINES CONVENTION IMPLEMENTATION ACT	16B-1
CHAPTER 17 - NON-INTERNATIONAL ARMED CONFLICTS.....	17-1
SECTION 1 - INTRODUCTION	17-1
1701. Aim.....	17-1
1702. General.....	17-1
SECTION 2 - NON-INTERNATIONAL ARMED CONFLICT.....	17-1

1703.	Rule of Non-Intervention.....	17-1
1704.	Historical Background.....	17-1
1705.	Special Agreements.....	17-1
SECTION 3 - COMMON ARTICLE 3 TO GENEVA CONVENTIONS.....		17-1
1706.	Purpose and Field of Application.....	17-1
1707.	Other Articles of Geneva Conventions Not Applicable.....	17-2
1708.	Protections Provided by Article 3.....	17-2
SECTION 4 - ADDITIONAL PROTOCOL II OF 1977		17-2
1709.	Field of Application	17-2
1710.	Protocol II Does Not Authorize Intervention.....	17-3
1711.	No Adverse Discrimination	17-3
1712.	Quarter Must Be Granted	17-3
1713.	Fundamental Guarantees.....	17-3
1714.	Treatment of Children.....	17-4
1715.	Treatment of Persons Who's Liberty Has Been Restricted.....	17-4
1716.	Trial and Punishment Restrictions and Guarantees.....	17-4
1717.	Amnesties Encouraged.....	17-5
1718.	Collection of Wounded, Sick and Shipwrecked.....	17-5
1719.	Rights and Duties of Medical and Religious Personnel.....	17-5
1720.	General Protection of Civilian Persons.....	17-6
1721.	Starvation as Method of Combat Prohibited.....	17-6
1722.	Attacks on Installations Containing Dangerous Forces Prohibited	17-6
1723.	Attacks on Cultural or Religious Objects Prohibited.....	17-6
1724.	Restrictions on Forcible Movement of the Civilian Population	17-6
1725.	Breaches of Protocol II	17-7
ANNEX A - MAIN INTERNATIONAL TREATIES ON THE LAW OF ARMED CONFLICT RELATING TO CANADA		A-1
ANNEX B - CODE OF CONDUCT FOR CF PERSONNEL		B-1
ANNEX C - CANADIAN LEGISLATION REGARDING THE LAW OF ARMED CONFLICT		C-1
GLOSSARY		GL-1
LIST OF ABBREVIATIONS.....		LA-1
INDEX.....		INDEX-1
LIST OF FIGURES		
Figure 8-1	Law of the Sea Geographical Terms	8-1

CHAPTER 1
INTRODUCTION TO THE LAW OF ARMED CONFLICT
SECTION 1 – INTRODUCTION

101. AIM

1. The aim of this chapter is to set out the purpose, components and sources the Law of Armed Conflict (LOAC). There are legitimate reasons for imposing rules on the conduct of armed conflict. In fact, the concept of imposing rules on the conduct of armed conflict dates back to ancient society. Although a complete overview of the history of the LOAC is not included, this chapter allows users of this guide to understand the reasoning behind the adoption of these rules as well as their origin.

102. DEFINITIONS

1. **International Law.** International law is the body of law, which governs relations between sovereign states. It is a system of rules and principles created primarily by states, which cover almost every facet of inter-state activity. It is the vital mechanism without which an increasingly interdependent world could not function. International law deals with issues such as nationality, the use of armed force and the human rights of individuals. The practice of International Law is directly related to diplomacy, politics and the conduct of foreign relations.

2. **The Law of Armed Conflict.** The LOAC, considered in the broadest sense, determines when states may resort to the use of armed force and how they may conduct hostilities during armed conflicts. This guide is concerned primarily with the LOAC in the narrow sense, that is, with the body of law that governs the conduct of hostilities during an armed conflict.

103. PURPOSES OF THE LAW OF ARMED CONFLICT

1. The purpose of the LOAC is to regulate the conduct of hostilities and to protect the victims of armed conflict. In doing so, the LOAC safeguards the fundamental human rights of persons who fall into the hands of an enemy, namely, prisoners of war (PWs), the wounded and sick, and civilians.

2. The LOAC is also designed to spare the civilian population from the dangers arising from military operations and to protect combatants from unnecessary suffering. History clearly indicates that armed conflicts do not last forever and in that respect the LOAC facilitates the restoration of peace. Compliance with the LOAC will prevent the degeneration of conflicts into brutality and savagery, which inevitably hinders future friendly relations.

104. COMPONENTS OF THE LAW OF ARMED CONFLICT

1. The LOAC is traditionally divided into two components or streams, the Law of The Hague and the Law of Geneva, each named after the city where most of the relevant agreements were devised. The Law of The Hague is concerned essentially with the actual conduct of military operations including the methods and means of combat. The Law of Geneva on the other hand is concerned with the protection of persons not involved in a conflict such as civilians, PWs and the sick and wounded. Following the adoption in 1977 of the Additional Protocols I and II to the Geneva Conventions, there has been a tendency for the two components to merge as the Additional Protocols deal with the conduct of hostilities as well as the protection of the victims of armed conflict.

SECTION 2 - SOURCES OF LOAC

105. GENERAL

1. The basic sources of the LOAC are treaties and customary international law. Treaties, which include Protocols and Conventions, are agreements concluded by states whereby they accept a legal obligation to do or not do something. One can determine whether or not a State is bound by a treaty simply by determining whether or not it has ratified the treaty. Ratification implies that the treaty has been approved by the government of the state.

2. Customary international law, on the other hand, is more difficult to identify. The elements of customary international law are a uniform, consistent and general repetition of similar acts by competent state authorities (usage) and recognition by states that such practice is binding upon them as law. The existence of customary international law is dependent upon general agreement, not unanimous agreement. Thus, a state may be bound by a treaty that expresses customary international law, although it is not a party to that treaty. For example, a state that is not a party to the Geneva Conventions of 1949 is still bound by them because they are now considered to be customary international law.

106. THE MARTENS CLAUSE

1. The link between treaty law and customary international law dealing with the LOAC is represented by what is known as the *Martens Clause*. This clause is a declaration adopted by the delegates at the 1899 Hague Conference as the preamble to the Convention Respecting the Laws and Customs of War on Land. The content of this declaration is not merely of historic interest as it is equally relevant today:

"The High Contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgement of military commanders. Until a more complete code of the laws of war is issued, the High Contracting Parties deem it expedient to declare that in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usage established between civilized nations, from the laws of humanity, and dictates of the public conscience."

2. The *Martens Clause* means that insofar as the LOAC treaties are silent on a specific issue, customary international law continues to govern the situation. Furthermore, the *Martens Clause* implies that what is not expressly forbidden by the LOAC **is not** necessarily permitted.

3. **The Martens Clause Corollary.** Although the *Martens Clause* was initially adopted for a specific purpose, it has reappeared in many subsequent LOAC treaties and has become of general application just like its corollary which states that, **"In any armed conflict the right of Parties to the conflict to choose methods or means of warfare is not unlimited."**

107. THE HAGUE CONVENTIONS OF 1907

1. The Hague Conventions of 1907 were adopted at the Second Peace Conference attended by 44 states. The conference was a follow-up to the First Peace Conference held in 1899, and it was supposed to be followed by a third conference, which never took place because of the First World War. Fourteen different conventions were adopted at the conference, each dealing with a specific topic. These conventions are the main source of the LOAC dealing with the conduct of hostilities. Today, in accordance with the judgement of the International Military Tribunal of Nuremberg, the Hague Conventions are considered to have the status of customary international law. The main conventions of interest for users of this guide are the following:

- a. laws and customs of war on land (Convention IV);
- b. rights and duties of neutral powers and persons in case of war on land (Convention V);

- c. status of enemy merchant ships at the outbreak of hostilities (Convention VI);
- d. conversion of merchant ships into warships (Convention VII);
- e. bombardment by naval forces in times of war (Convention IX);
- f. restrictions with regard to the exercise of the right of capture in naval war (Convention XI); and
- g. rights and duties of neutral Powers in naval war (Convention XIII).

108. PROTOCOL FOR THE PROHIBITION OF THE USE IN WAR OF ASPHYXIATING, POISONOUS OR OTHER GASES, AND OF BACTERIOLOGICAL METHODS OF WARFARE

1. The Geneva Protocol of 1925 (the "Gas Protocol") was drawn up and signed at the Conference for the Supervision of the International Trade in Arms and Ammunition, held in Geneva under the auspices of the League of Nations (predecessor to the United Nations). The Gas Protocol is a follow-up to Hague Declaration No. 10 of July 1899 concerning asphyxiating gases. It prohibits the use in armed conflict of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices.

2. The Gas Protocol is in force and is only binding for each state, which has ratified the Protocol effective as of their respective date of ratification (117 states as of July 1987). Therefore, the Gas Protocol does not prohibit a state which has ratified it from using gas against a state that has not ratified the Gas Protocol and which uses gas in the first instance. In fact, most states upon ratification of the Protocol, have made reservations that it would cease to be binding on them towards any state which uses the gas contrary to the provisions of the Protocol. In respect of chemical weapons, the Gas Protocol must be read in conjunction with the 1993 Chemical Weapons Convention.

109. CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

1. The Genocide Convention was unanimously adopted in 1948 by Resolution of the United Nations General Assembly. Although it is not a component of the LOAC in the strict sense, it is of particular importance because genocide often occurs during an armed conflict and may be committed by armed forces. The Convention confirms that genocide is a crime under International Law. Genocide is defined as acts committed in time of peace or in time of war, with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.

110. THE GENEVA CONVENTIONS OF 1949

1. Adopted in 1949, the Geneva Conventions are the result of a long process that started in Italy in 1859. This is when Henri Dunant, a Swiss businessman, proposed to create an international non-governmental movement dedicated to the care of the sick and wounded like those he had seen suffering and left alone to die on the Solferino battlefield. His proposal resulted in the creation in 1863 of the International Red Cross movement, which took the lead towards the adoption in 1864 of the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. The Convention was later amended and revised by later Geneva Conventions of 1906, 1929 and finally 1949.

2. The Geneva Conventions of 1949 are the main source of the LOAC concerned with the treatment and protection of civilians, combatants who are "hors de combat" (sick, wounded, shipwrecked and prisoners of war) and those otherwise exempt from treatment as combatants. The Geneva Conventions of 1949 are the treaties signed and ratified by the greatest number of states in the world with 188 state ratifications as of 30 June 1997. The Conventions apply in their entirety to international armed conflicts and in part, by virtue of Common Article 3 to the four Conventions, to non-international armed conflicts. Furthermore, in accordance with the judgement of the International Military Tribunal of Nuremberg following the Second World War, the Conventions are considered to have the status of customary international law.

3. The four Geneva Conventions of 1949 are:

- a. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GI);
- b. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GII);
- c. Geneva Convention relative to the Treatment of Prisoners of War (GIII); and
- d. Geneva Convention relative to the Protection of Civilian Persons in Time of War (GIV).

111. 1954 HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

1. The need for this convention was identified during the Second World War, which had shown that in modern armed conflict property of all kinds was liable to seizure or destruction. Historic monuments, places of worship, museums and the like were frequently destroyed, while cultural property, such as works of art, antiques, etc., were often stolen by senior government or military officers, or were transported by an occupying authority to its home territory. The Convention, adopted in 1954, widely defines cultural property as part of “the cultural heritage of all mankind”. Such property, when specially marked in accordance with the terms of the Convention, is made immune from attack during armed conflict, so long as it is not used for a military purpose.

112. 1977 ADDITIONAL PROTOCOLS I AND II TO THE GENEVA CONVENTIONS OF 1949

1. While Geneva Law had evolved in great detail up to 1949, Hague rules dealing with the conduct of hostilities dated back to the early 1900s when most modern day weapons did not exist. That was the reason for convening a Diplomatic Conference in 1974 on the Reaffirmation and Development of International Humanitarian Law Applicable to Armed Conflicts. The Additional Protocols were adopted on 10 June 1977.

2. Additional Protocol I (AP I) deals with international armed conflicts. Apart from bringing the law up to date, it also introduces some changes in the law with respect to international conflicts such as:

- a. the recognition that struggles conducted by national liberation movements in the name of self-determination fall in the category of international conflicts;
- b. the extended protection given to civilians and non-military objects; and
- c. the prohibition of actions likely to have a long-term deleterious effect upon the environment.

2. Although AP I also deals with the protection of the victims of war or Geneva Law, it does not replace the 1949 Geneva Conventions but reaffirms and develops them.

3. Additional Protocol II (AP II) deals with the application of humanitarian principles to non-international armed conflicts, which comprise the majority of post-World War II conflicts. It provides some protection to the civilian population, in that it covers fundamental guarantees and the protection of civilians whose liberty has been restricted and deals with the protection of the civilian population against the dangers arising from military operations. AP II aims for the most part to amplify the humanitarian protection contained in Common Article 3 to the Geneva Conventions.

113. 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects

1.. The issue of prohibitions and restrictions on the use of specific conventional weapons was addressed at length during the diplomatic conference which led to the adoption of the Additional Protocols to the Geneva Conventions, but no agreement could be reached. Thus, AP I contains only some provisions of a rather general character relating to such weapons.

2. The Conventional Weapons Convention was adopted in 1980 to alleviate this lack of rules. Three protocols were annexed to this convention: Protocol I relating to fragments not detectable by X-rays; Protocol II relating to mines, booby traps and other devices; and Protocol III relating to incendiary weapons.

3.. Protocol II relating to mines, booby traps and other devices was completely revised and amended in 1996 although it is not yet in force. as of 8 January 1998, 14 states (including Canada) out of the necessary 20 states have ratified this Protocol.

4. A fourth protocol dealing with prohibition on the use of laser and blinding weapons was added in 1995. This protocol, ratified by Canada on 30 January 1998, came into force on 30 June 1998.

114. 1984 UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. This Convention prohibits torture. "Torture" is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as:

- a. obtaining from that person or a third person information or a confession;
- b. punishing that person or a third person for an act he or a third person has committed or is suspected of having been committed;
- c. intimidating or coercing that person or a third person; or
- d. for any reason based on discrimination of any kind;

when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.

115. 1993 CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING AND USE OF CHEMICAL WEAPONS AND ON THEIR DESTRUCTION

1. This Convention, which can be considered as a complement to the 1925 Gas Protocol, was adopted with a view to achieving effective progress towards general and complete disarmament under strict and effective international control, including the prohibition and elimination of all types of weapons of mass destruction. State Parties undertake never under any circumstances to use chemical weapons as a means of warfare. Riot control agents may, however, be authorized for law enforcement operations. Unlike the 1925 Gas Protocol, this Convention includes a total ban on the use of such weapons regardless of the use of chemical weapons by the opposing force. It also has three annexes which form an integral part of the convention and which provide for implementation and verification systems for the enforcement of the Convention. for these reasons, the 1993 Convention is a major improvement.

2. This convention came into force 29 Apr 1997 and has received strong support. As of 9 Feb 1998 168 states have signed, and 107 states, including Canada, have ratified this convention.

116. 1997 CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI-PERSONNEL MINES AND ON THEIR DESTRUCTION

1. The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction* (APM Convention) was adopted in Ottawa. the APM Convention is a major breakthrough in that it completely prohibits the use of anti-personnel mines. Canada, the first state to ratify the APM Convention, played a major role in the adoption of the treaty. the APM Convention may very well change the face of land warfare in the years to come and as such it is very important to users of this guide.

This Page Intentionally Blank

CHAPTER 2

BASIC PRINCIPLES OF THE LAW OF ARMED CONFLICT

201. AIM

1. The aim of this chapter is to outline those principles, which are the foundation of the Law of Armed Conflict (LOAC). The LOAC is consistent with the economic and efficient use of force and is intended to minimize the horrors of conflict, while not inhibiting the military activities of the parties in their aim of achieving victory. A firm grasp of the principles referred to in this chapter is essential to an understanding of the LOAC. The principles may also provide guidance when there are no specific rules to govern a situation.

202. PRIMARY CONCEPTS

1. **General.** Three primary concepts underlie the LOAC: *military necessity*, *humanity* and *chivalry*.

2. **Military Necessity.** Military necessity is related to the primary aim of armed conflict - the complete submission of the enemy at the earliest possible moment with the least possible expenditure of personnel and resources. The concept of military necessity justifies the application of force not forbidden by International Law, to the extent necessary, for the realization of the purpose of armed conflict.

3. The concept of military necessity presupposes:

- a. the force used can be and is being controlled;
- b. the use of force is necessary to achieve the submission of the enemy; and
- c. the amount of force used is limited to what is needed to achieve prompt submission.

4. Military necessity is not a concept that can be considered in isolation. In particular, it does not justify violation of the LOAC, as military necessity was a factor taken into account when the rules governing the conduct of hostilities were drafted.

5. For example, military necessity is not the 19th Century German Doctrine of *Kriegsraison* which asserted that war could justify any measures - even in violation of the laws of war - when the necessities of any particular situation purportedly justified it. War crimes trials after World War II clearly rejected this view. Military necessity cannot justify actions absolutely prohibited by law, as the means to achieve military victory are not unlimited. Armed conflict must be carried on within the limits set by International Law.

6. **Humanity.** Related to the concept of necessity and implicitly contained within it is the concept of humanity which forbids the infliction of suffering, injury or destruction not actually necessary for the accomplishment of legitimate military purposes. This concept of humanity results in a specific prohibition against unnecessary suffering, a requirement of proportionality, and a variety of more specific rules. The concept of humanity also confirms the basic immunity of civilian populations and civilians from being objects of attack during armed conflict. This immunity of the civilian population does not preclude unavoidable incidental civilian casualties that may occur during the course of attacks against legitimate targets and that are not excessive in relation to the concrete and direct military advantage anticipated.

7. **Chivalry.** The concept of chivalry is difficult to define. It refers to the conduct of armed conflict in accordance with certain recognized formalities and courtesies. An armed conflict is rarely a polite contest. Nevertheless, the concept of chivalry is reflected in specific prohibitions such as those against dishonourable or treacherous conduct and against misuse of enemy flags or flags of truce. The concept of chivalry makes armed conflict slightly less savage and more civilized for the individual combatant.

203. FUNDAMENTAL PRINCIPLES

8. **Humanitarian Principle.** Military necessity must always be compatible with respect for the human person. Even in an armed conflict, there are certain basic human rights that must be respected.

9. **Principle of the Law of Geneva.** Persons rendered *hors de combat* (out of combat) and those not directly participating in hostilities shall be respected, protected and treated humanely. This principle specifies three duties towards the victims of war: to respect them, protect them and treat them humanely. These three requirements constitute a harmonious whole. To understand what they imply requires only common sense and good faith. It is the minimum treatment, which must be accorded to allow the individual to lead an acceptable existence.

10. **Principle of the Law of War (or Law of the Hague).** This principle is the corollary to the *Martens Clause* (discussed in Chapter 1, section 106). It states that the right of the parties to a conflict to choose the methods and means of warfare is not unlimited. This is directly related to the concept of military necessity, which implies that combatants shall not inflict harm on their adversaries out of proportion with the object of armed conflict, which is the prompt submission of the enemy. Any use of military force that is not essential to this purpose is superfluous. For example, any use of unlawful weapons is prohibited.

HIVR Arts 22 & 23 (e)

204. OPERATIONAL PRINCIPLES

1. **Distinction.** The principle of distinction imposes an obligation on commanders to distinguish between legitimate targets and civilian objects and the civilian population. It is of primary importance when selecting targets.

HIVR Arts 25 & 27 (1); HIX Arts 1 (1) & 5 (1); GIV Art 53; AP I Arts 48, 51, 52 & 57

2. This obligation is, of course, dependent on the quality of the information available to commanders at the time decisions are made. Commanders must make reasonable, good faith efforts to gather intelligence and to review the intelligence available to them.

Reservation made by Canada at the time of ratification of AP I relative to Arts 48, 51 - 60 inclusive, 62 & 67

3. **Non-Discrimination.** The principle of non-discrimination must be considered in two aspects. First, the LOAC binds both sides in a conflict. Although one side may label the other an aggressor, it is not entitled to apply the law in a different way because of that assertion. Second, the LOAC is to be applied without any adverse distinction founded on race, colour, religion or faith, gender, birth or wealth, or any other similar criteria. The fact that the enemy is of a different colour or a different religion does not allow the other party to apply the law in a different fashion.

GC Common Arts 2 & 3; GIV Art 13; AP I Arts 9 (1) & 10 (2); AP II Arts 2 (1) & 7 (2)

4. **Proportionality.** The principle of proportionality establishes a link between the concepts of military necessity and humanity. This principle implies that collateral civilian damage arising from military operations must not be excessive in relation to the direct and concrete military advantage anticipated from such operations.

AP I Arts 51 (5) (b), 56 (3), 57 (2) (a) (iii) & (b) & 85 (3) (b) & (c)

5. In deciding whether the principle of proportionality is being respected, the standard of measurement is the anticipated contribution to the military purpose of an attack or operation considered as a whole. The anticipated military advantage must be balanced against other consequences of the action, such as the adverse effect upon civilians or civilian objects. It involves weighing the interests arising from the success of the operation on the one hand, against the possible harmful effects upon protected persons and objects on the other.

Reservation made by Canada at the time of ratification of AP I in relation to Arts 51 (5) (b), 52 (2) & 57 (2) (a) (iii)

6. There must be a rational balance between the legitimate destructive effect and undesirable collateral effects. As an example, you are not allowed to bomb a refugee camp if its only military significance is that refugees in the camp are knitting socks for soldiers. As a converse example, you are not obliged to hold back an air strike on an ammunition dump simply because a farmer is ploughing a field beside it. Unfortunately, most applications of the principle of proportionality are not quite so clear cut.

AP I Art 51 (5) (b) & (7)

7. **Reciprocity.** The principle of reciprocity refers to the premise that all should be treated as you would like to be treated. Compliance with the LOAC is not only required by law, it is also to our operational advantage. If, for example, you commit a breach of the LOAC, the result is likely to be:

- a. your enemy may commit the same breach towards your force;
- b. your enemy may commit all kinds of other breaches against your force; and
- c. in any event, you will strengthen your enemy's will to fight to the bitter end.

GC Common Art 2

This Page Intentionally Blank

CHAPTER 3
COMBATANT STATUS
SECTION 1 - INTRODUCTION

301. AIM

1. The aim of this chapter is to summarize the law with regard to which persons are combatants, non-combatants, or unlawful combatants and to provide the background information necessary to determine their status.

302. OPERATIONAL RATIONALE

1. "Combatant" is a term found in many treaties related to the Law of Armed Conflict (LOAC). Whether a person is a combatant is important because:

- a. combatants are entitled to take a direct part in armed conflict and, in particular, to engage in hostilities;
- b. combatants are legitimate military targets;
- c. combatants who are captured by the enemy are prisoners of war (PWs); and
- d. PWs, unlike other detained persons, must be released and repatriated without delay at the end of hostilities.

GIII Arts 4 (A) (1) - (3), 118 (1); AP I Arts 43 (2) & 44 (1)

2. "Non-combatants", on the other hand, are not entitled to take a direct part in hostilities. Generally speaking, non-combatants may not be targeted. Non-combatants may be punished for taking part in hostilities if convicted following a fair trial by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable under International law.

GIV Art 5 (1) & (3); AP I Arts 45 (3) & 75 also see Sect 4 below

3. "Unlawful" combatants are those who take a direct part in hostilities without having the legal right to do so under the LOAC.

see Sect 5 below

4. For the operational commander, the combatant status of enemy personnel is an issue of concern in the decision making process related to targeting. The commander must direct military operations against legitimate targets. Hence the commander, as well as every soldier under command, must know who is a combatant.

AP I Arts 44 (3), 48 & 51 (2)

SECTION 2 - COMBATANTS

303. GENERAL

1. As a general rule, the term "combatant" includes any member of the armed forces, except medical and religious personnel. However, there are other persons described below who qualify as combatants under the LOAC.

AP I Art 43 (2)

304. ARMED FORCES

1. Armed forces of a party to the conflict consist of all organized armed forces, groups and units that are under a command responsible to that party for the conduct of its subordinates. In Canada, for example, the armed forces consist of the Regular Force and the Reserve Force.

AP I Art 43 (1)

2. A party to the conflict may be a government or an authority not recognized by an adverse party (for example, Free French Forces raised by the French government-in-exile during World War II). Armed forces shall be subject to an internal disciplinary system, one purpose of which is to enforce compliance with the LOAC.

AP I Art 43 (1)

3. Individual members of the armed forces, acting separately from their units, are combatants, even when employing methods of surprise or violent combat, provided they wear an appropriate uniform while so operating.

AP I Art 43 (2)

305. MILITIAS, VOLUNTEER GROUPS AND ORGANIZED RESISTANCE MOVEMENTS

1. In some cases, a party to a conflict may have armed groups fighting on its behalf that are not part of its armed forces. Such groups may be fighting behind enemy lines or in occupied territory. Partisans and resistance fighters who fought in occupied territory in the Soviet Union and France during World War II are examples of such groups.

2. Members of militias, volunteer corps and organized resistance movements, belonging to a party to the conflict and operating in or outside their own territory, even if this territory is occupied, are combatants provided they:

- a. are commanded by a person responsible for his subordinates;
- b. wear a fixed distinctive sign recognizable at a distance;
- c. carry arms openly; and
- d. conduct their operations in accordance with the LOAC.

HIVR Art 1

3. Militias, volunteer corps and organized resistance movements must “belong” to a party to the conflict in the sense that they are acknowledged by that party as fighting on its behalf or in its support.

AP I Art 43 (1)

306. INHABITANTS OF A NON-OCCUPIED TERRITORY

1. As a general rule, civilians are considered non-combatants and cannot lawfully engage in hostilities. There is, however, an exception to this rule for inhabitants of a territory that has not been occupied by an enemy. Where they have not had time to form themselves into regular armed units, inhabitants of a non-occupied territory are lawful combatants if:

- a. on the approach of the enemy they spontaneously take up arms to resist the invading forces;

- b. they carry arms openly; and
- c. they respect the LOAC.

This situation is referred to as a “*levée en masse*”.

HIVR Art 2

307. PARAMILITARY OR ARMED LAW ENFORCEMENT AGENCIES

1. If a party to a conflict incorporates paramilitary or armed law enforcement agencies into its armed forces, it must inform other parties to the conflict of this fact. These forces are then considered lawful combatants.

AP I Art 43 (3)

308. CONDITIONS TO RETAIN COMBATANT STATUS

1. To ensure the protection of the civilian population, combatants are required to distinguish themselves from that population when engaging in an attack or preparing to mount an attack.

AP I Art 44 (3)

2. There may be situations where, owing to the nature of the hostilities, armed combatants (such as resistance movements) cannot normally distinguish themselves from the civilian population. In such situations, those personnel retain their status as lawful combatants and their entitlement to prisoner of war status upon capture provided they carry their arms openly:

- a. during each military engagement, and
- b. during such time as they are visible to the adversary while they are engaged in a military deployment preceding the launching of an attack in which they are to participate.

GI II Art 4 (A) (6); AP I Art 44 (3)

309. COMBATANTS WHO ARE HORS DE COMBAT

1. A combatant is *hors de combat* (out of combat) if that person:

- a. is in the power of an adverse party;
- b. clearly expresses an intention to surrender; or
- c. has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and is therefore incapable of self defence,

provided that in any of these cases the individual abstains from any hostile act and does not attempt to escape.

AP I Art 41 (2)

2. A combatant who is recognized or who, in the circumstances, should be recognized to be *hors de combat* shall not be attacked.

HIVR Art 23 (c); GI Art 12 (1); GII Art 12 (1); GI V Art 16 (1); AP I Arts 10 (1) & 41 (1); AP II Arts 4 (1) & 7 (1)

SECTION 3 - NON-COMBATANTS

310. CHAPLAINS

1. Chaplains of the armed forces are non-combatants. They may not be attacked. If captured, they will be returned to their armed forces unless they are retained by the Detaining Power to assist PWs.

GI Arts 24, 28 (1) & 30 (1); GII Art 37 (1) & (2); GIII Art 33 (1); AP I Art 43 (2)

311. MEDICAL PERSONNEL

1. Personnel of the armed forces permanently assigned to medical activities, to the administration of medical units and to medical transport (“medical duties”) are non-combatants. They may not be attacked. If captured, permanent medical personnel will be returned to their own armed forces unless they are retained by the detaining power to assist PWs.

GI Arts 24, 28 (1) & 30 (1); GII Art 37 (1) & (2); GIII Art 33 (1); AP I Arts 8 (3) & 43 (2)

2. Personnel of the armed forces temporarily assigned to medical duties during a limited period of time, such as stretcher-bearers, are non-combatants when engaged in such duties. They may not be attacked while engaged in medical duties. If captured, temporary medical personnel become PWs.

GI Arts 25 & 29

312. CIVILIANS

1. Civilians are non-combatants. As a general rule, they may not be attacked unless they participate directly in hostilities.

AP I Arts 48 & 51 (3); AP II Art 13 (3)

313. JOURNALISTS

1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered civilians. As such, they are non-combatants and may not be attacked. Should a journalist be detained, such journalist’s status will be that of a civilian.

AP I Art 79 (1)

314. WAR CORRESPONDENTS

1. Journalists who are authorized to accompany the armed forces are “war correspondents.” They are non-combatants but risk being attacked as part of a legitimate target. War correspondents who are captured by the enemy are PWs.

HIVR Art 13; GIII Art 4 A (4)

315. PERSONS WHO ACCOMPANY THE ARMED FORCES

1. Persons who accompany the armed forces without actually being members thereof (such as civilian members of military aircraft crews, supply contractors, members of labour units or of services responsible for the welfare of the armed forces), provided that they have received authorization from the armed forces which they accompany, are non-combatants. They risk, however, being attacked as part of a legitimate target. If captured, they are entitled to PW status.

HIVR Art 13; GIII Art 4 A (4)

316. CREWS OF MERCHANT MARINE AND CIVIL AIRCRAFT

1. Members of crews of the merchant marine and civil aircraft (for example, masters, pilots and apprentices) of the parties to the conflict are non-combatants. They risk, however, being attacked as part of a legitimate target. If captured, they are entitled to PW status.

GIII Art 4 A (5)

317. DISTINCTIVE EMBLEM AND IDENTITY CARDS

1. Chaplains and medical personnel wear a distinctive emblem consisting of a Red Cross or Red Crescent. Many non-combatants (that is, journalists, war correspondents, persons who accompany the armed forces, and crews of merchant marine and civil aircraft) will possess an identity card attesting to their status. Refer to Annex A and B of Chapter 4 (Targeting) for examples of the distinctive emblem and identity cards issued to non-combatants.

GI Art 40; GIII Art 4 A (4), Anx IV; AP I Art 8 (12), 18 (3) - Anx I as Amended 30 Nov 93 Arts 2 - 5 & Anx II

SECTION 4 - UNLAWFUL COMBATANTS**318. CIVILIANS ENGAGED IN HOSTILITIES**

1. Civilians who take a direct part in hostilities (other than a *levée en masse*) are unlawful combatants. They lose their protection as civilians and become legitimate targets for such time as they take a direct part in hostilities.

HIVR Art 2; AP I Art 51 (3); AP II Art 13 (3)

2. If captured, civilians who take a direct part in hostilities are not entitled to PW status, but they must nevertheless be treated humanely. They may also be punished as unlawful combatants but only following a fair trial affording all judicial guarantees.

AP I Arts 44 (4), 45 (3) & 75

319. MERCENARIES

1. A mercenary is any person who:
 - a. is specially recruited locally or abroad in order to fight in an armed conflict;
 - b. does, in fact, take a direct part in the hostilities;
 - c. is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party;
 - d. is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
 - e. is not a member of the armed forces of a party to the conflict; and
 - f. has not been sent by a state which is not a party to the conflict on official duty as a member of its armed forces.

AP I Art 47 (2)

2. Mercenaries are unlawful combatants and may be attacked for such time as they take a direct part in hostilities. If captured, mercenaries are not entitled to PW status. They may be punished for being mercenaries but only following a fair trial affording all judicial guarantees.

AP I Arts 45 (3), 47 (1) & 75

320. SPIES

1. Espionage means to gather or attempt to gather information of military value through an act of false pretence or deliberately in a clandestine manner. Generally speaking, persons engaging in espionage may be attacked and if captured while doing so shall NOT have the right to the status of prisoner of war.

HIVR Art 29 (1); AP I Art 46 (1)

2. Members of the armed forces of a party to the conflict who gather or attempt to gather information **while wearing the uniform of their armed forces** will not be considered as engaging in espionage.

HIVR Art 29 (2); AP I Art 46 (2)

3. Members of the armed forces engaging in espionage **while not in uniform** may be treated as spies and lose their entitlement to PW status if they are captured before rejoining the armed forces to which they belong.

AP I Art 46 (4)

4. Spies who are not in uniform are not lawful combatants. If they engage in hostilities, they may be punished for doing so but only after a fair trial affording all judicial guarantees.

HIVR Arts 29 & 30; GIV Art 5 (3); AP I Arts 45 (3), 46 (1) & 75

321. DETERMINATION OF STATUS

1. In all cases of doubt as to the status of persons captured during hostilities, they shall be treated as PWs until a properly constituted tribunal has determined their proper status. If the tribunal determines that the captive is a lawful combatant, that captive will be entitled to PW status. For the CF, the composition of the tribunal and the procedure to be followed can be found in the *Prisoner of War Status Determination Regulations*, in QR&O. Vol. IV.

AP I Art 45 (1)

CHAPTER 4

TARGETING

SECTION 1 - INTRODUCTION

401. AIM

1. The aim of this chapter is to summarize the rules of the Law of Armed Conflict (LOAC) with respect to targeting.
2. The LOAC has developed a number of principles to ensure that military forces select targets that are legitimate targets. Military commanders must apply these principles when selecting targets. These principles guide the military commander to a determination of what objects, areas and personnel are legitimate targets.

402. APPLICATION

1. The principles set out in this chapter apply to land, air and maritime operations. This chapter must be considered in conjunction with Chapter 3 (Combatant Status) and Chapter 5 (Restrictions On The Use Of Weapons) as well as Chapter 6 (Law Relating To The Conduct Of Hostilities on Land), Chapter 7 (Law Relating To The Hostilities In The Air) and Chapter 8 (Law Relating To The Conduct Of Hostilities At Sea).

403. DISTINCTION PRINCIPLE

1. To ensure respect for and protection of the civilian population and civilian objects, commanders shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives.

AP I Arts 48, 51, 52 & 57; AP II Arts 13

404. BASIC RULE

1. Military operations shall be directed only against legitimate targets. Military operations directed against such targets must also meet the requirement of proportionality discussed below.

AP I Art 48, 51 (5) (b) & 57 (2) (a)

SECTION 2 - LEGITIMATE TARGETS

405. SCOPE

1. This section defines "legitimate targets" and provides examples of objects and personnel that are legitimate targets.

406. DEFINITION OF LEGITIMATE TARGETS

1. "Legitimate targets" include combatants, unlawful combatants and military objectives.

AP I Arts 43 (2), 46, 47, 51 (3) & 52 (2)

2. "Military objectives" are objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the

circumstances ruling at the time, offer a definite military advantage. A specific area of land may constitute a military objective.

AP I Art 52 (2)

407. EXAMPLES OF OBJECTS WHICH ARE MILITARY OBJECTIVES

1. The following are generally accepted as being military objectives:
 - a. military bases, warehouses, petroleum storage areas, ports and airfields; and
 - b. military aircraft, weapons, ammunition, buildings and objects that provide administrative and logistical support for military operations.
2. Civilian vessels, aircraft, vehicles and buildings are military objectives if they contain combatants, military equipment or supplies.

AP I Art 52 (2)

3. The following objects, depending on the circumstances, may constitute military objectives:
 - a. transportation systems for military supplies;
 - b. transportation centres where lines of communication converge;
 - c. rail yards;
 - d. industrial installations producing material for armed forces;
 - e. conventional power plants; and
 - f. fuel dumps.

408. COMBATANTS

1. Combatants are legitimate targets and may be attacked unless they have been captured, surrendered, expressed a clear intention to surrender, or are *hors de combat* (i.e., out of combat), provided they refrain from hostile acts and do not attempt to escape. For a complete discussion of who is a combatant, refer to Chapter 3 (Combatant Status).

HIVR Art 23 (c); AP I Arts 41 (1) & (2) & 43 (2)

409. AIRBORNE TROOPS

1. Airborne troops are combatants and therefore legitimate targets. They may be attacked during their descent by parachute from aircraft.

AP I Art 42 (3)

410. UNLAWFUL COMBATANTS

1. Unlawful combatants are legitimate targets for such time as they take a direct part in hostilities. Unlawful combatants include:
 - a. civilians (except those who are lawful combatants because they are participating in *levée en masse*);

- b. mercenaries; and
 - c. spies.
2. For further details concerning unlawful combatants, refer to Chapter 3 Section 4, Unlawful Combatants.

HIVR Art 2; AP I Arts 46, 47, 51 (3); AP II Art 13 (3)

SECTION 3 - TARGETING PRINCIPLES AND DEFINITIONS

411. PROTECTION OF CIVILIANS AND CIVILIAN OBJECTS

1. The protection of civilians and civilian objects is a fundamental principle of the LOAC. Parties to a conflict have a duty to distinguish between civilians and combatants as well as between civilian objects and military objectives. Civilians are entitled to protection from the dangers arising from military operations. In conducting operations care should always be taken to spare civilians and civilian objects.

AP I Arts 48, 51 - 58; AP II Arts 13 - 15

412. DEFINITION OF “ATTACK”

1. For the purposes of the LOAC, the term “attack” has a broad meaning. An “attack” is defined as an act of violence against the adversary, whether in offence *or* defence. Therefore, the term “attack” includes acts of violence against an adversary in not only offensive military operations but also in purely defensive military operations.

AP I Art 49 (1)

413. PROPORTIONALITY

1. The fact that an attack on a legitimate target may cause civilian casualties or damage to civilian objects does not necessarily make the attack unlawful under the LOAC. However, such collateral civilian damage must not be disproportionate to the concrete and direct military advantage anticipated from the attack.

AP I Art 51 (5) (b)

2.. The proportionality test is as follows: Is the attack expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof (“collateral civilian damage”), which would be excessive in relation to the concrete and direct military advantage anticipated? If the answer is “yes”, the attack must be cancelled or suspended. The proportionality test must be used in the selection of any target.

AP I Art 57 (2) (a) (iii)

414. PROPORTIONALITY AND MULTIPLE TARGETS

1. Where a choice is possible between several legitimate targets for obtaining a similar military advantage, the target to be selected shall be the one on which an attack would be expected to cause the least civilian casualties and damage to civilian objects.

AP I Art 57 (3)

415. CONCRETE AND DIRECT MILITARY ADVANTAGE

1.. The military advantage at the time of the attack is that advantage anticipated from the military campaign or operation of which the attack is part, considered as a whole, and not only from isolated or particular parts of that campaign or operation.

Reservation made by Canada at the time of ratification of AP I regarding Arts 51 (5) (b), 52 (2) & 57 (2) (a) (iii)

2. A concrete and direct military advantage exists if the commander has an honest and reasonable expectation that the attack will make a relevant contribution to the success of the overall operation. Military advantage may include a variety of considerations including the security of the attacking forces.

416. INDISCRIMINATE ATTACKS

1. Indiscriminate attacks are those that may strike legitimate targets and civilians or civilian objects without distinction. They are prohibited. Indiscriminate attacks are:

- a. those which are not directed at a specific legitimate target;
- b. those which employ a method or means of combat which cannot be directed at a specific legitimate target; or

those which employ a method or means of combat, the effects of which cannot be limited as required by the LOAC.

AP I Art 51 (4)

2. The following are examples of indiscriminate attacks:

- a. an attack by bombardment by any methods or means which treats as a single legitimate target a number of clearly separated and distinct legitimate targets located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
- b. an attack which does not meet the requirements of proportionality.

AP I Art 51 (5)

SECTION 4 - OBLIGATIONS RELATED TO TARGETING

417. MILITARY COMMANDERS, PLANNERS AND STAFF OFFICERS

1. Under the LOAC commanders, planners and staff officers have the following obligations:

- a. to do everything feasible to verify that the objectives to be attacked are in fact legitimate targets and are not entitled to special protection under the LOAC;
- b. to take all feasible precautions in the choice of means and methods of attack to avoid, and in any event to minimize, collateral civilian damage; and
- c. to refrain from launching any attack which may be expected to cause collateral civilian damage which would be excessive in relation to the concrete and direct military advantage anticipated (proportionality test).

AP I Art 57 (2) (a)

418. STANDARD OF CARE

1. Commanders, planners and staff officers will not be held to a standard of perfection in reaching their decisions.

Reservation made by Canada at the time of ratification of AP I in relation to Arts 48, 51 to 60 inclusive, 62 & 67

2. Commanders, planners and staff officers are required to take all “feasible” steps to verify that potential targets are legitimate targets. However, such decisions will be based on the “circumstances ruling at the time”. Consideration must be paid to the honest judgement of responsible commanders, based on the information reasonably available to them at the relevant time, taking fully into account the urgent and difficult circumstances under which such judgements are usually made.

AP I Art 57 (2) (a) (i) & Reservation made by Canada at the time of ratification in relation to Arts 41, 56, 57, 58, 78 & 86

3. The test for determining whether the required standard of care has been met is an objective one: Did the commander, planner or staff officer do what a reasonable person would have done in the circumstances?

419. CANCELLATION OR SUSPENSION OF AN ATTACK

1. An attack must be cancelled or suspended if it becomes apparent that the objective is not a legitimate target, or that the attack may be expected to cause collateral civilian damage, which would be excessive in relation to the concrete and direct military advantage anticipated.

AP I Art 57 (2) (b)

420. WARNING

1. An effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit such a warning to be given. For tactical reasons, an attacking force may not give a warning in order to maintain the element of surprise.

HIVR Art 26; HIX Art 6; AP I Art 57 (2) (c)

421. OBLIGATION TO PROTECT CIVILIANS AGAINST THE EFFECTS OF ATTACKS

1. To protect civilians, the parties to a conflict shall, to the maximum extent feasible:
 - a. endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of legitimate targets;
 - b. avoid locating legitimate targets within or near densely populated areas; and
 - c. take other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.

AP I Art 58

SECTION 5 - CIVILIANS AND CIVILIAN OBJECTS**422. SCOPE**

1. This section describes the protection to which civilians and civilian objects are entitled.

423. GENERAL RULE

1. As a general rule, civilians and civilian objects shall not be attacked. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited.

AP I Art 51 (2); AP II Art 13 (2)

424. DEFINITION OF “CIVILIAN”

1. In general, a “civilian” is any person who is not a combatant. For a complete discussion of persons considered to be “combatants”, see Chapter 3 (Combatant Status).

AP I Art 50 (1)

425. CIVILIANS WHO ACCOMPANY THE ARMED FORCES

1. For targeting purposes, the presence of civilians who are authorized to accompany the armed forces without actually being members thereof (such as crews of military aircraft, war correspondents, supply contractors or members of services responsible for the welfare of the armed forces) does not render a legitimate target immune from attack. Such persons run the risk of being attacked as part of a legitimate target.

AP I Art 51 (7)

426. CIVILIAN POPULATION

1. The civilian population comprises all persons who are civilians. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

AP I Art 50 (2) & (3)

427. DEFINITION OF “CIVILIAN OBJECT”

1. Under the LOAC, a “civilian object” is any object, which is not a “military objective”.

AP I Art 52 (1)

428. CIVILIAN OBJECT USED FOR MILITARY PURPOSES

1. Where a civilian object is used for military purposes, it loses its protection as a civilian object and may become a legitimate target.

AP I Art 52 (2)

429. CASES OF DOUBT

1. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. In the case of doubt as to whether an object which is normally dedicated to civilian purposes (such as a place of worship, a house or other dwelling, or a school) is being used to make an effective contribution to military action, it shall be presumed not to be so used.

AP I Arts 50 (1) & 52 (3)

430. PROHIBITION ON REPRISALS

1. Reprisals against civilians and civilian objects are prohibited.

GIV Art 33 (3); AP I Art 51 (6) & 52 (1)

SECTION 6 - OTHER PERSONS ENTITLED TO PROTECTION

431. SCOPE

1. This section sets out the various classes of persons that are entitled to special protection from attack under the LOAC.

432. MEDICAL AND RELIGIOUS PERSONNEL

1. Medical and religious personnel, both military and civilian, have protected status and thus shall not be attacked. These persons wear the Red Cross or Red Crescent (see Annex A) and carry identity cards which identify them as protected persons (see Annex B).

GI Art 24; GII Art 36, 42; GIV Art 20 (1) & (3); AP I Art 15 (1) & (5), 18 (1) & (3), Anx I As Amended 30 Nov 93 Arts 1 - 5; AP II Art 9 (1)

433. ENEMY "HORS DE COMBAT"

1. A combatant who is recognized or who, in the circumstances, should be recognized to be hors de combat (out of combat) shall not be attacked.

HIVR Art 23 (c); AP I Arts 41 (1) & 85 (3) (e)

2. A combatant is hors de combat if that person:

- a. is in the power of an adverse party (PW);
- b. clearly expresses an intention to surrender; or
- c. has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and is therefore incapable of defending himself;

provided that in any of these cases the combatant abstains from any hostile act and does not attempt to escape.

AP I Art 41 (2)

3. It is prohibited to order that there shall be no survivors or to conduct hostilities on that basis. Hence, a person who clearly shows an intent to surrender by whatever means shall not be attacked.

HIVR Art 23 (d); AP I Art 40; AP II Art 4 (1)

434. PERSONNEL BEARING THE WHITE FLAG

1. Personnel bearing a white flag are indicating a desire to negotiate or surrender. They should not be attacked but should be dealt with cautiously. For more information on the use of the white flag, see Chapter 14 (Communications and Contact Between Opposing Forces).

HIVR Art 32; AP I Art 41 (2) (b)

435. WOUNDED, SICK AND SHIPWRECKED

1. All the wounded, sick and shipwrecked, to whichever party they belong, shall be respected and protected and shall not be attacked.

GI Art 12 (1); GII Art 12 (1); API Arts 10 (1) & 41 (1) & (2) (c); AP II Art 7 (1)

2. The “wounded” and “sick” mean persons, whether military or civilian who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care. The wounded and sick are protected so long as they refrain from any act of hostility.

API Art 8 (1)

3. “Shipwrecked” means persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them. The shipwrecked are protected so long as they refrain from any act of hostility.

API Art 8 (2)

436. PRISONERS OF WAR

1. PWs must be protected and shall not be attacked so long as they refrain from any hostile act and do not attempt to escape.

API Art 41 (1) & (2)

437. PARACHUTISTS FROM AIRCRAFT IN DISTRESS

1. No person parachuting from an aircraft in distress shall be made the object of attack during descent.

API Art 42 (1)

2. Upon reaching the ground in territory controlled by an adverse party, a person who has parachuted from an aircraft in distress shall be given an opportunity to surrender before being made the object of attack, unless it is apparent that that person is engaging in a hostile act.

API Art 42 (2)

3. Airborne troops are not entitled to this protection and may be attacked during their descent by parachute.

API Art 42 (3)

438. HUMANITARIAN AID SOCIETIES

1. Humanitarian aid societies, such as the Red Cross or Red Crescent Societies, who on their own initiative, collect and care for the wounded, sick and shipwrecked, even in invaded or occupied areas, shall not be made the object of attack.

GI Art 18 (2) & (3) & 26 (1); GII Art 24 (1); API Art 17 (1)

439. PERSONNEL PARTICIPATING IN RELIEF ACTIONS

1. Personnel participating in relief actions shall not be made the object of attack.

GI Art 18 (2) & (3); API Art 17 (1)

440. CIVIL DEFENCE PERSONNEL

1. Civil defence organizations and their personnel are protected and shall not be attacked.

API Art 62 (1)

2. Civil defence personnel are assigned to the performance of civil defence tasks and include those assigned to the administration of civil defence organizations.

AP I Art 61 (3)

3.. “Civil defence” means the performance of some or all of the humanitarian tasks intended to protect the civilian population against the dangers of hostilities or disasters, to help the civilian population recover from the immediate effects of such hostilities or disasters, and to provide the conditions necessary for the civilian population’s survival. Civil defence tasks include:

- a. warning;
- b. evacuation;
- c. management of shelters;
- d. management of blackout measures;
- e. rescue;
- f. medical services including first aid and religious assistance;
- g. fire-fighting;
- h. detection and marking of danger areas;
- i. decontamination and similar protective measures;
- j. provision of emergency accommodation and supplies;
- k. emergency assistance in the restoration and maintenance of order in distressed areas;
- l. emergency repair of indispensable public utilities;
- m. emergency disposal of the dead;
- n. assistance in the preservation of objects essential for survival; and
- o. complementary activities necessary to carry out any of the above-mentioned tasks including planning and organization.

AP I Art 61 (1)

4. Civil defence personnel wear the civil defence emblem consisting of a blue triangle on an orange background (see Annex A) and carry an identity card certifying their status (see Annex B).

AP I Art 66 (3) & (4), Anx I As Amended 30 Nov 93 Arts 15 & 16

5. The protection to which civil defence personnel are entitled ceases where they commit or are used to commit, outside their proper tasks, acts harmful to the enemy. However, protection ceases only after a warning has been given and after such warning has remained unheeded.

AP I Art 65 (1)

6. The following do not constitute “acts harmful to the enemy”:

- a. that civil defence tasks are carried out under the direction or control of military authorities;
- b. that civilian civil defence personnel cooperate with military personnel in the performance of civil defence tasks;

- c. that some military personnel are attached to civil defence organizations;
- d. that the performance of civil defence tasks may incidentally benefit military victims, particularly those who are *hors de combat*;
- e. that civilian civil defence personnel are armed with light individual weapons (usually handguns to distinguish them from combatants) for maintaining order or for self-defence; or
- f. that civilian civil defence organizations have been formed along military lines, and service in them is compulsory.

AP I Art 65 (2) - (4)

441. JOURNALISTS ENGAGED IN DANGEROUS PROFESSIONAL MISSIONS

1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and are entitled to the protection accorded to civilians under the LOAC, provided they take no action adversely affecting their status as civilians. Such journalists must possess identity cards that attest to their status as journalists (see Annex B).

AP I Art 79 & Anx II

SECTION 7 - OBJECTS ENTITLED TO PROTECTION

442. SCOPE

1. This section describes a number of objects that are entitled to protection from attack under the LOAC.

443. CULTURAL OBJECTS

- 1. The following actions are prohibited:
 - a. to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or
 - b. to use such objects in support of the military effort.

HIVR Art 27 (1); HIX Art 5 (1); H Cultural Property Convention Art 4 (1); AP I Arts 53 (a) & (b) & 85 (4) (d); AP II Art 16

2. Care must be taken to avoid locating military personnel and material in or near protected cultural objects and places of worship.

H Cultural Property Convention Art 4 (1); AP I Art 53 (b)

3. Cultural objects and places of worship should be marked with the international sign set out in Annex A. However, the absence of such a sign does not deprive such objects of protection.

HIVR Art 27 (2); H Cultural Property Convention Arts 16 & 17; HR for Execution of Cultural Property Convention Art 20

4. Not all cultural objects and places of worship are protected as cultural or religious property by the LOAC. Only those cultural objects and places of worship, which constitute the "cultural or spiritual heritage of peoples", are so protected. Therefore, a small village church may not be protected by the cultural protection provisions of the LOAC, but a major cathedral (for example, Vatican) is likely entitled to protection.

However, the fact that an object is not a cultural object does not mean that it is not a “civilian object.” It would be entitled to protection under that status.

AP I Arts 52(1) & 53 (a)

5. It is recognized that it may be difficult to distinguish between cultural objects and places of worship which are protected and those which are not protected. However, cultural objects and places of worship which are not protected nevertheless remain civilian objects and are protected as such.

AP I Arts 52(1)

6. Cultural objects and places of worship being used by the adverse party in support of its military effort may become legitimate targets.

HIVR Art 27 (1); H Cultural Property Convention Art 4 (2); AP I Art 52(2)

7. Whether you attack cultural objects and places of worship which have become legitimate targets will depend on your mission. If so, the principle of proportionality is particularly important, as the location or object should not be damaged any more than what the mission requires.

AP I Arts 51 (5) (b) & 52 (2)

8. Where possible, the opposing force should be warned to stop using a cultural object or place of worship for military purposes before an attack is launched.

AP I Art 57 (2) (c)

9. Reprisals against cultural objects and places of worship are forbidden.

AP I Art 53 (c)

444. DAMS, DYKES AND NUCLEAR POWER PLANTS

1. Dams, dykes and nuclear electrical generating stations shall not be attacked, even where they are legitimate targets, if such an attack might cause the release of dangerous forces and consequent severe losses among the civilian population.

AP I Art 56 (1); AP II Art 15

2. Other legitimate targets located at or near dams, dykes and nuclear electrical generating stations shall not be attacked if such an attack may cause the release of dangerous forces from those works or installations and consequent severe losses among the civilian population.

AP I Art 56 (1); AP II Art 15

3. The protection that the LOAC provides to dams, dykes, nuclear electrical generating stations, and other legitimate targets near those installations is not absolute. The protection ceases in the following circumstances:

- a. for a dam or dyke, only if it is used for other than its normal function and in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;
- b. for a nuclear electrical generating station, only if it provides electric power in regular, significant and direct support of military operations and only if such attack is the only feasible way to terminate such support; and
- c. for other legitimate targets located at or in the vicinity of these works or installations, only if they are used in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support.

API Art 56 (2)

4. The parties to a conflict should avoid locating legitimate targets near dams, dykes and nuclear electrical generation stations. Weapons co-located for the sole purpose of defending such installations are permissible.

API Art 56 (5)

5. Dams, dykes and nuclear electrical generating stations should be marked with a special sign consisting of three bright orange circles on the same axis (see Annex A). Even if they are not marked with the special sign, they are still entitled to all the protections described above.

API Art 56 (7), Anx I As Amended 30 Nov 93 Art 17

6. No reprisals may be taken against dams, dykes, nuclear electrical generating stations, or legitimate targets located at or near such installations.

API Art 56 (4)

445. OBJECTS INDISPENSABLE TO THE SURVIVAL OF THE CIVILIAN POPULATION

1. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population for whatever motive.

API Art 54 (2)

2. The following are examples of “objects indispensable to the survival of the civilian population”:

- a. foodstuffs;
- b. agricultural areas for the production of foodstuffs;
- c. crops;
- d. livestock;
- e. drinking water installations and supplies; and
- f. irrigation works.

API Art 54 (2)

3. Objects indispensable to the survival of the civilian population may be attacked if they are used by an adverse party:

- a. as sustenance solely for the member of its armed forces; or
- b. in direct support of military action, provided that actions against these objects do not leave the civilian population with such inadequate food or water so as to cause its starvation or force its movement.

API Art 54 (3)

4. Objects indispensable to the survival of the civilian population shall not be made subject to reprisals.

API Art 54 (4)

5. Where a party to a conflict is defending its national territory against invasion, it may attack objects indispensable to the survival of the civilian population if:

- a. the objects are within national territory of and under the control of the party; and
- b. an attack on the objects is required by imperative military necessity.

AP I Art 54 (5)

446. NATURAL ENVIRONMENT

1. Care shall be taken in an armed conflict to protect the natural environment against widespread, long-term and severe damage.

AP I Arts 35 (3) & 55 (1)

2. Attacks, which are intended or may be expected to cause damage to the natural environment, which prejudices the health or survival of the population, are prohibited.

AP I Art 55 (1)

3. Attacks against the natural environment by way of reprisals are prohibited.

AP I Art 55 (2)

4. It is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.

G P III Art 2 (4)

447. MEDICAL UNITS AND ESTABLISHMENTS

1. Medical units and establishments shall be respected, protected and shall not be made the object of attack.

GI Art 19 (1); GII Arts 22 (1), 23 & 24; GIV Arts 18 (1); AP I Art 12 (1) & (2); AP II Art 11 (1)

2. "Medical units" means establishments and other units, *whether military or civilian*, organized for medical duties. The term "medical units" is intended to have a broad meaning and includes:

- a. hospitals and other similar units;
- b. blood transfusion centres;
- c. preventive medicine centres and institutes;
- d. medical depots; and
- e. the medical and pharmaceutical stores of such units.

AP I Art 8 (5)

2. Medical units may be fixed or mobile, permanent or temporary.

AP I Art 8 (5)

3. The protection to which medical units are entitled shall not cease unless they are used to commit, outside their humanitarian function, acts harmful to the enemy. Protection may only cease, however, after a warning has been given and after such warning has remained unheeded.

GI Art 21; AP I Art 13 (1); AP II Art 11 (2)

4. The following are not considered “acts harmful to the enemy” and do not deprive medical units of protection:
- a. that the personnel of the medical unit are armed for their own defence or that of the wounded and sick in their charge;
 - b. that the medical unit is protected by a picket, sentries or escort;
 - c. that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the medical unit;
 - d. that personnel and material of the military veterinary service are found in the medical unit, without forming an integral part thereof; and
 - e. that the humanitarian activities of medical units or of their personnel extend to the care of both civilian and military wounded and sick.

GI Art 22; AP I Art 13 (2)

448. MEDICAL TRANSPORTS

1. Medical transports of all types (land, sea and air) are protected and must not be attacked.

GI Art 35(1) & 36 (1); GII Arts 22, 25 & 39 (1); GIV Art 21 (1), 22 (1) & 56 (2); AP I Arts 21, 22 (2), 23 (1) & 24; AP II Art 11 (1)

2. Medical transports should not be armed (i.e., crew-served weapons) because of the danger that they may be mistaken as fighting vehicles. Medical personnel in the medical transports can, however, retain their personal weapons.

GI Art 22 (1); GII Art 35 (1); AP I Arts 13 (2) (a) & 28 (3)

449. VESSELS

1. The following vessels of an adverse party shall not be attacked:

- a. hospital ships;
- b. small craft used for coastal rescue operations and medical transports;
- c. vessels granted safe conduct by agreement between parties to the conflict (e.g., vessels carrying PWs or humanitarian supplies);
- d. vessels engaged in transporting cultural property under special protection;
- e. passenger vessels when engaged only in carrying civilian passengers;
- f. vessels charged with religious, non-military scientific or philanthropic missions;
- g. small coastal fishing vessels and small boats engaged in local coastal trade;
- h. vessels which have surrendered; and
- i. life rafts and life boats.

SRM para 47

450. CIVIL DEFENCE BUILDINGS, MATERIEL AND SHELTERS

1. Civil defence buildings and *materiel*, as well as shelters provided for the civilian population, are considered “civilian objects” and shall not be attacked or subjected to reprisals.

API Art 62 (3)

2. Civil defence *materiel* means equipment, supplies and transports used by civil defence organizations to perform civil defence tasks. Objects used for civil defence purposes may not be attacked.

API Arts 61 (4) & 62 (3)

3. Civil defence buildings, *materiel* and shelters should be marked with a distinctive sign consisting of a blue triangle on an orange background (see Annex A).

API Art 66 & Annex I As Amended 30 Nov 93 Art 16

4. The protection to which civil defence buildings, *materiel* and shelters are entitled ceases where they are used to commit, outside their proper tasks, acts harmful to the enemy. However, protection ceases only after a warning has been given and after such warning has remained unheeded.

API Art 65 (1)

451. PRISONER OF WAR CAMPS

1. PW camps shall not be attacked. Such camps will be marked with the letters “PW” or “PG” (*Prisonnier de Guerre*) which are clearly visible from the air (see Annex A).

Geneva Convention III Art 23 (4)

2. The presence of PWs is not to be used to render certain points or areas immune from military operations.

Geneva Convention III Art 23 (1)

452. INTERNMENT CAMPS

1. Civilians may be detained in places known as internment camps. Internment camps shall not be attacked. Such camps will be marked with the letters “IC” which are clearly visible from the air (see Annex A).

Geneva Convention IV 79 & 83 (3)

SECTION 8 - AREAS ENTITLED TO PROTECTION**453. SCOPE**

1. This section describes a number of areas that are entitled to protection from attack under the LOAC.

454. HOSPITAL AND SAFETY ZONES

1. Hospital and safety zones can be established by parties to a conflict to protect the following persons from the effects of armed conflict:

- a. wounded, sick and aged persons;

- b. children under the age of fifteen;
- c. expectant mothers; and
- d. mothers of children under the age of seven.

GI Art 23 (1); GIV Art 14 (1)

2. Such zones also protect those personnel responsible for organizing and administering the zones as well as those caring for the wounded and sick.

GI Art 23 (1) & Anx I Art 1; GIV Anx I Art 1 (1)

3. Hospital zones should be located in sparsely populated areas away from legitimate targets. They shall be marked with a distinctive sign consisting of an oblique red band on a white background. Zones reserved exclusively for the wounded and sick may be marked by means of the Red Cross or the Red Crescent (see Annex A).

GI Anx I Arts 4 & 6; GIV Anx I Arts 4 & 6

4. Hospital and safety zones are not to be attacked.

GI Anx I Art 11; GIV Anx I Art 11

455. NEUTRALIZED ZONES

1. Any party to a conflict may, either directly or through a neutral state or some humanitarian organization, propose to the adverse party to establish, in the regions where the fighting is taking place, neutralized zones intended to shelter from the effects of the conflict the following persons, without distinction:

- a. wounded and sick combatants or non-combatants; and
- b. civilian persons who take no part in hostilities and who, while they reside in the zones, perform no work of a military character.

GIV Art 15 (1)

2. So long as the adverse party complies with the terms of the agreement establishing the neutralized zone, it shall not be attacked.

GIV Art 15 (1)

456. NON-DEFENDED LOCALITIES

1. It is prohibited for parties to a conflict to attack, by any means whatsoever, non-defended localities.

HIVR Art 25; HIX Arts 1 - 4; AP I Arts 59 (1) & 85 (3) (d)

2. A party to a conflict may declare as a non-defended locality any inhabited place near or in a zone where armed forces are in contact. The non-defended locality is then open for occupation by the adverse party.

AP I Art 59 (2)

3. An non-defended locality must normally satisfy the following conditions:

- a. all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;
- b. no hostile use shall be made of fixed military installations or establishments;

- c. no acts of hostility shall be committed by the authorities or by the population; and
- d. no activities in support of military operations shall be undertaken.

AP I Art 59 (2)

4. However, the parties to a conflict may agree to the establishment of a non-defended locality even where these conditions are not all satisfied.

AP I Art 59 (5)

5. The party in control of a non-defended locality shall mark it, so far as possible, by such signs as may be agreed upon by the adverse parties. Such signs shall be displayed where they are clearly visible, especially on the non-defended locality's perimeter and on highways.

AP I Art 59 (6)

6. An area loses its status as a non-defended locality when it ceases to fulfil the conditions described above or in an agreement between adverse parties to establish the non-defended locality.

AP I Art 59 (7)

457. DEMILITARIZED ZONE

1. It is prohibited for parties to a conflict to conduct military operations in or to attack an area that they have agreed to treat as a demilitarized zone.

AP I Art 60 (1)

2. A demilitarized zone must normally satisfy the following conditions:

- a. all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;
- b. no hostile use shall be made of fixed military installations or establishments;
- c. no acts of hostility shall be committed by the authorities or by the population; and
- d. any activity linked to the military effort must have ceased.

AP I Art 60 (3)

3. The party in control of a demilitarized zone shall mark it, so far as possible, by such signs as may be agreed upon by the adverse parties. Such signs shall be displayed where they are clearly visible, especially on the demilitarized zone's perimeter and on highways.

AP I Art 60 (5)

4. An area loses its status as a demilitarized zone where:

- a. a party commits a violation of the conditions described above;
- b. a party uses the demilitarized zone for purposes related to the conduct of military operations where it has agreed not to do so; or
- c. a party unilaterally revokes the status of an area as a demilitarized zone where it has agreed not to do so.

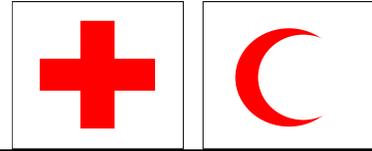
AP I Art 60 (7)

This Page Intentionally Blank

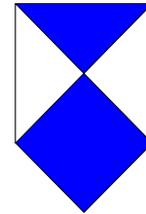
ANNEX A – PROTECTIVE EMBLEMS AND SIGNS

PROTECTIVE EMBLEMS AND SIGNS

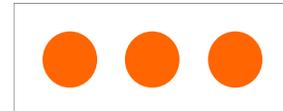
Medical and Religious Personnel and Medical Units and Establishments :
(Red on White)



Cultural Objects & Places of Worship :
(Blue on White)



Dams, Dykes and Nuclear Power Plants :
(Orange on White)



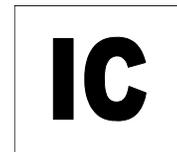
Civil Defence Installations, Materiel and Personnel :
(Blue on Orange)



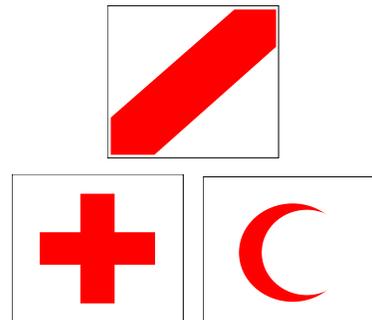
Prisoner of War Camps :
(Black on White)



Internment Camps :
(Black on White)



Hospital & Safety Zone :
(Red on White)
A hospital & safety zone reserved exclusively for the wounded and sick may be marked with the Red Cross or Red Crescent. Otherwise, the hospital and safety zone should be marked with the oblique red band on a white background.



This Page Intentionally Blank

ANNEX B – IDENTITY CARDS

1. MEDICAL AND RELIGIOUS PERSONNEL

FRONT

(space reserved for the name of the country and authority issuing this card)

IDENTITY CARD

for PERMANENT civilian medical personnel
TEMPORARY religious

Name :

Date of birth (or age) :

Identity No. (if any) :

The holder of this card is protected by the Geneva Conventions of 12 August 1949 and by the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) in his capacity as :

.....

Date of issue : No of card :

Date of expiry : Signature of issuing authority

REVERSE SIDE

Height :	Eyes :	Hair :
Other distinguishing marks or information:		
Blood Group		
PHOTO OF HOLDER		
Stamp	Signature of holder or thumbprint or both	

2. MEDICAL AND RELIGIOUS PERSONNEL (LAND & SEA)

FRONT

(space reserved for the name of the country and military authority issuing this card)

IDENTITY CARD

For member of medical and religious personnel attached to the armed forces (*at sea*)

Surname :

First names :

Date of birth :

Rank :

Army Number :

The bearer of this card is protected by the Geneva Conventions for the Amelioration of the Condition of the Wounded, Sick (*and Shipwrecked*) Member of Armed Forces in the field (*at Sea*) of 12 August, 1949, in his capacity as :

.....

Date of issue : No of card :

REVERSE SIDE

<div style="border: 1px dashed black; padding: 5px; width: 80%; margin: 0 auto;"> <p>Photo of bearer</p> </div> <div style="border: 1px dashed black; border-radius: 50%; width: 60%; height: 60%; margin: 10px auto; text-align: center;"> <p>Embossed stamp of military authority issuing card</p> </div>	<p>Signature of bearer or fingerprints or both</p>	
Height :	Eyes :	Hair :
Other distinguishing marks :		

Where appropriate, the identity card for medical and religious personnel should also be in the local language of the region concerned.

3. CIVIL DEFENCE PERSONNEL

FRONT



(space reserved for the name of the country and authority issuing this card)

IDENTITY CARD
for civil defence personnel



Name :

Date of birth (or age) :

Identity No. (if any) :

The holder of this card is protected by the Geneva Conventions of 12 August 1949 and by the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) in his capacity as :

.....

.....

Date of issue..... No of card

Date of expiry..... Signature of issuing authority

REVERSE SIDE

Height.....	Eyes.....	Hair.....
Other distinguishing marks or information:		
Weapons		
PHOTO OF HOLDER		
Stamp	Signature of holder or thumbprint or both	

4. PERSONS WHO ACCOMPANY THE ARMED FORCES

FRONT

Photograph
Of the bearer

(Name of the country and military authority issuing this card)

IDENTITY CARD
FOR A PERSON WHO ACCOMPANIES
THE ARMED FORCES

Name :

First Name :

Date and place of birth :

Accompanies the Armed Forces as :

Date of issue Signature of bearer

REVERSE SIDE

Height	Weight	Eyes	Hair
Fingerprints (optional) (Left forefinger) (Right forefinger)		Blood type	Official seal imprint
		Religion	
Any other mark of identification :		NOTICE	
		This identity card is issued to persons who accompany the Armed forces of but are not part of them. The card must be carried at all times by the person to whom it is issued. If the bearer is taken prisoner, he shall at once hand the card to the Detaining Authority, to assist in his identification.	

5. JOURNALIST ENGAGED IN DANGEROUS PROFESSIONAL MISSIONS
FRONT

<p style="text-align: center;">NOTICE</p> <p>This identity card is issued to journalists on dangerous professional missions in areas of armed conflicts. The holder is entitled to be treated as a civilian under the Geneva Conventions of 12 August 1949, and their Additional Protocol I. The card must be carried at all times by the bearer. If he is detained, he shall at once hand it to the Detaining Authorities, to assist in his identification.</p> <p style="text-align: center;">[ARABIC TEXT]</p> <p style="text-align: center;">NOTA</p> <p>La presente tarjeta de identidad se expide a los periodistas en mision profesional peligrosa en zonas de conflictos armados. Su titular tiene derecho a ser tratado como persona civil conforme a los Convenios de Ginebra del 12 agosto de 1949 y su Protocolo adicional I. El titular debe llevar la tarjeta consigo, en todo momento. En caso de ser detenido, la entregara inmediatamente a las autoridades que lo detengan a fin de facilitar su identificacion.</p> <p style="text-align: center;">AVIS</p> <p>La présente carte d'identité est délivrée aux journalistes en mission professionnelle périlleuse dans des zones de conflit armé. Le porteur a le droit d'être traité comme une personne civile aux termes des Conventions de Genève du 12 août 1949 et de leur Protocole additionnel I. La carte doit être portée en tout temps pas son titulaire. Si celui-ci est arrêté, il la remettra immédiatement aux autorités qui le détient afin qu'elles puissent l'identifier.</p> <p style="text-align: center;">[RUSSIAN TEXT]</p>	<p>(Name of country issuing this card) [Arabic Text] (Nombre del país que expide esta tarjeta) (Nom du pays qui a délivré cette carte) [Russian Text]</p> <p style="text-align: center;">IDENTITY CARD FOR JOURNALIST ON DANGEROUS PROFESSIONAL MISSION</p> <p style="text-align: center;">[ARABIC TEXT]</p> <p style="text-align: center;">TARJETA DE IDENTIDAD DE PERIODISTA EN MISION PELIGROSA</p> <p style="text-align: center;">CARTE D'IDENTITÉ DE JOURNALISTE EN MISSION PÉRILLEUSE</p> <p style="text-align: center;">[RUSSIAN TEXT]</p>
--	---

REVERSE SIDE

<p>Issued by (competent authority) (Arabic Text) Expédida por (autoridad competente) Délivrée par (autorité compétente)</p> <p>Photograph of bearer (Arabic Text) Fotografía del titular Photographie du porteur (Russian Text)</p> <p style="border: 1px dashed black; padding: 2px;"> (Official seal imprint) (Arabic Text) (Sello oficial) (Timbre de l'autorité délivrant la carte) (Russian Text) </p> <p>(Signature of bearer) (Arabic Text) (Firma del titular) (Signature du porteur) (Russian Text)</p> <p>x _____</p> <p>Name (Arabic Text) Apellidos Nom (Russian Text)</p> <p>First names (Arabic Text) Nombre Prénoms (Russian Text)</p> <p>Place & date of birth (Arabic Text) Lugar y fecha de nacimiento Lieu & date de naissance (Russian Text)</p> <p>Correspondent of (Arabic Text) Correspondant de Correspondant de (Russian Text)</p> <p>Specific occupation (Arabic Text) Categoría profesional Catégorie professionnelle (Russian Text)</p> <p>Valid for (Arabic Text) Valido por Durée de validité (Russian Text)</p>	<p>Place (Arabic Text) Lugar Lieu Mesto</p> <p>Date (Arabic Text) Fecha Date (Russian Text)</p> <p>Height (Arabic Text) Estatura Taille (Russian Text)</p> <p>Weight (Arabic Text) Peso Poids (Russian Text)</p> <p>Blood Type (Arabic Text) Grupo sanguíneo Groupe sanguin (Russian Text)</p> <p>Religion (optional) (Arabic Text) Religion (optativo) Religion (facultatif) (Russian Text)</p> <p>Fingerprints (optional) (Arabic Text) Huellas dactilares (optativo) Empreintes digitales (facultatif) (Russian Text)</p> <p>(Left forefinger) (Arabic Text) (Dedo índice izquierdo) (Index gauche) (Russian Text)</p> <p>Special marks of identification (Arabic Text) Senas particulares Signes particuliers (Russian Text)</p>	<p>Eyes (Arabic Text) Ojos Yeux (Russian Text)</p> <p>Hair (Arabic Text) Cabell Cheveux (Russian Text)</p> <p>Rh factor (Arabic Text) Factor Rh Facteur Rh (Russian Text)</p> <p>(Right forefinger) (Arabic Text) (Dedo índice derecho) (Index droit) (Russian Text)</p>
--	--	--

This Page Intentionally Blank

CHAPTER 5
RESTRICTIONS ON THE USE OF WEAPONS
SECTION 1 - INTRODUCTION

501. AIM

1. The aim of this chapter is to summarize the limitations that the Law of Armed Conflict (LOAC) places on the use of weapons.

502. GENERAL

1. The LOAC limits the types of weapons that may be used and the manner in which those weapons are used. Weapons, projectiles, materials and means of warfare that cause superfluous injury or unnecessary suffering are prohibited.

HIVR Art 23 (e); AP I Art 35 (2)

2. A weapon, projectile, material or means of warfare must not cause injury or suffering which is out of proportion to its military effectiveness. Likewise, weapons which cannot be directed at specific legitimate targets or the effects of which cannot be limited are prohibited.

AP I Art 51 (4)

503. SUPERFLUOUS INJURY AND UNNECESSARY SUFFERING

1. "Superfluous injury" and "unnecessary suffering" are closely related concepts. "Superfluous" means "more than enough, redundant, needless." The term "unnecessary" is easily understood.

2. In an armed conflict, it may often be necessary to wound or even kill an adversary. To accomplish a mission a soldier is normally armed with a rifle and a bayonet. Soldiers may use their rifles to wound or kill an adversary. They may not, however, use ammunition that expands or flattens on impact ("dum-dum" bullets) which will cause a gaping wound that is extremely difficult to treat. Likewise, soldiers may use their bayonets against an adversary. However, they may not "notch" their bayonets to cause a jagged wound that result in suffering out of proportion to the aim of using the bayonets in the first place.

1899 Hague Declaration (IV,3) Concerning Expanding Bullets para 2; HIVR Art 23 (e); AP I Art 35 (2)

504. OPERATIONAL RATIONALE

1. The aim of the use of force in the course of military operations is to enable members of the Canadian Forces (CF) to accomplish their assigned mission. Although "suffering" is likely to be inevitable, it is to the CF's operational advantage to limit the force used to what is required to accomplish the mission.

505. LIMITATIONS ON THE USE OF WEAPONS

1. The limitations on the use of weapons fall into two broad categories:
- a. prohibited weapons; and
 - b. restrictions on the use of lawful weapons.

506. WEAPONS AND AMMUNITION ISSUED BY THE CANADIAN FORCES

1. While CF members can be confident that weapons and ammunition issued to them comply with the LOAC, they must be careful to ensure that their weapons and ammunition are used in a manner that

complies with the LOAC. The use of a weapon or ammunition will be unlawful under the LOAC where it causes superfluous injury or unnecessary suffering.

HIVR Art 23 (e); AP I Art 35 (2)

507. USE OF CAPTURED WEAPONS AND AMMUNITION

1. In a conflict, CF members may have to use captured enemy weapons and ammunition. While it is recognized that such weapons and ammunition may be used, they shall only be used if they do not cause superfluous injury or unnecessary suffering and are not indiscriminate in their effect. Standard military pattern weapons normally meet these criteria.

HIVR Art 23 (e); AP I Art 35 (2)

SECTION 2 - PROHIBITED WEAPONS AND AMMUNITION

508. GENERAL

1. Some weapons are totally prohibited by the LOAC because they are either indiscriminate in their effect or cause superfluous injury and/or unnecessary suffering.

HIVR Art 23 (e); AP I Arts 35 (2) & 51

509. WEAPONS INDISCRIMINATE IN THEIR EFFECT

1. Weapons that are indiscriminate in their effect are prohibited. A weapon is indiscriminate if it might strike or affect legitimate targets and civilians or civilian objects without distinction. Therefore, a weapon that cannot be directed at a specific legitimate target or the effects of which cannot be limited as required by the LOAC is prohibited. For example, it may be argued that the Scud missile used in the Gulf War falls in that category.

AP I Art 51

510. PROHIBITED AMMUNITION

1. The following types of ammunition are prohibited:

- a. projectiles of a weight below 400 grams that are either explosive or charged with fulminating (exploding) or inflammable substances;
- b. bullets that expand or flatten easily in the human body, such as bullets with a hard envelope that does not entirely cover the core or is pierced with incisions (that is, hollow point or “dum-dum” bullets); and.
- c. bullets that have been dipped in poison.

2. However, tracer rounds are not prohibited so long as they are used for marking.

Oxford Manual of the Laws of Naval War Art 16; 1899 Hague Declaration (IV,3) Concerning Expanding Bullets para 2; HIVR Art 23 (a)

511. ANTI-PERSONNEL LAND MINES

1. The possession or use of anti-personnel land mines is prohibited by the Anti-Personnel Mines Convention signed in 1997 by over 100 states. Canada has already ratified the Convention. While many nations may continue to possess and use anti-personnel land mines, the CF is bound not to do so.

APM Convention Art 1 (1) (a) & (b); 1997 Anti-Personnel Mines Convention Implementation Act

2. An “anti-personnel mine” is a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.

G C W P II Art 2 (3); APM Convention Art 2 (1)

3. Any mine that inflicts injury or death when an innocent act is carried out by a non-combatant is included in the above definition of anti-personnel mine.

4. The use of an anti-personnel mine that is manually detonated (for example, by land line or electronic signal from a remote or protected position) by a CF member is not prohibited. Therefore, the use of an explosive device such as a “Claymore Mine” is not prohibited if it is manually detonated. Any anti-personnel mine that is designed to be exploded automatically by the “presence, proximity or contact of a person” cannot be lawfully used by the CF. The “Claymore Area Defence System” is not prohibited if it is command detonated. If horizontal fragmentation weapons which propel fragments in a horizontal arc of less than 90 degrees, such as the Claymore, are placed on or above the ground, they may be used for a maximum period of 72 hours if they are located in the immediate proximity to the military unit that emplaced them, and the area is monitored by military personnel to ensure the effective exclusion of civilians.

G C W P II Art 5 (6)

5. CF members serving with or training in cooperation with the armed forces of a nation using anti-personnel land mines shall follow the guidelines in Annexes A and B.

6. Explosive booby traps are not to be employed as, or used as, a substitute for anti-personnel mines.

7. Canada's obligation to clear minefields after the cessation of hostilities will vary depending upon circumstances such as the degree of jurisdiction or control exercised over the territory, the terms of any peace accord and any other bilateral or multilateral arrangement. There is no legal obligation to clear mines simply because Canada is conducting operations in an Area of Responsibility (AOR) during peace support or any other operation.

512. POISON

1. Poison or poisoned weapons are illegal because of their potential to be indiscriminate. For example, the poisoning or contamination of any source of drinking water is prohibited. Posting a notice that the water has been contaminated or poisoned does not make this practice legal, as both civilians and combatants might drink from that water source and be equally affected.

HIVR Art 23 (a); AP I Arts 51 (4) (b) & (c) & 57 (1)

513. NON-DETECTABLE FRAGMENTS

1. Weapons that cause injury by the use of fragments undetectable by X-ray in the human body are prohibited.

G C W P I para 1

514. ENVIRONMENT ALTERING WEAPONS

1. Environmental modification techniques having widespread, long lasting or severe effects are prohibited.

1976 Convention on the Prohibition of Military or any Hostile use of Environmental Modification Techniques

515. GAS

1. The use of asphyxiating, poisonous or other gases is prohibited at all times and under all circumstances.

1925 Geneva Protocol for the Prohibition of the use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

2. However, smoke grenades, smoke ammunition from indirect fire weapons and tank smoke ammunition are not prohibited so long as they are used to conceal position or movement or to mask a target.

516. BACTERIOLOGICAL/BIOLOGICAL WEAPONS

1. Bacteriological/biological methods of warfare are prohibited. Nations are prohibited from manufacturing, storing and using biological weapons. Both bacteriological and biological weapons are prohibited because they cause unnecessary suffering and may affect the civilian population in an indiscriminate fashion.

1972 Convention on the Prohibition of the Development Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction Art 1

517. CHEMICAL WEAPONS

1. Chemical weapons, which include toxic chemicals and their precursors (those chemicals which can cause death, permanent harm or temporary incapacity to humans or animals) and munitions or devices designed to carry such chemicals, are banned.

C CW Arts 1 (1) & 2 (1) - (3)

518. RIOT CONTROL AGENTS

1. The use of riot control agents, including tear gas and other gases that have debilitating but non-permanent effects, as a means of warfare is prohibited

C CW Arts 1 (5) & 2 (7)

519. BLINDING LASER WEAPONS

1. Laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision (that is, to the naked eye or to the eye with corrective eyesight devices) are prohibited.

G CWP IV Art 1

2. "Permanent blindness" means irreversible and uncorrectable loss of vision that is seriously disabling with no prospect of recovery. Serious disability is equivalent to visual acuity of less than 20/200 vision.

G CWP IV Art 4

3. Blinding as an incidental or collateral effect of the legitimate military employment of laser systems is not covered by the prohibition. For example, the legitimate use of a laser targeting system in a tank is lawful

even if one of its collateral effects may be to cause blindness. However, such a laser targeting system could not be deliberately used to blind enemy combatants.

G CWP IV Art 1

SECTION 3 - LIMITATIONS ON LAWFUL WEAPONS

520. GENERAL

1. This section discusses the limitations placed on weapons that are otherwise lawful under the LOAC.
2. Legal weapons are limited in the way in which they may be used. Specifically, no weapons may be used indiscriminately or in such a way as to cause superfluous injury or unnecessary suffering.

HIVR Art 23 (e); AP I Arts 35 (2) & 51 (4) (b) & (c)

521. INCENDIARY WEAPONS

1. Incendiary weapons include any weapon or munitions that is designed to set fire to objects or to cause burn injury to humans through the action of flame, heat or a combination of the two caused by a chemical reaction of a substance delivered on a target. Examples of incendiary weapons include napalm, flame-throwers, shells, rockets, grenades, mines, bombs and other containers of incendiary materials.

G CWP III Art 1

2. Incendiary weapons **do not** include:
 - a. munitions which have incidental incendiary effects (for example, illuminants, tracers, smoke or signalling devices); or
 - b. munitions designed to combine penetration, blast or fragmentation effects with an additional incendiary effect (for example, armour piercing projectiles, fragmentation shells, explosive bombs and similar combined effects ammunition) in which the incendiary effect is not specifically designed to cause burn injury to humans, but to be used against military objectives such as armoured vehicles, aircraft and installations and facilities.

G CWP III Art 1 (1) (b)

3. The use of incendiary weapons against combatants is not prohibited unless such use results in superfluous injury or unnecessary suffering. However, it is prohibited in all circumstances to make the civilian population, individual civilians or civilian objects the object of attack by incendiary weapons.

HIVR Art 23 (a); AP I Art 35 (2); G CWP III Art 2 (1)

4. The use of incendiary weapons is prohibited:
 - a. in all circumstances to make any legitimate target located within a concentration of civilians the object of attack *by air delivered incendiary weapons* ;
 - b. to make any legitimate target located within a concentration of civilians the object of an attack *by other than air delivered incendiary weapons*, except where that target is clearly separated from the civilians and all feasible precautions are taken to minimize collateral civilian damage; and
 - c. on forests or plant cover except when they are either being used to cover, conceal or camouflage legitimate targets or are military objectives themselves (for example, if it is necessary to use

incendiaries on a forest to clear a field of fire or facilitate an advance or attack against an enemy, the forest has become a military objective and may legitimately be attacked).

G C W P III Art 2 (2) - (4)

522. BOOBY TRAPS AND OTHER DEVICES

1. A "booby trap" is any device or material which is designed, constructed or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act. "Other Devices" means manually placed munitions and devices including improvised explosive devices designed to kill, injure or damage and which are activated manually, by remote control or automatically after a lapse of time.

G C W P II Art 2 (4) & (5)

2. Booby traps and other devices, attached to or associated with the following objects, are prohibited:

- a. internationally recognized protective emblems and signs;
- b. sick, wounded or dead persons;
- c. burial or cremation sites or graves;
- d. medical facilities, equipment, supplies or transportation;
- e. children's toys or objects designed for feeding, health, hygiene, clothing or education of children;
- f. food or drink;
- g. kitchen utensils or appliances (except those in military establishments, locations or supply depots);
- h. objects of a religious nature;
- i. historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or
- j. animals or their carcasses.

G C W P II Art 7 (1)

3. It is prohibited to use booby trap or other devices in the form of apparently harmless portable object which are specifically designed and constructed to contain explosive material.

G C W P II Art 7 (2)

4. Explosive booby traps are not to be employed or used as a substitute for anti-personnel mines. Where booby traps are lawfully used, they must not cause unnecessary injury or suffering.

G C W P II Art 3 (3)

523. USE OF AUTHORIZED LAND MINES, BOOBY TRAPS AND OTHER DEVICES

1. As discussed above, anti-personnel mines are prohibited unless they are command detonated. Anti-tank mines, however, continue to be lawful.

2. Land mines are any munitions on, under or near the ground or other surface area and designed to be detonated by the presence, proximity or contact of a person or a vehicle. Land mines include remotely delivered mines such as mines delivered by artillery, rocket, mortar or aircraft.

G CW P II Art 2 (1) & (2); APM Convention Art 2 (2)

3. An “anti-tank mine” is a mine designed to be exploded by the presence, proximity or contact of a vehicle and that will damage or destroy that vehicle. The primary purpose of the anti-tank mine is in fact to damage or destroy the vehicle that detonates it. However, the occupants of the vehicle that detonates an anti-tank mine or those in the vicinity may also be injured or killed.

G CW P II Art 2 (1); APM Convention Art 2 (1)

4. All feasible precautions must be taken to protect civilians from the effects of land mines, booby traps and similar devices. They must not be directed at civilians nor may they be used indiscriminately. It is indiscriminate to:

- a. place mines or booby traps so that they are not on or not directed at a legitimate target;
- b. use a means of delivery for mines or booby traps that cannot be directed at a legitimate target; and
- c. place mines or booby traps so that they may be expected to cause collateral civilian damage that is excessive in relation to the concrete and direct military advantage anticipated.

G CW P II Art 3 (8)

5. Booby traps and similar devices must not be used in areas containing civilian concentrations if combat between ground forces is neither imminent nor actually taking place unless:

- a. they are placed on, or in the vicinity of, an enemy military objective; or
- b. measures are taken to protect civilians (for example, warning signs, sentries, fences or other warnings to civilians).

G CW P II Art 7 (3)

6. The location of all pre-planned minefields and areas in which there has been large scale and pre-planned use of booby traps must be recorded. A record should also be kept of all other minefields, mines and booby traps so that they may be disarmed when they are no longer required.

G CW P II Arts 2 (9), 9 & 10 (1)

7. It is prohibited to use mines, booby traps or other devices that employ a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations.

G CW P II Art 3 (5)

8. A “self-deactivating mine” permanently stops functioning when a component (for example, battery) is exhausted. Self-deactivating mines are lawful unless they are used with an anti-handling device that continues to function after the mine has stopped functioning.

G CW P II Arts 2 (12) & 3 (6)

9. An “anti-handling device” is part of, linked to or under a mine and detonates when an attempt is made to tamper with the mine. An example of an anti-handling device is a hand grenade with its safety pin removed that is placed under a mine such that the grenade explodes when the mine is moved. Under Canadian doctrine, anti-handling devices are used only with anti-tank mines.

G CW P II Art 2 (14); APM Convention Art 2 (3)

524. REMOTELY-DELIVERED MINES

1. A “remotely-delivered mine” is a mine not directly emplaced but delivered by artillery, missile, rocket, mortar or similar means, or dropped from an aircraft. Mines delivered from a land-based system from less than 500 metres are not considered to be “remotely delivered”.

G CWP II Art 2 (2)

2. Remotely-delivered land mines can only be used within the area of a military objective if their location can be accurately recorded, and they can be neutralized when they no longer serve the military purpose for which they were placed in position. Each mine must have:

- a. an effective self neutralizing or destroying mechanism; or
- b. a remotely controlled mechanism designed to render the mine harmless or destroy it.

G CWP II Art 6 (3)

3. If circumstances permit, effective advance warning should be given where remotely-delivered mines are likely to affect civilians.

G CWP II Art 6 (4)

525. OTHER DEVICES

1. “Other devices” are manually emplaced munitions and devices designed to kill, injure or damage and which are activated either remotely or by time delay. For example, time-delayed or remotely controlled explosives would fall into this category. The restrictions on the use of these “other devices” are the same as for land mines and booby traps.

G CWP II Arts 2 (5) & 3 (1)

526. NUCLEAR WEAPONS

1. The United Nations General Assembly has condemned nuclear weapons as being illegal, although the international community itself is divided on this question. While nuclear weapons are not specifically prohibited by any international treaty, there is a strong argument to be made that the use of nuclear weapons would violate International Law on a variety of grounds including:

- a. they would cause superfluous injury and unnecessary suffering;
- b. their effect would be indiscriminate; or
- c. their use would cause widespread, long-term and severe damage to the natural environment.

HIVR Art 23 (e); AP I Arts 35, 51 & 57 (2)

2. At the request of the United Nations General Assembly, the International Court of Justice (ICJ) issued an advisory opinion with respect to the legality of nuclear weapons in 1996. The majority of the judges ruled that the threat or use of nuclear weapons would generally be contrary to the LOAC and in particular the principles and rules of humanitarian law. However, the ICJ went on to state that it could not reach a final decision on whether the threat or use of nuclear weapons was illegal in extreme circumstances of self-defence where the very survival of a state is at stake.

3. When Canada deposited its ratification of Additional Protocol I, the following reservation was made:

“It is the understanding of the Government of Canada that the rules introduced by Protocol I were intended to apply exclusively to conventional weapons. In particular, the rules so introduced do not have any effect on and do not regulate or prohibit the use of nuclear

weapons.”

527. ROCKETS, MISSILES AND BOMBARDMENT

1. With the advent of modern technology many armed forces are now able to deliver weapons on target with much greater precision. However, states are not limited to the use of precision weapons and munitions. An attack by conventional, free-fall weapons or “dumb” bombs is lawful provided that the overriding principles of proportionality and superfluous injury/unnecessary suffering as well as other applicable rules are not violated.

HIVR Art 23 (e); AP I Arts 35, 51 & 57

528. SEA MINES

1. There are very few restrictions on the use of sea mines. Sea mines must be able to self neutralize if control over them is lost. Their location must be recorded. They must not be laid in neutral waters. When sea mines are first laid in the territorial waters of a state, there must be provision for free exit of neutral shipping located in the ports of the state whose territorial waters have been mined.

HVIII Arts 1 (1) & (2) & 3 (2); SRM paras 82 (b) & 84 - 86

529. TORPEDOES

1. It is prohibited to use torpedoes that do not sink or become harmless when they have missed their target or completed their run.

HVIII Art 1 (3); SRM para 79

SECTION 4 - NEW WEAPONS

530. DEVELOPMENT OR ACQUISITION OF NEW WEAPONS

1. In the study, development, acquisition or adoption of a new weapon, means or method of warfare, there is an obligation to determine whether its employment would, in some or all circumstances, be prohibited by the LOAC.

AP I Art 36

This Page Intentionally Blank

ANNEX A – CANADA AND ANTI-PERSONEL MINES

A001. CANADA'S UNDERSTANDING WITH RESPECT TO THE SERVICE OF CF MEMBERS WITH THE ARMED FORCES OF NATIONS THAT USE ANTI-PERSONNEL LAND MINES

Canada has deposited the following Statement of Understanding with respect to the Anti-Personnel Mines Convention:

“It is the understanding of the Government of Canada that, in the context of operations, exercises or other military activity sanctioned by the United Nations or otherwise conducted in accordance with international law, the mere participation by the Canadian Forces, or individual Canadians, in operations, exercises or other military activity conducted in combination with the armed forces of States not a party to the Convention which engage in activity prohibited under the Convention would not, by itself, be considered to be assistance, encouragement or inducement in accordance with the meaning of those terms in article 1, paragraph 1 (c).”

A002 IMPLICATIONS OF THE ANTI-PERSONNEL MINES CONVENTION

1. APM Convention. In December 1997, Canada signed and ratified the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction* (APM Convention). In fact, the Convention imposes broader restrictions than its title suggests in that State Parties:
 - a. cannot use anti-personnel mines;
 - b. cannot develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines; and
 - c. cannot assist, encourage or induce activities prohibited by the APM Convention.
2. General. In general, the CF will not stockpile, acquire or use anti-personnel mines, or clear mines laid by allies or belligerents unless necessary for the safety of CF personnel or mission success.
3. Anti-personnel Mines Convention Implementation Act. The *Anti-personnel Mines Convention Implementation Act* (Canada) makes it a Canadian criminal offence:
 - a. to place an anti-personnel mine under, on or near the ground or other surface area with the intent to cause the explosion of the anti-personnel mine by the presence, proximity or contact of a person; or
 - b. to develop, produce or otherwise acquire, possess or transfer to anyone, directly or indirectly, an anti-personnel mine, or stockpile anti-personnel mines.
4. Penalty: The maximum penalty for a violation of the *Anti-personnel Mines Convention Implementation Act* is a \$500,000.00 fine and/or five years imprisonment.
5. Permitted Activities. The following activities by CF personnel are permitted under the APM Convention:
 - a. the placement, acquisition, possession or transfer of a number of anti-personnel mines, as authorized by the Government of Canada, for the development of, and training in, mine detection, mine clearance or mine destruction techniques;
 - b. the acquisition, possession or transfer of anti-personnel mines for the purpose of their destruction; and
 - c. the acquisition, possession or transfer of an anti-personnel mine that has been deactivated as prescribed by Government of Canada regulations or that has been deactivated by:
 - (i) removing all explosive substances, including the priming charge, booster charge and main charge, from the anti-personnel mine, including from any fuse, percussion cap or detonator; and
 - (ii) removing or destroying the anti-personnel mine's priming or detonating mechanism or rendering the mechanism inoperable in such a way that its function cannot readily be restored; or
 - d. participation in operations, exercises or other military activities with the armed forces of a state that is not a party to the convention that engage in activity prohibited by the convention if that participation does not amount to active assistance in the prohibited activity.
6. Application. The *Anti-personnel Mines Convention Implementation Act* applies to any person present in Canada. Therefore, foreign citizens present in Canada may be prosecuted for violating the Act. The *Anti-personnel Mines Convention Implementation Act* applies to CF personnel serving anywhere in the world.
7. Service Offence. Any CF personnel who violate the provisions of the *Anti-personnel Mines Convention Implementation Act* inside or outside Canada while serving with the CF or on international staffs, exchange postings or liaison postings are liable to prosecution under sections 60 and 130 of the *National Defence Act*.
8. Definitions:
 - a. Mine: Mine means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or vehicle.
 - b. Anti-Personnel Mine: Anti-personnel mine means a munition designed:
 - (1) to be placed under, on or near the ground or other surface area; and
 - (2) to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill

- one or more persons.
- c. Anti-Tank Mine: Anti-tank mine means a munition designed:
- (1) to be placed under, on or near the ground or other surface area; and
 - (2) to be exploded by the presence, proximity or contact of a vehicle as opposed to a person.

An anti-tank mine equipped with an anti-handling device is not considered an anti-personnel mine.

- d. Anti-handling Device. Anti-handling device means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.
- e. Mixed Munitions. Mixed munitions means munitions containing both anti-tank and anti-personnel mines. These types of munitions are banned under the terms of the APM Convention because they contain anti-personnel mines.
- f. Transfer. Transfer includes, in addition to the physical movement of antipersonnel mines, the transfer of title to and control over anti-personnel mines, but does not include the transfer of territory containing emplaced anti-personnel mines.

APM Convention Art 2

9. Command Detonated Mines and Explosive Devices. Explosive devices that are "command detonated" are not banned. "Command detonated" means that the explosion of the mine or explosive device is triggered by CF personnel manually (e.g., by mechanical means, electronic signal over a land line, remote-control, etc.) Thus, an area defence weapon such as the Claymore Mine is not illegal. Furthermore, horizontal fragmentation weapons like the Claymore, if placed on or above the ground and propelling fragments in an arc of less than 90 degrees, do not have to be marked by fencing for a maximum period of 72 hours if they are located in the immediate proximity to the military unit that emplaced them, and the area is monitored by military personnel to ensure the effective exclusion of civilians.

10. Explosive Booby Traps. Explosive booby traps are not to be employed as or used as a substitute for anti-personnel mines.

11. Controlled Activities. The following controls apply to all Canadian Forces personnel including those serving on international staffs, exchange and liaison postings and participating in operations:

- a. Participation in Combined Operations. Canada may participate in combined operations with a state that is not Party¹ to the Convention. Canadian contingents may not, however, use anti-personnel mines and the Canadian Forces may not request, even indirectly, the protection of anti-personnel mines or encourage the use of anti-personnel mines by others.
- b. Rules of Engagement. When participating in combined operations, Canada will not agree to the Combined Rules of Engagement section that would authorize the use by the combined force of anti-personnel mines. This would not, however, prevent States that are not signatories to the APM Convention from using antipersonnel mines for the defence of their national contingent
- c. Right of Self-Defence. The right of states which are not signatories or parties to the APM Convention to use anti-personnel mines in self-defence is not precluded by the Convention.
- d. Operational Plans. When engaged in pre-conflict or combined operations with foreign forces, Canada will not agree to operational plans which authorize the use by the combined force of anti-personnel mines. While Canadians may participate in operational planning as members of a multinational staff, they may not participate in planning for the use of anti-personnel mines. This would not prevent a state that is not a signatory or party to the APM Convention from participating in a multinational force or planning for the use of anti-personnel mines by its own forces for strictly national purposes. However, CF personnel will not be involved in any such planning.
- e. Command and Control. The use of anti-personnel mines by the combined force *will not be authorized in cases where Canada is in command of a combined force*. Likewise, if *Canadian Forces* personnel are being commanded by other nationalities, they are prohibited from participating in the use of, or planning for the use of, antipersonnel mines.
- f. Occupation of Previously Mined Terrain. Canadian soldiers may take over operational responsibility for an area in which anti-personnel mines have previously being deployed. If self-neutralizing/self-destructing anti-personnel mines have been used Canada will not seek their replacement once they expire. If the anti personnel mines are not self-destructing or self-neutralising Canada will only monitor the minefield and maintain the markings, but will not conduct the maintenance thereof. Under no circumstance shall a Canadian request or encourage the use of anti-personnel mines in an area planned for occupation by Canadian troops.
- g. Clearing Minefields. Responsibility for clearing minefields will depend upon the circumstances. There is no legal obligation to clear mines simply because Canada is conducting operations in an Area of Responsibility (AOR) during peace support or other operations. An obligation may arise at the cessation of hostilities depending upon circumstances such as the degree of control exercised over the territory, the

¹ For example, two NATO allies, the U.S. and Turkey, have not signed the APM Convention

- terms of any peace accord or any other bilateral or multilateral agreement.
- h. Training. Countermine training is permitted. The APM Convention specifically permits signatories to retain a small number of anti-personnel mines for research and development and training in mine detection, mine clearance and mine destruction techniques.
 - i. Transit of Anti-Personnel Mines. The APM Convention does not prohibit the transit of anti-personnel mines, which is defined as the movement of antipersonnel mines within a state, or from a state, to its forces abroad. Canada, however, discourages the use of Canadian territory, airspace or territorial waters for the purpose of transit of anti-personnel mines.

CDS Memo (Anti-Personnel Mines - Restriction on CF Personnel) 11 Aug 98, para 3, Anx A

12. Allowable Stock Levels. In accordance with the APM Convention, Canada is permitted to retain a small number of anti-personnel mines for research and development of, and training in, mine detection, mine clearance and mine detection techniques. No more than 2,000 antipersonnel mines will be retained for this purpose. Small numbers of foreign anti-personnel mines may be obtained as part of this total.

APM Convention Art 3

This Page Intentionally Blank

CHAPTER 6

LAW RELATING TO THE CONDUCT OF HOSTILITIES ON LAND

SECTION 1 - INTRODUCTION

601. AIM

1. The aim of this chapter is to summarize the Law of Armed Conflict (LOAC) concerning the conduct of hostilities on land.
2. This chapter must be read in conjunction with other chapters, primarily Chapter 4 (Targeting) and Chapter 5 (Restrictions On The Use Of Weapons), to obtain a complete overview of the law.
3. While primarily applicable to land forces, these rules also apply to naval forces (landing parties) and air forces (personnel conducting operations on land such as air field perimeter security).
4. This chapter is not primarily concerned with the care of persons or property on land once they are under the control of the Canadian Forces (CF). For guidance concerning the care of persons or property belonging to the adverse party and under the control of the CF, refer to the following chapters:
 - a. Chapter 9, Treatment of the Wounded, Sick and Shipwrecked;
 - b. Chapter 10, Treatment of Prisoners of War;
 - c. Chapter 11, Treatment of Civilians in the Hands of a Party to a Conflict or an Occupying Power; and
 - d. Chapter 12, Rights and Duties of Occupying Powers.

SECTION 2 - LAWFUL AND UNLAWFUL TACTICS

602. RUSES

1. Ruses of war are measures taken to obtain advantage of the enemy by confusing or misleading them.

HIVR Art 24; AP I Art 37 (2)

2. Ruses of war are more formally defined as acts, which are intended to mislead an adversary or to induce that adversary to act recklessly. Ruses must not infringe any rule of the LOAC. Ruses are lawful if they are not treacherous, perfidious and do not violate any express or tacit agreement.

HIVR Art 24; AP I Art 37 (2)

3. The following are examples of ruses, which are lawful:
 - a. surprises;
 - b. ambushes;
 - c. feigning attacks, retreats or flights;
 - d. simulating quiet and inactivity;
 - e. giving large strong points to a small force;

- f. constructing works, bridges, etc., which it is not intending to use;
- g. transmitting bogus signal messages, and sending bogus dispatches and newspapers with a view to their being intercepted by the enemy;
- h. making use of the enemy's signals, watchwords, wireless code signs, tuning calls and words of command;
- i. conducting a false military exercise on the wireless on a frequency easily intercepted while substantial troop movements are taking place elsewhere;
- j. pretending to communicate with troops or reinforcements that do not exist;
- k. moving landmarks;
- l. constructing dummy airfields and aircraft;
- m. putting up dummy guns or dummy tanks;
- n. laying dummy mines;
- o. removing badges from uniforms;
- p. clothing the men of a single unit in the uniforms of several different units to induce the enemy to believe that they face a large force; or
- q. giving false ground signals to enable airborne personnel or supplies to be dropped in a hostile area, or to induce aircraft to land in a hostile area.

603. PERFIDY

1. It is prohibited to kill, injure or capture adversaries by resort to perfidy. Acts inviting the confidence of adversaries and leading them to believe that they are entitled to protection or are obliged to grant protection under the LOAC, *with intent to betray that confidence*, constitute perfidy. In other words, perfidy consists of committing a hostile act under the cover of a legal protection.

HIVR Art 23 (b) & (f); AP I Art 37 (1)

2. The following are examples of perfidy if a hostile act is committed while:
- a. feigning an intent to negotiate under a flag of truce or to surrender;
 - b. feigning incapacitation by wounds or sickness;
 - c. feigning civilian, non-combatant status; or
 - d. feigning protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other states not parties to the conflict.

HIVR Arts 23 (f) & 34; AP I Art 37 (1)

604. IMPROPER USE OF THE RED CROSS OR RED CRESCENT

1. It is prohibited to make improper use of the distinctive emblem of the Red Cross or Red Crescent.

AP I Arts 38 (1) & 85 (3) (f)

605. IMPROPER USE OF OTHER EMBLEMS, SIGNS OR SIGNALS

1. It is prohibited:
 - a. to make improper use of the other emblems, signs or signals provided for by the Geneva Conventions or Additional Protocols;
 - b. to deliberately misuse other internationally recognized protective emblems, signs or signals including the flag of truce and the protective emblem of cultural property;
 - c. to make use of the distinctive emblem of the United Nations, except as authorized by that Organization.

AP I Art 38

606. FLAGS, MILITARY EMBLEMS, AND UNIFORMS OF NEUTRAL OR OTHER STATES

1. It is prohibited to make use in armed conflict of the flags or military emblems, insignia or uniforms of *neutral or other states not parties to the conflict*.

AP I Art 39 (1)

607. FLAGS, MILITARY EMBLEMS, AND UNIFORMS OF ADVERSE PARTIES

1. It is prohibited to make use of the flags or military emblems, insignia or uniforms of *adverse parties while engaging in attacks*.

AP I Art 39 (2)

2. When depositing its ratification of Additional Protocol I, Canada reserved the right to make use of the flags or military emblems, insignia or uniforms of adverse parties *to shield, favour, protect or impede military operations*. Any decision to do so should only be carried out with national level approval.

608. DENIAL OF QUARTER

1. It is prohibited to deny quarter. In other words, it is unlawful to order, imply or encourage that no prisoners will be taken; to threaten an adverse party that such an order will be given; or to conduct hostilities on the basis that no prisoners will be taken.

HIVR Art 23 (d); AP I Art 40; AP II Art 4 (1)

2. It is prohibited to attack a combatant who is, or should be recognized as being, *hors de combat* (out of combat).

AP I Art 41 (1) & 85 (3) (e)

3. A combatant is *hors de combat* if that person:
 - a. is in the power of an adverse Party (that is, a prisoner);
 - b. clearly expresses an intention to surrender; or
 - c. has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of self defence;

provided that in any of these cases this person abstains from any hostile act and does not attempt to escape.

AP I Art 41 (2)

609. RELEASE OF PRISONERS WHERE PROPER EVACUATION NOT POSSIBLE

1. Where persons entitled to protection as prisoners of war (PWs) have fallen into the power of an adverse party under unusual conditions of combat that prevent their evacuation as provided for in the GIII, they shall be released and all feasible precautions shall be taken to ensure their safety. For the obligations of a belligerent with respect to the evacuation of PWs, refer to Chapter 10 (Treatment of Prisoners of War).

GIII Art 19 & 20; API Art 41 (3)

2. The “unusual conditions of combat” may include, for example, the capture of a PW by a long-range patrol that does not have the ability to evacuate the PW properly. In such circumstances, there would be an obligation to release the PW and take all feasible precautions to ensure his safety. Such precautions might include providing the PW with sufficient food and water or other aids to assist in rejoining unit lines.

API Art 41 (3)

610. SABOTAGE

1. Sabotage is permitted under the LOAC, so long as the object of the sabotage is a legitimate target. Saboteurs are persons operating behind the lines of an adverse party to commit acts of destruction.

API Art 52 (2)

2. Saboteurs in uniform are combatants and entitled to PW status if captured.

API Art 44 (2) & (3)

3. Civilian saboteurs or saboteurs not in uniform are not so protected and are liable to be treated as spies. Such civilian saboteurs and saboteurs not in uniform may be tried in accordance with the law of the captor and may face the death penalty. They must not, however, be punished without a fair trial.

HIVR Arts 29 & 30; GIV Arts 5 & 68 (2); API Arts 44 (4), 45 (3), 46 & 75

611. ESPIONAGE

1. Espionage is the collection of information clandestinely behind enemy lines or in the zone of operations while wearing civilian clothing or otherwise disguised or concealed. Spies are those who engage in espionage. Although espionage is not contrary to the LOAC, International Law provides that, if they are captured, spies may be tried in accordance with the law of the captor and may be liable to the death penalty following a proper trial.

HIVR Arts 29 & 30; GIV Arts 5 & 68 (2); API Arts 44 (4), 45 (3), 46 & 75

2. Members of the armed forces who engage in intelligence gathering *while in uniform* are not considered to be spies and are entitled to PW status. Members of the armed forces who engage in espionage *while not in uniform* can be considered as spies. For further discussion of the status of persons captured while engaging in espionage, refer to Chapter 3 (Combatant Status).

HIVR Art 29; API Art 46 (1) & (2)

612. ASSASSINATION AND BOUNTY

1. Assassination is prohibited. Assassination means the killing or wounding of a selected non-combatant for a political or religious motive. It is not forbidden, however, to send a detachment or individual members of the armed forces to kill, by sudden attack, a person who is a combatant.

API Art 51 (2)

2. If prior information of an intended assassination should reach the party on whose behalf the act is to be committed, that party should make the utmost effort to prevent its being carried out.
3. It is forbidden to put a price on the head of an enemy individual or to offer a bounty for an enemy "dead or alive."

613. INDISCRIMINATE ATTACKS

1. The bombardment of any legitimate target must not be "indiscriminate." It is prohibited to carry out an attack by bombardment by any means (aircraft, artillery, mortars, naval fire, missiles, etc.) that treats as a single legitimate target a number of clearly separated and distinct legitimate targets in an urban area or an area containing a similar concentration of civilians or civilian objects.

AP I Art 51 (4) & (5) (a) & 85 (3) (b)

2. An attack expected to cause collateral civilian damage that is excessive in relation to the concrete and direct military advantage anticipated is prohibited.

AP I Art 51 (5) (b)

614. SIEGE WARFARE

1. An assault against or bombardment of towns, villages, dwellings or buildings that are undefended is prohibited.

HIVR Art 25; HIX (1) - (4); AP I Arts 59 (1) & 85 (3) (d)

2. Where an area is defended, the commander of an attacking force must take all feasible measures to warn the opposing force of an impending bombardment, except in the case of an assault. The pillage of a town, however, even when taken by assault, is prohibited.

HIVR Arts 26, 28, 47 & 56; HIX Art 7; GIV Art 33 (2); AP I Art 57 (2) (c); AP II Art 4 (2) (g)

3. All necessary steps must be taken to spare, as far as possible, buildings devoted to religion, art, science and charity, hospitals and places where the sick and wounded are collected, provided they are not used at the same time for military purposes. Either the residents or the opposing force in the besieged area should indicate the buildings or places to be protected by visible signs and should notify the attacking force of these signs.

HIVR Art 27; HIX Art 5; 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict Art 4; GI Art 19(1); GIV Art 18 (1) & (4) & 19; AP I Arts 52, 53 (a) & 85 (4) (d); AP II Art 16

4. Diplomatic and consular personnel of a neutral state should not be prevented from leaving a besieged place before hostilities commence. This privilege cannot be claimed while hostilities are in progress. Should the diplomatic and consular personnel of a neutral state voluntarily decide to remain, they must undergo the same risks as other inhabitants.

5. The commander of the attacking force may forbid all communications and access between the besieged place and the outside.

6. If circumstances permit, the parties to a conflict must endeavour to conclude local agreements for the removal from besieged areas of wounded, sick, infirm, and aged persons, children and maternity cases. The parties should also permit passage to these areas of:
 - a. ministers of all religions;
 - b. medical personnel and medical equipment;
 - c. consignments of medical and hospital stores;

- d. objects necessary for religious worship intended for the use of civilians; and
- e. essential foodstuffs, clothing, and tonics intended for children under the age of 15, expectant mothers, and maternity cases.

GI Art 15 (3); GII Art 18 (2); GIV Arts 17 & 23 (1); AP I Art 70 (1) & (2)

7. The parties to a conflict are obliged to facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel.

GIV Art 23

8. No rule compels the commander of an attacking force to permit non-combatants to leave a besieged locality. It is within the discretion of the besieging commander whether or not non-combatants will be permitted to leave and under what conditions.

615. USE OF PROTECTED PERSONS TO RENDER A TARGET IMMUNE FROM ATTACK

1. The use of protected persons such as civilians or PWs to render legitimate targets immune from attack is prohibited.

GIV Art 28; AP I Art 51 (7)

616. CULTURAL AND RELIGIOUS OBJECTS

1. All necessary steps must be taken to spare, as far as possible, cultural and religious objects, provided they are not being used at the time for military purposes. The circumstances in which cultural and religious objects may become legitimate targets are fully described in Chapter 4 (Targeting).

HIVR Art 27; AP I Art 53

617. TERRORIZING THE CIVILIAN POPULATION

1. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited. The protection of civilians is a fundamental principle of the LOAC. A campaign of threats or violence designed to terrorize the civilian population is simply not acceptable under any circumstances, even where the civilian population exhibits a hostile attitude toward the presence of the CF.

AP I Art 51 (2); AP II Art 13 (2)

618. STARVATION OF THE CIVILIAN POPULATION

1. Starvation of civilians as a method of warfare is prohibited. Therefore, it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population whatever the motive. The circumstances in which objects indispensable to the survival of the civilian population may be attacked are fully described in Chapter 4 (Targeting).

AP I Art 54 (1); AP II Art 14

619. SCORCHED EARTH POLICY ON NATIONAL TERRITORY

1. Where a party to a conflict is defending its national territory against invasion, it may destroy objects indispensable to the survival of the civilian population with intent to deny their use by the enemy if:

- a. the objects are within national territory of and under the control of the party; and
- b. their destruction is required by imperative military necessity.

API Art 54 (5)

2. Where such an extreme measure is taken, the destruction of objects indispensable to the survival of the civilian population should not leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

620. PROTECTION OF THE ENVIRONMENT

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare that are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

API Art 35 (3)

2. In addition, Canada as a party to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD Convention) has undertaken not to engage in any military or hostile use of environmental modification techniques as the means of destruction, damage or injury to any other state, which is a party to the Convention.

1976 Convention on the Prohibition of Military or any Hostile use of Environmental Modification Techniques Art 1 (1)

3. An "environmental modification technique" is any technique for changing, through the deliberate manipulation of natural processes, the dynamics, composition or structure of the earth which would have widespread, long-term or severe effects.

1976 Convention on the Prohibition of Military or any Hostile use of Environmental Modification Techniques Art 2

SECTION 3 - PROPERTY ON THE BATTLEFIELD

621. DESTRUCTION OR SEIZURE OF ENEMY PROPERTY

1. The destruction or seizure of enemy property, whether it belongs to private individuals or to the state, is forbidden unless the damage or seizure is imperatively demanded by the necessities of war.

HIVR Art 56

622. BOOTY OF WAR

1. All enemy public movable property captured or found on a battlefield is known as "booty" and becomes the property of the capturing state. Booty includes all articles captured with PWs other than their personal property. For further details, refer to Section 3 of Chapter 10 (Treatment of Prisoners of War).

HIVR Art 53; GIII Art 18 (1)

623. ENEMY PRIVATE PROPERTY

1. Enemy private movable property, other than arms and military papers captured or found on a battlefield, may be appropriated only to the extent such taking is permissible in an occupied area. For further details, refer to Section 6 of Chapter 12 (Rights and Duties of Occupying Powers).

HIVR Arts 46, 53; GIV Art 53

624. PILLAGE

1. Pillage, the violent acquisition of property for private purposes, is prohibited. Pillage is theft, and therefore is an offence under the *Code of Service Discipline*.

HIVR Art 47; GIV Art 33 (2); AP II Art 4 (2) (g)

CHAPTER 7

LAW RELATING TO THE CONDUCT OF HOSTILITIES IN THE AIR

SECTION 1 - INTRODUCTION

701. AIM

1. This chapter summarizes the Law of Armed Conflict (LOAC) concerning the conduct of hostilities in the air, including air to land and air to sea operations.

2. To obtain a complete overview of the law relating to the conduct of air operations/warfare, this chapter must be read in conjunction with Chapter 4 (Targeting) and Chapter 5 (Restrictions On The Use Of Weapons).

702. GENERAL

1. Where air bombardment is concerned, the major elements used in determining whether or not operations are legitimate include:

- a. is the objective of the operation a legitimate target; and
- b. is the attack expected to cause collateral civilian damage which would be excessive in relation to the concrete and direct military advantage anticipated.

AP I Art 51 (5) (b) & 52 (2)

2. Additional Protocol I (AP I) is the first treaty which contains a series of provisions intended to regulate the conduct of air bombardment. Many of the AP I provisions codify pre-existing customary international law. For this reason states are obliged to comply with the substance of these provisions, whether or not they have ratified AP I.

703. AREAS OF OPERATION IN AN ARMED CONFLICT

1. **General Area of Air Warfare.** During an armed conflict, parties to the conflict are entitled to conduct air operations in the national airspace of any party to the conflict and international airspace. However, operations in international airspace must be conducted with due regard for the rights of those who are not parties to the conflict.

2. **Operational Zones.** Parties to a conflict may, by appropriate notice, establish areas of immediate air operations where they pursue combat activities. Such zones may exist over the territories and territorial waters of all states involved in the hostilities. All aircraft entering such zones, including the aircraft of neutral states, risk damage from the hostilities.

3. **Neutral Airspace.** Military aircraft must not enter the airspace of a neutral state, even in hot pursuit of a hostile aircraft unless the neutral airspace is a known sanctuary for the hostile aircraft.

H RAW Art 40

4. Military aircraft entering neutral airspace may be attacked by aircraft of the neutral state in defence of their neutrality and may be liable for damage sustained by the neutral state as a result of the unlawful intrusion.

H RAW Art 42

5. A neutral state has the duty to prevent, by force if necessary, intrusions into its airspace by belligerent aircraft. If the neutral state cannot or does not prevent violations of its airspace by one belligerent, opposing belligerents are entitled to take appropriate measures including entry into the neutral

airspace to attack the adversary. Such a decision, however, is a political rather than a military one and should only be taken at the governmental level.

H RAW Art 42 (1); SRM para 18

6. Where a military aircraft is brought down or lands in the territory of a neutral state, the aircraft and its occupants will be interned by the neutral state until the conflict is over. The aircraft and its occupants will then be returned to their state.

H RAW Art 42 (2); SRM para 18

704. COMBATANT STATUS AND INSIGNIA

1. **Military Aircraft.** All aircraft used in armed conflict should be clearly marked with national insignia indicating that they are military aircraft. Those markings normally include both national colours and an emblem indicating the military character of the aircraft. In some cases, however, it may consist of only one mark as it is accepted in practice that the military aircraft of some countries carry accepted markings that are neither national colours or flags.

H RAW Art 3

2. A belligerent or joint command (such as NATO) may inform adverse parties of the emblem its military aircraft will bear (for example, IFOR). Occupants of properly identified aircraft are lawful combatants. Occupants of aircraft not so marked are not lawful combatants.

H RAW Art 3

3. **Civil Aircraft.** Civil aircraft and state aircraft that are not military aircraft (for example, police or customs aircraft) may not engage in hostilities even if their crew and/or their passengers are members of the armed forces.

H RAW Art 16

SECTION 2 - LAWFUL AND UNLAWFUL TACTICS

705. RUSES

1. Ruses of war are measures taken to obtain advantage of the enemy by confusing or misleading them.

HIVR Art 24; API Art 37 (2)

2. Ruses of war are more formally defined as acts that are intended to mislead an adversary or to induce that adversary to act recklessly. Ruses must not infringe any rule of the LOAC. Ruses are lawful if they are not treacherous, perfidious and do not violate any express or tacit agreement. Examples of legitimate ruses include camouflage, decoys and fake radio signals.

API Art 37 (2)

706. PERFIDY

1. It is prohibited to kill, injure or capture adversaries by resort to perfidy. Acts inviting the confidence of adversaries and leading them to believe that they are entitled to protection or are obliged to grant protection under the LOAC, *with intent to betray that confidence*, constitute perfidy. In other words, perfidy consists of committing a hostile act under the cover of a legal protection.

SRM para 111; AP I Art 37 (1)

2. The following are examples of perfidy if a hostile act is committed while:
 - a. feigning an intent to negotiate under a flag of truce or to surrender;
 - b. feigning incapacitation by wounds or sickness;
 - c. feigning civilian, non-combatant status; or
 - d. feigning protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other states not parties to the conflict.

AP I Art 37 (1)

3. The following are examples of perfidy in air warfare if a hostile act is committed while:
 - a. using false markings on military aircraft such as the markings of civil aircraft, medical aircraft, United Nations aircraft or enemy aircraft; and
 - b. feigning surrender of an aircraft and then firing on an unsuspecting adversary after such surrender was accepted.

HRAW Art 19; AP I Art 37 (1) (a)

4. It is not unlawful to use captured enemy aircraft. However, the enemy's markings must be removed.

AP I Art 39 (2); SRM para 110

707. QUARTER / SURRENDER

1. It is prohibited to deny quarter. In other words it is unlawful to order, imply or encourage that no prisoners are to be taken; to threaten an adverse party that such an order will be given; or to conduct hostilities on the basis that no prisoners will be taken.

HIVR Art 23 (d); AP I Art 40; AP II Art 4 (1)

2. It is prohibited to attack a combatant who is, or should be recognized as being, *hors de combat* (out of combat).

AP I Art 41 (1)

3. A combatant is *hors de combat* when that person:
 - a. is in the power of an adverse party (that is, a prisoner);
 - b. clearly expresses an intention to surrender; or
 - c. has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of self-defence;

provided that in any of these cases such combatant abstains from any hostile act and does not attempt to escape.

AP I Art 41 (2)

4. Surrenders in air combat are not generally offered. Nevertheless, surrenders by aircraft have been made on occasion. Surrender when offered in good faith must be respected. Surrenders by defecting enemy aircrew of military aircraft offer intelligence and psychological operations opportunities.

5. Disabled enemy aircraft in air combat are frequently pursued to destruction because of the impossibility of verifying their true status and inability to enforce surrender (that is, to take the enemy into your power or control). Although disabled, an aircraft may or may not have lost its means of combat. Moreover, it still may represent a valuable military asset. If an aircraft is clearly in distress, the attack may be broken off to permit possible evacuation by crew or passengers.

6. Aircraft may not open fire on any personnel who have indicated an intention to surrender, provided they can be taken into your power or effective control. This applies to ships as well as land forces. Nor may they fire upon shipwrecked personnel, including those who may have parachuted into the sea or otherwise come from downed aircraft, unless they carry out acts inconsistent with their status as “hors de combat.”

HIVR Art 23 (c); GII Art 12(1); API Art 42 (2)

708. STARVATION OF THE CIVILIAN POPULATION

1. Starvation of civilians as a method of warfare is prohibited. Therefore, it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population whatever the motive. The circumstances in which objects indispensable to survival of the civilian population may be attacked are fully described in Chapter 4 (Targeting).

API Art 54 (1) & (2); AP II Art 14

709. PROTECTION OF THE ENVIRONMENT

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare, which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

API Art 55 (1)

2. In addition, Canada as a party to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) has undertaken not to engage in any military or hostile use of environmental modification techniques as the means of destruction, damage or injury to any other state, which is party to the Convention.

1976 Convention on the Prohibition of Military or any Hostile use of Environmental Modification Techniques Art 1 (1)

3. Environmental modification techniques are defined by the ENMOD Convention as any technique for changing, through the deliberate manipulation of natural processes, the dynamics, composition or structure of the earth, which would have widespread, long-term or severe effects.

1976 Convention on the Prohibition of Military or any Hostile use of Environmental Modification Techniques Art 2

710. PSYCHOLOGICAL OPERATIONS

1. The use of military aircraft for the purpose of disseminating propaganda from the air is well established in aerial warfare. Dissemination of propaganda by military aircraft includes dropping of leaflets, air to ground broadcasts and the like.

2. Propaganda for the purposes of inducing enemy combatants to rebel, desert, or surrender is not prohibited. Inducements may take the form of monetary rewards. Although the LOAC sanctions the use of military aircraft and aircrews to deliver propaganda, not all forms of propaganda are lawful. Propaganda which would incite illegal acts of warfare, as for example killing civilians, killing or wounding by treachery or the use of poison or poisonous weapons, is prohibited.

H RAW Art 21

SECTION 3 - AIR TO AIR OPERATIONS

711. GENERAL

1. Enemy military aircraft may be attacked and destroyed in any airspace other than neutral airspace. Enemy military aircraft may be captured anywhere other than in neutral jurisdiction. Ownership passes to the captor's government by virtue of the capture. The possibility, in modern warfare, of effecting capture in air to air combat does not, however, appear to be a realistic one.

SRM Art 16 (a)

2. A military aircraft is always a legitimate target in armed conflict unless it is entitled to protection as a medical aircraft or to specific protection by agreement between the parties concerning non-hostile uses such as negotiations to conclude hostilities, cease fire, surrender, exchange of prisoners or the exchange of official communications. In all such circumstances, the agreement should include appropriate markings and other means of identification. In the absence of entitlement to protection the status of personnel on board a military aircraft is irrelevant; their individual status is subsumed to the military character of the aircraft until such time as they leave it.

SRM para 55

3. All reasonable precautions should be taken during the conduct of military operations in the air to avoid losses of civilian lives and damage to civilian objects.

AP I Art 48

712. PARACHUTISTS AND DOWNED AIRCREW

1. Aircrew descending by parachute from a disabled aircraft are immune from attack. If such personnel land in enemy territory they must be given an opportunity to surrender before being made the object of an attack, unless it is apparent that they are engaging in some hostile act.

AP I Art 42 (1) & (2)

2. If personnel from a disabled aircraft do not surrender on being called upon to do so, they may be attacked in the same way as any other combatant. If a member of the crew of a disabled aircraft lands by parachute in territory occupied by his own forces or under the control of his own national authority, he may be attacked by the enemy in the same way as any other combatant, unless he is *hors de combat* (out of combat), in which case he is protected.

AP I Arts 42 & 43

3. Paratroops and other airborne troops may be attacked even during their descent.

AP I Art 42 (3)

713. SEARCH AND RESCUE OPERATIONS

1. It is permitted to attack members of the adverse party attempting to rescue aircrew who have crashed, unless such rescuers are protected as medical personnel attempting to rescue injured aircrew. In such cases, the aircrew and rescuers are protected in accordance with the Geneva Conventions.

AP I Art 12; SRM Art 53

714. CIVIL AIRCRAFT

1. Civil aircraft (including state aircraft which are not military aircraft) in flight should not be attacked. They are presumed to be carrying civilians who may not be made the object of direct attack. If there is doubt as to the status of civil aircraft, it should be called upon to clarify that status. If it fails to do so, or is engaged in support of military activities, such as ferrying troops, it may be attacked. Civil aircraft should avoid entering areas that have been declared combat zones by the belligerents, since this increases the risk of their being attacked.

SRM paras 53, 56 & 63 & Part III Sect VI

2. Aircraft that have not been absorbed into a belligerent's air force and are being ferried from the manufacturer to a belligerent for this purpose may be attacked.

3. Civilian crewmembers of a military aircraft, together with those responsible for ferrying aircraft intended for military use, become prisoners of war if captured by the adverse party.

GIV Art 4 (A) (4)

4. If a civil aircraft has been lawfully attacked, members of the crew become prisoners of war. Otherwise, any civilian passengers surviving the attack should be freed or held in accordance with the provisions of the Geneva Convention for the Protection of Civilians (GIV).

GIV Art 4; AP I Art 50 (1)

5. Civil aircraft on the ground may only be attacked in accordance with the normal rules relating to legitimate targets. However, since they may be used for transporting troops or supplies, their status will frequently depend upon the prevailing military situation. In addition, airfields are subject to attack, and incidental damage to civil aircraft on the ground does not render the attack unlawful.

AP I Arts 51 (5) (b) & 52 (2)

715. MEDICAL AIRCRAFT

1. Medical aircraft, correctly identified and exclusively used as such, are immune from attack.

AP I Art 24

2. The parties to a conflict may, by agreement, confer immunity from attack upon specific aircraft. Such aircraft remain protected so long as they take no part in hostilities and rigorously respect the conditions laid down in the agreement.

AP I Art 26 - 29; SRM paras 54, 55 & 177

SECTION 4 - AIR TO LAND OPERATIONS

716. BASIC ATTACK RULES

1. This section is to be read in conjunction with the general rules regarding targeting contained in Chapter 4 (Targeting).

2. The civilian population as a whole, as well as individual civilians, shall not be the object of attack. Civilians shall enjoy this protection unless and for such time as they take a direct part in hostilities.

AP I Art 51 (2) & (3)

3. Air to land operations must be conducted in accordance with the principle of proportionality. This implies that collateral civilian damage must never be excessive in relation to the concrete and direct military advantage anticipated.

AP I Art 51 (5) (b)

4. Indiscriminate attacks, as defined in Chapter 4 (Targeting), are prohibited.

AP I Art 51 (4)

5. When a choice is possible between several legitimate targets for obtaining a similar military advantage, the target to be selected shall be the one where the attack may be expected to cause the least danger to civilian lives and to civilian objects.

AP I Art 57 (3)

6. An attack shall be cancelled or suspended if it becomes apparent that the objective is not a legitimate target or is subject to special protection, or that the attack may be expected to cause collateral civilian damage, which would be excessive in relation to the concrete and direct military advantage anticipated.

AP I Art 57 (2) (b)

SECTION 5 - AIR TO SEA OPERATIONS

717. ENEMY WARSHIPS AND NAVAL AUXILIARIES

1. Enemy warships and naval or military auxiliaries may be attacked or captured outside neutral jurisdiction.

718. ENEMY MERCHANT VESSELS

1. Enemy merchant vessels may be captured outside neutral jurisdiction.

2. Enemy merchant vessels become legitimate targets and may be attacked if they:

- a. engage in belligerent acts on behalf of the enemy (for example, laying mines, minesweeping, cutting undersea cables and pipelines, engaging in visit and search of neutral merchant vessels or attacking other merchant vessels);
- b. act as an auxiliary to an enemy's armed forces (for example, carrying troops or replenishing warships);
- c. are incorporated into or assisting the enemy's intelligence gathering system (for example, engaging in reconnaissance, early warning, surveillance, or command, control and communications missions);
- d. sail under convoy of enemy warships or military aircraft;
- e. refuse an order to stop or actively resist visit, search or capture;
- f. are armed to an extent that they could inflict damage to a warship (this excludes light individual weapons for the defence of personnel and purely deflective systems such as "chaff"; or
- g. otherwise making an effective contribution to military action.

SRM paras 59 & 60

3. Enemy merchant vessels may be attacked and destroyed if they are incorporated into the belligerent war effort. a decision concerning whether or not enemy merchant vessels may be generally deemed to be incorporated into the belligerent war effort will be made at the governmental level. Indicators that all enemy merchant shipping is incorporated into the belligerent war effort include:

- a. state control over merchant shipping to ensure that only items essential to the war effort are imported or exported;
- b. general use of convoys;
- c. general integration of merchant vessels into intelligence networks by, for example, requiring reports of sighting of all enemy vessels or aircraft;
- d. standing instructions to resist submarines by ramming; and
- e. arming of merchant vessels.

4. If practicable, enemy merchant vessels should be warned prior to the commencement of an attack.

API Art 57 (2) (c)

719. NEUTRAL MERCHANT VESSELS

1. Neutral merchant vessels are subject to capture outside neutral waters if they:

- a. are believed on reasonable grounds to be carrying contraband or breaching a blockade, and after prior warning they intentionally and clearly refuse to stop, or intentionally and clearly resist visit, search or capture;
- b. engage in belligerent acts on behalf of the enemy;
- c. act as auxiliaries to the enemy's armed forces;
- d. are incorporated into or assist the enemy's intelligence system;
- e. sail under convoy of enemy warships or military aircraft; or
- f. otherwise make an effective contribution to the enemy's military action.

SRM para 67

2. Neutral merchant vessels may also be captured if it is determined as a result of visit and search or by other means, that they:

- a. are carrying contraband;
- b. are on a voyage especially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy;
- c. are operating directly under enemy control, orders, charter, employment or direction;
- d. present irregular or fraudulent documents, lack necessary documents, or destroy, deface or conceal documents;
- e. are violating regulations established by a belligerent within the immediate area of naval operations;
or
- f. are breaching or attempting to breach a blockade.

SRM para 146

3. Neutral merchant vessels become legitimate targets and may be attacked if they:
 - a. are believed on reasonable grounds to be carrying contraband or breaching a blockade, and after prior warning they intentionally and clearly refuse to stop, or intentionally and clearly resist visit, search or capture;
 - b. engage in belligerent acts on behalf on the enemy;
 - c. act as auxiliaries to the enemy's armed forces;
 - d. are incorporated into or assist the enemy's intelligence system;
 - e. sail under convoy of enemy warships or military aircraft; or
 - f. otherwise make an effective contribution to the enemy's military action.

SRM para 67

4. If practicable, neutral merchant vessels should be warned prior to the commencement of an attack.

SRM para 67

720. ENEMY VESSELS EXEMPT FROM ATTACK

1. The following enemy vessels are protected and may not be attacked:
 - a. hospital ships;
 - b. small craft used for coastal rescue operations and other medical transports;
 - c. vessels granted safe conduct by agreement between the belligerent parties (for example, vessels transporting PWs or engaged in humanitarian missions);
 - d. vessels engaged in transporting cultural property under special protection;
 - e. passenger vessels carrying only civilian passengers;
 - f. vessels charged with religious, non-military scientific or philanthropic missions;
 - g. small coastal fishing vessels and small boats engaged in local coastal trade, but they are subject to the regulations of a belligerent naval commander operating in the area and to inspection;.
 - h. vessels which have surrendered; and
 - i. life rafts and life boats.

SRM para 47

721. CONDITIONS OF PROTECTION

1. The vessels listed in paragraph 60 are protected and exempt from attack only if they:
 - a. are innocently employed in their normal role;
 - b. submit to identification and inspection when required; and

- c. do not intentionally hamper the movement of combatants and obey orders to stop or move out of the way when required.

SRM para 48

722. LOSS OF PROTECTION BY HOSPITAL SHIPS

1. A hospital ship loses its protection from attack if it violates any of the three conditions in paragraph 61. However, a hospital ship's protection is lost only after due warning has been given with a reasonable time limit to terminate the violation, and such warning has remained unheeded.

SRM para 49

2. A hospital ship that persists, after a warning, in violating a condition of its protection renders itself liable to capture or other necessary measures to enforce compliance.

SRM para 50

723. ATTACK AGAINST A HOSPITAL SHIP

1. A hospital ship may only be attacked as a last resort if:
 - a. diversion or capture is not feasible;
 - b. no other method is available for exercising military control;
 - c. the circumstances of non-compliance are sufficiently grave that the hospital ship has become, or may be reasonably assumed to be, a legitimate target; and
 - d. the collateral casualties or damage will not be disproportionate to the military advantage gained or expected.

SRM para 51

724. ATTACK AGAINST OTHER PROTECTED VESSELS

1. If any other protected vessel breaches the conditions in paragraph 61, it may be attacked only if:
 - a. diversion or capture is not feasible;
 - b. no other method is available for exercising military control;
 - c. the circumstances of non-compliance are sufficiently grave that the vessel has become, or may be reasonably assumed to be, a legitimate target; and
 - d. the collateral casualties or damage will not be disproportionate to the military advantage gained or expected.

SRM para 52

CHAPTER 8
LAW RELATING TO THE CONDUCT OF HOSTILITIES AT SEA
SECTION 1 - INTRODUCTION

801. AIM

1. The aim of this chapter is to summarize the rules concerning the conduct of hostilities at sea. This chapter must be read in conjunction with Chapter 4 (Targeting), Chapter 5 (Restrictions On The Use Of Weapons) and Chapter 13 (Rights and Duties of Neutral Powers).
2. This chapter is derived from the San Remo Manual on International Law Applicable to Armed Conflicts at Sea². Drafted by an international group of specialists in international law and naval experts, the San Remo Manual is the most up to date version of the law taking into account recent developments such as the 1982 UN Law of the Sea Convention (UNCLOS).

802. GEOGRAPHICAL TERMS

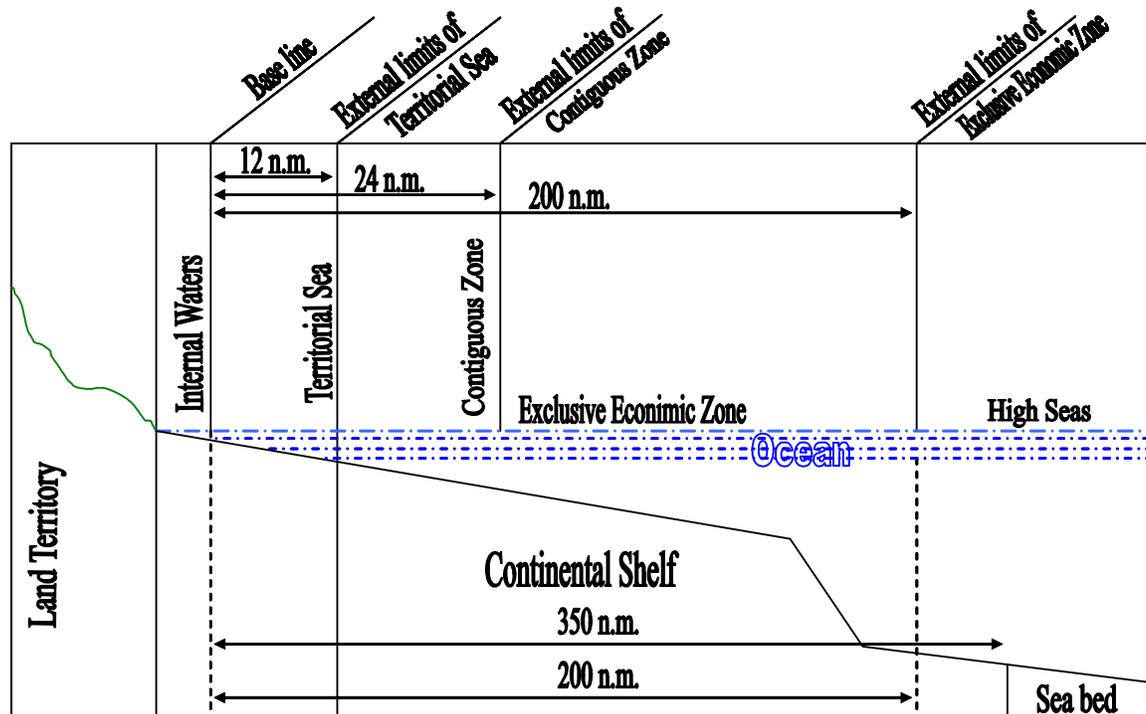


Figure 8-1 Law of the Sea Geographical Terms

1. The following diagram illustrates geographical terms used in relation to the law of the sea.

All distances shown are maximum distances in nautical miles (n.m.)

² *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*. International Institute of Humanitarian Law, Cambridge: Cambridge University Press, 1995.

803. UN CONVENTION ON THE LAW OF THE SEA

1. The following terms used in this chapter are defined in the Glossary: transit passage; international straits; archipelagic sea lanes; archipelagic waters; archipelagic sea lanes passage and innocent passage. These definitions are derived from UNCLOS, which is the most accepted source for the law of the sea.

804. AREAS OF NAVAL WARFARE

1. As a general rule, hostile actions by naval forces may be conducted in, on or over:
 - a. the territorial sea and internal waters; the land territories; the exclusive economic zone (EEZ) and continental shelf ; and the archipelagic waters, of belligerent States;
 - b. the high seas; and
 - c. the EEZ and the continental shelf of neutral states.

SRM para 10

2. Parties to the conflict are encouraged to agree that no hostile actions will be conducted in marine areas containing:

- a. rare or fragile ecosystems; or
- b. the habitat of depleted, threatened or endangered species or other forms of marine life.

SRM para 11

3. In carrying out operations in areas where neutral states enjoy sovereign rights, jurisdiction, or other rights under International Law, belligerents shall have due regard for the legitimate rights and duties of those neutral states.

SRM para 12

SECTION 2 - MARITIME OPERATIONS IN NEUTRAL WATERS, TERRITORIAL SEAS AND ARCHIPELAGIC WATERS

805. NEUTRAL WATERS AND AIRSPACE

1. "Neutral waters" are the internal waters, territorial sea, and archipelagic waters of neutral states. "Neutral airspace" is the airspace over neutral waters and the land territory of neutral states.

SRM para 14

806. HOSTILE ACTIONS FROM OR IN NEUTRAL WATERS

1. Hostile actions by belligerent forces are forbidden within and over neutral waters, including neutral waters comprising an international strait and waters in which the right of archipelagic sea lanes passage may be exercised.

SRM para 15

2. Examples of "hostile actions include:

- a. attack on or capture of persons or objects located in, on or over neutral waters or territory;

- b. use of neutral waters or territory as a base of operations, including attack on or capture of persons or objects located outside neutral waters, if the attack or seizure is conducted by belligerent forces located in, on or over neutral waters;
- c. laying of mines; or
- d. visit and search, diversion or capture.

SRM para 16

807. USE OF NEUTRAL WATERS AS A SANCTUARY

- 1. Belligerent forces may not use neutral waters as a sanctuary.

SRM para 17

808. REGULATION OF PASSAGE THROUGH NEUTRAL WATERS

- 1. A neutral state may, on a non-discriminatory basis, impose conditions or prohibit entry to or innocent passage through its neutral waters by belligerent warships and auxiliary vessels. However, a neutral state may not interfere with transit passage or archipelagic sea lanes passage as described in paragraphs 21 and 24.

SRM paras 19, 29 & 31

809. ACTIONS PERMITTED IN NEUTRAL WATERS

- 1. A neutral state has a duty of impartiality. However, a neutral state may, without jeopardizing its neutrality, permit the following acts within its neutral waters:
 - a. innocent passage through its territorial sea or its archipelagic waters by warships, auxiliary vessels and prizes of belligerent states (warships, auxiliary vessels and prizes may employ pilots of the neutral state during passage);
 - b. replenishment by a belligerent warship or auxiliary vessel of its food, water and fuel sufficient to reach a port in its own territory; and
 - c. repairs of belligerent warships or auxiliary vessels found necessary by the neutral state to make them seaworthy, but such repairs may not restore or increase their fighting strength.

SRM para 20

810. TIME LIMIT ON PASSAGE THROUGH NEUTRAL WATERS

- 1. A belligerent warship or auxiliary vessel may not extend the duration of its passage through neutral waters, or its presence in those waters for replenishment or repair, for longer than 24 hours unless unavoidable on account of damage or the stress of weather. This rule does not apply in international straits and waters in which the right of archipelagic sea lanes passage is exercised.

SRM para 21

- 2. While belligerent forces may exercise the right of innocent passage, they may be considered to have used neutral waters as a “base of operations” if their presence in those waters is for the purpose of gaining military advantage (i.e., the hostile actions described in paragraph 10).

SRM para 16

811. DUTY OF STATE TO PREVENT VIOLATIONS OF NEUTRALITY

1. A neutral state is under an obligation to take the measures necessary to terminate a violation of its neutrality by a belligerent.

SRM para 15

2. If the neutral state fails to terminate the violation of its neutral waters by a belligerent, the opposing belligerent must notify the neutral state and give it a reasonable time to terminate the violation. The belligerent may, in the absence of any feasible and timely alternative, use such force as is strictly necessary to respond to the threat posed by the violation.

SRM para 22

**SECTION 3 - MARITIME OPERATIONS IN INTERNATIONAL STRAITS AND
ARCHIPELAGIC SEA LANES**

**812. TRANSIT PASSAGE OF BELLIGERENTS THROUGH NEUTRAL INTERNATIONAL STRAITS
AND ARCHIPELAGIC SEA LANES**

1. Belligerent warships, auxiliary vessels and military or auxiliary aircraft may exercise the rights of transit passage through, under or over neutral international straits and the rights of archipelagic sea lanes passage (ASL passage) provided by International Law.

SRM para 23

813. NEUTRALITY OF BORDER STATES

1. The neutrality of a state bordering an international strait is not jeopardized by the transit passage of belligerent warships, auxiliary vessels, or military or auxiliary aircraft, nor by the innocent passage of belligerent warships or auxiliary vessels through that strait.

SRM para 24

814. NEUTRALITY OF ARCHIPELAGIC STATES

1. The neutrality of an archipelagic state is not jeopardized by the exercise of ASL passage by belligerent warships, auxiliary vessels, or military or auxiliary aircraft.

SRM para 25

**815. TRANSIT PASSAGE OF NEUTRALS THROUGH BELLIGERENT INTERNATIONAL STRAITS
AND ARCHIPELAGIC WATERS**

1. Neutral warships, auxiliary vessels, military and auxiliary aircraft may exercise the rights of transit passage provided by International Law through, under and over belligerent international straits and archipelagic waters. The neutral state should, as a precautionary measure, give timely notice of its exercise of the rights of passage to the belligerent state.

SRM para 26

816. TRANSIT PASSAGE AND ARCHIPELAGIC SEA LANES PASSAGE

1. The rights of transit passage and ASL passage applicable to international straits and archipelagic waters in peacetime continue to apply in times of armed conflict. The laws and regulations of states

bordering straits and archipelagic states relating to transit passage and ASL passage adopted in accordance with International Law remain applicable.

SRM para 27

2. Belligerent and neutral surface ships, submarines and aircraft have the rights of transit passage and ASL passage through, under, and over all straits and archipelagic waters to which these rights generally apply.

SRM para 28

817. NEUTRAL REGULATION OF TRANSIT PASSAGE AND ARCHIPELAGIC SEA LANES PASSAGE

1. Neutral states may not suspend, hamper or otherwise impede the right of transit passage or the right of ASL passage.

SRM para 29

818. OBLIGATIONS OF A BELLIGERENT IN TRANSIT PASSAGE OR ARCHIPELAGIC SEA LANES PASSAGE

1. A belligerent in transit passage through, under and over a neutral international strait, or in ASL passage through, under and over neutral archipelagic waters, is required:

- a. to proceed without delay,
- b. to refrain from the threat or use of force against the territorial integrity or political independence of the neutral littoral or archipelagic state, or in any other manner inconsistent with the purposes of the Charter of the United Nations, and
- c. otherwise to refrain from any hostile actions or other activities not incident to their transit.

SRM para 30

819. DEFENSIVE MEASURES BY BELLIGERENTS IN TRANSIT PASSAGE OR ARCHIPELAGIC SEA LANES PASSAGE

1. Belligerents passing through, under and over neutral straits or waters in which the right of ASL passage applies are permitted to take defensive measures consistent with their security, including launching and recovery of aircraft, screen formation steaming and acoustic and electronic surveillance. Belligerents in transit or ASL passage may not, however, conduct offensive operations against enemy forces, nor use such neutral waters as a place of sanctuary, nor as a base of operations.

SRM para 30

820. INNOCENT PASSAGE

1. In addition to the exercise of the rights of transit and ASL passage, belligerent vessels and auxiliary vessels may exercise the right of innocent passage through neutral international straits and archipelagic waters in accordance with international law. However, belligerents must observe regulations that may be imposed by bordering neutral states and time limits for travel as described in paragraphs 9 and 11.

SRM paras 15, 17 & 31

2. Neutral vessels may likewise exercise the right of innocent passage through belligerent international straits and archipelagic waters.

SRM para 32

3. The right of non-suspendable innocent passage ascribed to certain international straits by International Law may not be suspended in time of armed conflict.

SRM para 33

SECTION 4 - MARITIME OPERATIONS IN THE EXCLUSIVE ECONOMIC ZONE AND OVER THE CONTINENTAL SHELF

821. REGARD FOR RIGHTS OF COASTAL STATE

1. If hostile actions are conducted within the EEZ or over the continental shelf of a neutral state, belligerent states shall have due regard for the rights and duties of that state including:

- a. the exploration and exploitation of the economic resources of the EEZ and the continental shelf, and
- b. the protection and preservation of the marine environment.

2. They shall, in particular, have due regard for artificial islands, installations, structures and safety zones established by neutral states in the EEZ and on the continental shelf.

SRM para 34

822. MINES IN THE EXCLUSIVE ECONOMIC ZONE OR CONTINENTAL SHELF

1. If a belligerent lays mines in the EEZ or the continental shelf of a neutral state, the belligerent shall notify that state and:

- a. shall ensure that the size of the minefield and the type of mines used do not endanger artificial islands, installations and structures, nor interfere with access thereto, and
- b. shall avoid so far as practicable interference with the exploration or exploitation of the zone by the neutral state.

2. Due regard shall also be given to the protection and preservation of the marine environment.

SRM para 35

SECTION 5 - MARITIME OPERATIONS ON THE HIGH SEAS AND SEA-BED BEYOND NATIONAL JURISDICTION

823. REGARD FOR RIGHTS OF NEUTRALS

1. Hostile actions on the high seas shall be conducted with due regard for the exercise by neutral states of rights of exploration and exploitation of the natural resources of the sea-bed, ocean floor, and the subsoil thereof, beyond the national jurisdiction of that state.

SRM para 36

824. CABLES AND PIPELINES

1. Belligerents shall take care to avoid damage to cables and pipelines laid on the sea-bed which do not exclusively serve the belligerents.

SRM para 37

SECTION 6 - TARGETING IN MARITIME OPERATIONS

825. TARGETING

1. The principles of targeting summarized in Chapter 4 apply fully to maritime operations. However, for greater clarity the targets likely to be encountered in maritime operations are discussed in greater detail in sections below.

826. SUBMARINES

1. Submarines, in their actions towards merchant ships, must conform to the same LOAC rules to which surface ships are subject. In particular, except in the case of a persistent refusal to stop on being summoned or of active resistance to visit and search, a warship, whether vessel or submarine, may not sink or render incapable of navigation a merchant ship without having first placed passengers, crew and ship's papers in a place of safety.

1936 London Procès-Verbal Relating to the Rules of Submarine Warfare Set Forth in Part IV of the Treaty of London of 22 April 1930 Rules (1) & (2); SRM paras 60 (e), 67 (a), 139 & 151

2. For this purpose, the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity to land or the presence of another vessel, which is in a position to take them aboard.

1936 London Procès-Verbal Relating to the Rules of Submarine Warfare Set Forth in Part IV of the Treaty of London of 22 April 1930 Rule (2); SRM para 139 (a)

3. This rule, as part of the London Protocol of 1936 on submarine warfare, further defined "merchant ships" as not including ships that are incorporated into the belligerent's war effort. Thus, under this rule merchant ships under convoy of enemy warships or military aircraft may be attacked because they are deemed to be resisting visit or search.

827. INDISCRIMINATE ATTACKS

1. The bombardment of any legitimate target must not be "indiscriminate". It is prohibited to carry out an attack by bombardment by any means (such as aircraft, naval fire and missiles) that treats as a single legitimate target a number of clearly separated and distinct legitimate targets in an urban area or an area containing a similar concentration of civilians or civilian objects.

AP I Art 51 (5) (a)

2. This prohibition applies to shore bombardments by naval forces. In this respect, "shore bombardments" include bombardments from both ships and aircraft.

3. An attack expected to cause collateral civilian damage that is excessive in relation to the concrete and direct military advantage anticipated is prohibited.

AP I Art 51 (5) (b)

SECTION 7 - PROTECTED ENEMY VESSELS

828. ENEMY VESSELS EXEMPT FROM ATTACK

1. The following enemy vessels are protected and may not be attacked:

- a. hospital ships;

- b. small craft used for coastal rescue operations and other medical transports;
- c. vessels granted safe conduct by agreement between the belligerent parties (e.g., vessels transporting PWs or engaged in humanitarian missions);
- d. vessels engaged in transporting cultural property under special protection;
- e. passenger vessels carrying only civilian passengers;
- f. vessels charged with religious, non-military scientific or philanthropic missions;
- g. small coastal fishing vessels and small boats engaged in local coastal trade, but they are subject to the regulations of a belligerent naval commander operating in the area and to inspection;
- h. vessels which have surrendered; and
- i. life rafts and life boats.

SRM para 47

829. CONDITIONS OF PROTECTION

- 1. The vessels listed above are protected and exempt from attack only if they:
 - a. are innocently employed in their normal role;
 - b. submit to identification and inspection when required; and
 - c. do not intentionally hamper the movement of combatants and obey orders to stop or move out of the way when required.

SRM para 48

830. LOSS OF PROTECTION BY HOSPITAL SHIPS

- 1. A hospital ship loses its protection from attack if it violates any of the three conditions in paragraph 42. However, a hospital ship's protection is lost only after due warning has been given with a reasonable time limit to terminate the violation, and such warning has remained unheeded.

SRM para 49

- 2. A hospital ship that persists, after a warning, in violating a condition of its protection renders itself liable to capture or other necessary measures to enforce compliance.

SRM para 50

831. ATTACK AGAINST A HOSPITAL SHIP

- 1. A hospital ship may only be attacked **as a last resort** if:
 - a. diversion or capture is not feasible;
 - b. no other method is available for exercising military control;
 - c. the circumstances of non-compliance are sufficiently grave that the hospital ship has become, or may be reasonably assumed to be, a legitimate target; and
 - d. the collateral casualties or damage will not be disproportionate to the military advantage gained or expected.

SRM para 51

832. ATTACK AGAINST OTHER PROTECTED VESSELS

1. If any other protected vessel breaches the conditions in paragraph 42, it may be attacked only if:
 - a. diversion or capture is not feasible;
 - b. no other method is available for exercising military control;
 - c. the circumstances of non-compliance are sufficiently grave that the vessel has become, or may be reasonably assumed to be, a legitimate target; and
 - d. the collateral casualties or damage will not be disproportionate to the military advantage gained or expected.

SRM para 52

SECTION 8 - ATTACKS

833. ENEMY WARSHIPS AND AIRCRAFT

1. Enemy warships, military aircraft, auxiliary vessels, and auxiliary aircraft that are legitimate targets and may be attacked. Such vessels and aircraft may not be attacked if they are protected under paragraph 41.

SRM para 47

834. ENEMY MERCHANT VESSELS

1. Enemy merchant vessels may only be attacked if they are legitimate targets.

SRM para 59

2. The following activities may render enemy merchant vessels legitimate targets:
 - a. engaging in belligerent acts on behalf of the enemy (e.g., laying mines, minesweeping, cutting undersea cables and pipelines, engaging in visit and search of neutral merchant vessels or attacking other merchant vessels);
 - b. acting as an auxiliary to an enemy's armed forces (e.g., carrying troops or replenishing warships);
 - c. being incorporated into or assisting the enemy's intelligence gathering system (e.g., engaging in reconnaissance, early warning, surveillance, or command, control and communications missions);
 - d. sailing under convoy of enemy warships or military aircraft;
 - e. refusing an order to stop or actively resisting visit, search or capture;
 - f. being armed to an extent that they could inflict damage to a warship (this excludes light individual weapons for the defence of personnel and purely deflective systems such as "chaff"); or
 - g. otherwise making an effective contribution to military action.

SRM para 60

835. NEUTRAL MERCHANT VESSELS

1. Merchant vessels flying the flag of neutral states may not be attacked unless they:
 - a. are believed on reasonable grounds to be carrying contraband or breaching a blockade, and after prior warning they intentionally and clearly refuse to stop, or intentionally and clearly resist visit, search or capture;
 - b. engage in belligerent acts on behalf of the enemy;
 - c. act as auxiliaries to the enemy's armed forces;
 - d. are incorporated into or assist the enemy's intelligence system;
 - e. sail under convoy of enemy warships or military aircraft; or
 - f. otherwise make an effective contribution to the enemy's military action, and it is not feasible for the attacking forces to first place passengers and crew in a place of safety. Unless circumstances do not permit, they are to be given a warning, so that they can re-route, off-load, or take other precautions.

SRM para 67

2. The mere fact that a neutral merchant vessel is armed provides no grounds for attacking it.

SRM para 69

SECTION 9 - RULES FOR THE USE OF SEA MINES

836. BASIC RULE

1. There are very few restrictions on the use of sea mines. Sea mines must be able to self-neutralize if control over them is lost. Their location must be recorded. They must not be laid in neutral waters. When sea mines are first laid in the territorial waters of a state, there must be provision for free exit of neutral shipping located in the ports of the state whose territorial waters have been mined.

SRM paras 81, 84, 85 & 86

837. FREE FLOATING MINES

1. It is forbidden to use free-floating mines unless:
 - a. they are directed against a legitimate target; and
 - b. they become harmless within an hour after loss of control over them.

SRM para 82

838. NOTIFICATION

1. A belligerent must give notification of the laying of armed mines or the arming of pre-laid mines. No notification is required for mines capable of being controlled so that they detonate only against vessels that are legitimate targets.

SRM para 83

839. PREVENTION OF PASSAGE BETWEEN NEUTRAL AND INTERNATIONAL WATERS

1. Mining shall not have the practical effect of preventing passage between neutral waters and international waters.

SRM para 87

840. REGARD FOR THE USE OF THE HIGH SEAS BY NEUTRALS

1. The mine laying states shall pay due regard to the legitimate uses of the high seas by, among other things, providing safe alternative routes for shipping of neutral states.

SRM para 88

841. TRANSIT PASSAGE AND ARCHIPELAGIC SEA LANES PASSAGE

1. Transit passage through international straits and passage through waters subject to the right of ASL passage shall not be impeded unless safe and convenient alternative routes are provided.

SRM para 89

842. REMOVAL OF MINES AFTER CESSATION OF HOSTILITIES

1. After the cessation of active hostilities, parties to the conflict shall do their utmost to remove or render harmless the mines they have laid. Each party shall remove its own mines. With regard to mines laid in the territorial seas of the enemy, each party shall notify their position and shall proceed with the least possible delay to remove the mines in its territorial sea or otherwise render the territorial sea safe for navigation.

SRM para 90

2. Parties to the conflict shall endeavour to conclude agreements among themselves, with other states and with international organizations on the provision of information, technical support and material assistance necessary to remove minefields or otherwise render them harmless.

SRM para 91

843. REMOVAL OF MINES BY NEUTRAL STATES

1. Neutral states do not commit an act inconsistent with the laws of neutrality by clearing mines laid in violation of the LOAC.

SRM para 92

SECTION 10 - BLOCKADE**844. DEFINITION**

1. A blockade is the surrounding or blocking of a place such as a port to prevent entry and exit of supplies.

845. DECLARATION OF A BLOCKADE

1. A blockade shall be declared. A party declaring a blockade shall notify all belligerents and neutral states. The declaration shall specify the commencement, duration, location, and extent of the blockade and

the period within which vessels of neutral states may leave the blockaded coastline. The force maintaining the blockade may be stationed at a distance determined by military requirements.

SRM paras 93, 94 & 96

846. BLOCKADE MUST BE EFFECTIVE

1. A blockade must be effective. To be effective, a blockade must be maintained by a surface, air or subsurface force or other mechanism that is sufficient to render entry into or exit from the blockaded area dangerous.

SRM para 95

847. CAPTURE OF OR ATTACK ON MERCHANT VESSELS

1. Merchant vessels believed on reasonable grounds to be breaching a blockade may be captured. Merchant vessels which, after prior warning, clearly resist capture may be attacked.

SRM para 98

848. RESTRICTIONS

1. A blockade:
- a. must not bar access to the ports and coasts of neutral states, and
 - b. must be applied impartially to the vessels of all states.

SRM paras 99 & 100

849. CESSATION OR ALTERATION OF A BLOCKADE

1. The cessation, temporary lifting, re-establishment, extension or other alteration of a blockade must be declared. Belligerents and neutral states must be notified of the declaration.

SRM para 101

850. CIRCUMSTANCES IN WHICH A BLOCKADE IS PROHIBITED

1. The declaration or establishment of a blockade is prohibited if:
- a. it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or
 - b. the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.

SRM para 102

851. FOOD AND OTHER OBJECTS ESSENTIAL TO THE SURVIVAL OF THE CIVILIAN POPULATION

1. If the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must provide for free passage of such foodstuffs and other essential supplies, subject to:

- a. the right to prescribe the technical arrangements, including search, under which such passage is permitted; and

- b. the condition that the distribution of such supplies shall be made under the local supervision of a Protecting Power or a humanitarian organization which offers guarantees of impartiality, such as the International Committee of the Red Cross.

SRM para 103

1. The blockading belligerent shall allow the passage of medical supplies for the civilian population or for the wounded and sick members of armed forces, subject to the right to prescribe technical arrangements, including search, under which such passage is permitted.

SRM para 104

SECTION 11 - ZONES

852. GENERAL

1. Parties to naval conflicts have on a number of occasions established different kinds of zones in and over water areas that deny or restrict access to vessels and aircraft of states that are not parties to the conflict. Vessels or aircraft entering such zones risk being attacked. These zones have been given a variety of names including exclusion zones, military areas, barred areas, war zones and operational zones.
2. A belligerent is not absolved of its duties under International Law by establishing zones that might adversely affect the legitimate uses of defined areas of the sea. In particular, such zones are not "free fire zones".

SRM para 105

853. OBLIGATIONS OF A BELLIGERENT ESTABLISHING A ZONE

1. If a belligerent establishes a zone:
 - a. The law continues to apply in the same manner both inside and outside the zone. The practical effect of a zone is to warn shipping that hostilities are taking place and that there is a greater risk if entry into the zone occurs.
 - b. The extent, location and duration of the zone and the measures imposed shall not exceed what is strictly required by military necessity and the principle of proportionality.
 - c. Due regard shall be given to the rights of neutral states to legitimate uses of the seas.
 - d. Necessary safe passage through the zone for neutral vessels and aircraft shall be provided:
 - (1) where the geographical extent of the zone significantly impedes free and safe access to the ports and coasts of a neutral state;
 - (2) in other cases where normal navigation routes are affected, except where military requirements do not permit.
 - e. The commencement, duration, location and extent of the zone, as well as the restrictions imposed, shall be publicly declared and appropriately notified.

SRM para 106

854. NEUTRALS

2. Compliance with the measures taken by one belligerent in the zone shall not be construed as an act harmful to the opposing belligerent. Therefore, if a neutral vessel does not enter or leaves the zone then the neutral has not done anything inappropriate in respect of another belligerent to the conflict.

SRM para 107

855. OPERATIONS OUTSIDE OF THE ZONE

1. The existence of a zone does not preclude operations being carried on outside of the zone.

SECTION 12 - LAWFUL AND UNLAWFUL TACTICS

856. RUSES OF WAR

1. Ruses of war are measures taken to obtain advantage of the enemy by confusing or misleading them.

API Art 37 (2)

2. Ruses of war are more formally defined as acts, which are intended to mislead an adversary or to induce that adversary to act recklessly. Ruses must not infringe any rule of the LOAC. Ruses are lawful if they are not treacherous, perfidious and do not violate any express or tacit agreement.

API Art 37 (2); SRM para 110

3. The following are examples of ruses, which are lawful:

- a. surprises;
- b. feigning attacks, retreats or flights;
- c. simulating quiet and inactivity;
- d. transmitting bogus signal messages, and sending bogus dispatches and newspapers with a view to their being intercepted by the enemy;
- e. making use of the enemy's signals, watchwords, wireless code signs, tuning calls and words of command;
- f. conducting a false military exercise on the wireless on a frequency easily intercepted while substantial naval operations are taking place elsewhere; and
- g. pretending to communicate with forces that do not exist.

4. Certain types of ruses are not permitted. Warships and auxiliary vessels are prohibited from opening fire while flying a false flag. They may, however, display the enemy flag or a neutral flag during pursuit. Such conduct at sea is accepted or at least tolerated, whether the ship in question is pursuing an enemy ship or is trying to escape from it.

SRM para 110

5. Warships and auxiliary vessels are also prohibited from actively simulating the status of:

- a. hospital ships, small coastal rescue craft or medical transports;

- b. vessels on humanitarian missions;
- c. passenger vessels carrying civilian passengers;
- d. vessels protected by the United Nations flag;
- e. vessels guaranteed safe conduct by prior agreement between the parties, including cartel vessels;
- f. vessels entitled to be identified by the emblem of the Red Cross or Red Crescent; or
- g. vessels engaged in transporting cultural property under special protection.

SRM para 110

857. PERFIDY

1. It is prohibited to kill, injure or capture adversaries by resort to perfidy. Acts inviting the confidence of adversaries and leading them to believe that they are entitled to protection or are obliged to grant protection under the LOAC, *with intent to betray that confidence*, constitute perfidy. In other words, perfidy consists of committing a hostile act under the cover of a legal protection.

SRM para 111; API Art 37 (1)

2. The following are examples of perfidy if a hostile act is committed while:
- a. feigning an intent to negotiate under a flag of truce;
 - b. feigning distress or surrender (e.g., by sending a distress signal or by the crew taking to the life rafts);
 - c. feigning incapacitation by wounds or sickness;
 - d. feigning civilian, non-combatant status; or
 - e. feigning protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other states not parties to the conflict.

API Art 37 (1)

SECTION 13 - INTERCEPTION, VISIT, SEARCH AND DIVERSION

858. DETERMINATION OF ENEMY CHARACTER OF VESSELS AND AIRCRAFT

1. The fact that a merchant vessel is flying the flag of an enemy state or that a civil aircraft bears the marks of an enemy state is conclusive evidence of its enemy character.

SRM para 112

2. The fact that a merchant vessel is flying the flag of a neutral state or a civil aircraft bears the marks of a neutral state is *prima facie* evidence of its neutral character.

SRM para 113

3. If the commander of a warship suspects that a merchant vessel flying a neutral flag in fact has enemy character, the commander is entitled to exercise the right of visit and search, including the right of diversion for search.

SRM para 114

4. If the commander of a military aircraft suspects that a civil aircraft with neutral marks in fact has enemy character, the commander is entitled to exercise the right of interception and, if circumstances require, the right to divert for the purpose of visit and search.

SRM para 115

5. If, after visit and search, there are reasonable grounds for suspicion that the merchant vessel flying a neutral flag or a civil aircraft with neutral marks has enemy character, the vessel or aircraft may be captured as a prize subject to adjudication.

SRM para 116

6. Enemy character can be determined by registration, ownership, charter or other criteria.

SRM para 117

859. BASIC RULE FOR THE VISIT AND SEARCH OF MERCHANT VESSELS

1. In exercising their legal rights in an international armed conflict at sea, belligerent warships and military aircraft have a right to visit and search merchant vessels outside neutral waters where there are reasonable grounds for suspecting that they are subject to capture.

SRM para 118

860. Neutral Merchant Vessels Under Convoy of Accompanying Neutral Warships

1. A neutral merchant vessel is exempt from the exercise of the right of visit and search if it meets the following conditions:

- a. it is bound for a neutral port;
- b. it is under the convoy of an accompanying neutral warship of the same nationality or a neutral warship of a state with which the flag state of the merchant vessel has concluded an agreement providing for such convoy;
- c. the flag state of the neutral warship warrants that the neutral merchant vessel is not carrying contraband or otherwise engaged in activities inconsistent with its neutral status; and
- d. the commander of the neutral warship provides, if requested by the commander of an intercepting belligerent warship or military aircraft, all information as to the character of the merchant vessel and its cargo as could otherwise be obtained by visit and search.

SRM para 120

861. DIVERSION

1. If visit and search at sea is impossible or unsafe, a belligerent warship or military aircraft may divert a merchant vessel to an appropriate area or port in order to exercise the right of visit and search.

SRM para 121

2. For other purposes (e.g., as an alternative to visit and search) a neutral merchant vessel may, with its consent, be diverted from its declared destination.

SRM para 119

862. MEASURES OF SUPERVISION

1. To avoid the necessity of visit and search, belligerent states may establish reasonable measures for the inspection of cargo of neutral merchant vessels and certification that a vessel is not carrying contraband.

SRM para 122

2. The fact that a neutral merchant vessel has submitted to such measures of supervision, such as the inspection of its cargo and grant of certificates of non-contraband cargo by one belligerent, is not an act of unneutral service with regard to an opposing belligerent.

SRM para 123

3. To prevent the need for visit and search, neutral states are encouraged to enforce reasonable control measures and certification procedures to ensure that their merchant vessels are not carrying contraband.

SRM para 124

SECTION 14 - CAPTURE OF ENEMY VESSELS AND GOODS**863. GENERAL RULE**

1. Enemy vessels, whether merchant or otherwise, and goods on board such vessels may be captured outside neutral waters unless they are exempt from capture as set out below. Prior exercise of visit and search is not required.

SRM para 135

864. ENEMY VESSELS EXEMPT FROM CAPTURE

1. The following enemy vessels are exempt from capture:
 - a. hospital ships and small craft used for coastal rescue operations;
 - b. other medical transports, so long as they are needed for the wounded, sick and shipwrecked on board;
 - c. vessels granted safe conduct by agreement between the belligerent parties (e.g., vessels engaged in the transport of PWs or engaged in humanitarian missions);
 - d. vessels engaged in transporting cultural property under special protection;
 - e. vessels charged with religious, non-military scientific or philanthropic missions; and
 - f. small coastal fishing vessels and small boats engaged in local coastal trade, but they are subject to the regulations of a belligerent naval commander operating in the area and to inspection.

SRM para 136

865. CONDITIONS FOR EXEMPTION FROM CAPTURE

1. The enemy vessels listed in paragraph 96 are exempt from capture only if they:
 - a. are innocently employed in their normal role;
 - b. do not commit acts harmful to the enemy;

- c. immediately submit to identification and inspection when required; and
- d. do not intentionally hamper the movement of combatants and obey orders to stop or move out of the way when required.

SRM para 137

866. CAPTURE OF ENEMY MERCHANT VESSELS

1. Capture of an enemy merchant vessel is exercised by taking such vessel as prize for adjudication. If military circumstances preclude taking such a vessel as a prize at sea, it may be diverted to an appropriate area or port in order to complete capture.

SRM para 138

867. DESTRUCTION OF ENEMY MERCHANT VESSELS

1. A captured enemy merchant vessel may only be destroyed, as an exceptional measure, when military circumstances preclude taking or sending such a vessel for adjudication as an enemy prize and the following conditions are met beforehand:

- a. the safety of passengers and crew is provided for (for this purpose, the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured in the prevailing sea and weather conditions by the proximity of land or the presence of another vessel which is in a position to take them on board);
- b. documents and papers relating to the prize are safeguarded; and
- c. if feasible, personal effects of the passengers and crew are saved.

SRM para 139

868. DESTRUCTION OF ENEMY PASSENGER VESSELS

1. The destruction of enemy passenger vessels carrying only civilian passengers is prohibited at sea. For the safety of the passengers, such vessels shall be diverted to an appropriate area or port in order to complete capture.

SRM para 140

SECTION 15 - CAPTURE OF NEUTRAL MERCHANT VESSELS AND GOODS

869. GENERAL RULE

1. Neutral merchant vessels are subject to capture outside neutral waters if they are engaged in any of the following activities:

- a. are believed on reasonable grounds to be carrying contraband or breaching a blockade, and after prior warning they intentionally and clearly refuse to stop, or intentionally and clearly resist visit, search or capture;
- b. engage in belligerent acts on behalf of the enemy;
- c. act as auxiliaries to the enemy's armed forces;
- d. are incorporated into or assist the enemy's intelligence system;

- e. sail under convoy of enemy warships or military aircraft; or
- f. otherwise make an effective contribution to the enemy's military action, and it is not feasible for the attacking forces to first place passengers and crew in a place of safety. Unless circumstances do not permit, they are to be given a warning, so that they can re-route, off-load, or take other precautions.

SRM para 146

2. Neutral merchant vessels may also be captured if it is determined as a result of visit and search or by other means, that they:
 - a. are carrying contraband;
 - b. are on a voyage especially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy;
 - c. are operating directly under enemy control, orders, charter, employment or direction;
 - d. present irregular or fraudulent documents, lack necessary documents, or destroy, deface or conceal documents;
 - e. are violating regulations established by a belligerent within the immediate area of naval operations; or
 - f. are breaching or attempting to breach a blockade.

SRM para 146

870. PRIZE FOR ADJUDICATION

1. Capture of a neutral merchant vessel is exercised by taking such vessel as a prize for adjudication.

SRM para 146

871. CAPTURE OF GOODS ON BOARD NEUTRAL MERCHANT VESSELS

1. Goods on board neutral merchant vessels are subject to capture only if they are contraband.

SRM para 147

2. Contraband is defined as goods which are ultimately destined for territory under the control of the enemy and which may be susceptible for use in armed conflict.

SRM para 148

3. To exercise the right of capture as a result of the presence of contraband on a neutral merchant ship, the belligerent must have published contraband lists. The precise nature of a belligerent's contraband list may vary according to the particular circumstances of the armed conflict. Contraband lists shall be reasonably specific.

SRM para 149

872. FREE GOODS

1. Goods not on the belligerent's contraband list are "free goods", that is, not subject to capture. As a minimum, "free goods" shall include the following:
 - a. religious objects;

- b. articles intended exclusively for the treatment of the wounded and sick and for the prevention of disease;
- c. clothing, bedding, essential foodstuffs, and means of shelter for the civilian population so long as there is no reason to believe that such goods will be diverted to other purposes resulting in a definite military advantage to the enemy;
- d. items destined for PWs, including individual parcels and collective relief shipments containing food, clothing, educational, cultural, and recreational articles;
- e. goods otherwise specifically exempted from capture by international treaty or by special arrangement between belligerents; and
- f. other goods not susceptible for use in armed conflict.

SRM para 150

873. DESTRUCTION OF CAPTURED NEUTRAL MERCHANT VESSELS

1. A captured neutral vessel may, as an exceptional measure, be destroyed when military circumstances preclude taking or sending such a vessel for adjudication as an enemy prize, only if the following conditions are met beforehand:
 - a. the safety of passengers and crew is provided for (for this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured in the prevailing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board);
 - b. documents and papers relating to the captured vessel are safeguarded; and
 - c. if feasible, personal effects of the passengers and crew are saved.

SRM para 151

2. The destruction of a captured neutral merchant vessel shall not be ordered without there being entire satisfaction that the captured vessel can neither be sent into a belligerent port, nor diverted, nor properly released. Destruction shall be subject to adjudication.

SRM para 151

874. DESTRUCTION OF CAPTURED NEUTRAL MERCHANT VESSELS FOR CARRYING CONTRABAND

1. A captured neutral merchant vessel may not be destroyed for carrying contraband unless the contraband, reckoned either by value, weight, volume or freight, forms more than half the cargo.

SRM para 151

875. DESTRUCTION OF CAPTURED NEUTRAL PASSENGER VESSELS

1. The destruction of captured neutral passenger vessels carrying civilian passengers is prohibited at sea. For the safety of the passengers, such vessels shall be diverted to an appropriate port in order to complete capture.

SRM para 152

CHAPTER 9

TREATMENT OF THE WOUNDED, SICK AND SHIPWRECKED

SECTION 1 INTRODUCTION

901. AIM

1. The aim of this chapter is to summarize the Law of Armed Conflict (LOAC) relating to the treatment of the wounded, sick and shipwrecked.

902. GENERAL

2. The two major treaties in this area are the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GI) and the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GII). Additional Protocol I to the Geneva Conventions (AP I) also contains provisions amplifying the obligation to care for persons protected by GI and GII. The innovation of AP I in this area is to extend the scope of the earlier Conventions so that civilians as well as military personnel are entitled to protection.

SECTION 2 - COLLECTION AND TREATMENT OF WOUNDED, SICK AND SHIPWRECKED

903. GENERAL PROVISIONS OF TREATY LAW

1. Although two separate conventions deal with the wounded, sick and shipwrecked, AP I deals with them collectively. Thus they are most conveniently considered together.

2. It should be noted, however, that in the event of hostilities between maritime and land forces, GII applies only to forces on board ship. Once these forces are put ashore they become subject to the provisions of G I.

3. The Geneva Convention Relative to the Treatment of Prisoners of War (GIII) also regulates the treatment of the sick, wounded and the shipwrecked once these persons have fallen into the hands of adverse combatants.

4. It is open to the parties to the conflict to make special agreements relating to the sick, wounded and shipwrecked, provided that these agreements do not adversely affect the position of such persons or other persons protected by the Geneva Conventions. Persons protected by the Conventions may not renounce any of their rights.

GI Arts 6 (1) & 7; GII Arts 6 (1) & 7; GIII Art 7; GIV Art 8

5. Reprisals against the wounded, sick and shipwrecked are forbidden.

GI Art 46; GII Art 47; AP I Art 20

904. COLLECTION OF WOUNDED, SICK AND SHIPWRECKED

1. Following an engagement, parties to a conflict are obliged to take all possible measures to search for and collect without delay the wounded, sick and shipwrecked.

GI Art 15 (1); GII Art 18 (1); AP II Art 8

2. The parties to a conflict must protect the wounded, sick and shipwrecked from pillage and ill-treatment and ensure their adequate care. They must also search for the dead and prevent their remains from being despoiled.

GI Art 15 (1); GII Art 18 (1)

3. In the case of a land engagement, agreements between commanders, whether by armistice or cease-fire, may be made for the exchange, removal and transport of the wounded left on the field. In both land and sea engagements, arrangements may also be made for the removal of the wounded and sick from a besieged area and for the passage of medical personnel and chaplains proceeding to such an area.

GI Art 15 (2); GII Art 18 (2)

905. IDENTIFICATION OF THE WOUNDED, SICK AND SHIPWRECKED

1. Parties holding wounded, sick and shipwrecked personnel are obliged to record and forward the same details of identity and capture as in the case of any other PW. Regulations with regard to burial at sea are adjusted to meet the requirements of the situation.

GI Art 16 (1) - (3); GII Arts 19 (1) & 20 (1)

906. INVOLVEMENT OF LOCAL INHABITANTS AND RELIEF SOCIETIES

1. In the case of a land engagement, appeals may be made to local inhabitants and relief societies to collect and care for the wounded and sick. Such inhabitants and relief societies, even in occupied or invaded territory, shall be permitted spontaneously to collect and care for such personnel. No one may be molested or convicted for having assisted the sick and wounded, regardless of nationality.

GI Art 18 (1) - (3); API Art 17

2. The involvement of local inhabitants and relief societies does not relieve the Detaining or Occupying Power from its obligations to ensure that such wounded and sick receive proper attention.

GI Art 18

3. At sea parties to the conflict may appeal to captains and masters of neutral vessels to fulfil this task, which they may also undertake spontaneously. They may not be captured on account of any such assistance, but this does not exempt them from liability in respect of any breach of neutrality they may commit.

GII Art 21

4. All belligerent warships have the right to demand the handing over of wounded, sick and shipwrecked, whether they are being carried on hospital ships or any other vessels, except neutral warships, provided these persons are fit enough to be handed over and the warship involved has sufficient facilities for their proper care and treatment.

GII Art 14

5. If the wounded, sick or shipwrecked have been taken on board a neutral warship or military aircraft, care should be taken that they take no further part in military operations. If they fall into enemy hands they become PWs, but the captors may convey them to a port of their nationality, to a neutral port, or even to a port of the captives' own forces. In the latter case, such personnel must take no further part in the hostilities.

GII Art 15 & 16

907. TREATMENT OF THE WOUNDED, SICK AND SHIPWRECKED

1. The wounded, sick and shipwrecked are to be protected, respected, treated humanely and cared for by the Detaining Power without any adverse discrimination.

GI Art 12 (1) & (2); GII Art 12 (1) & (2); AP I Art 10 (2); AP II Art 7

2. Attempts upon their lives and violence against their persons are prohibited. They shall not be murdered or subjected to biological experiments, left without proper medical care and attention or exposed to conditions, which might result in contagion or infection. The term “wounded, sick and shipwrecked”, includes civilians.

GI Art 12 (2); GII Art 12 (2); AP I Arts 8 (1) & (2) & 11 (1) - (4)

908. PRIORITY OF TREATMENT

1. Only urgent medical requirements will justify any priority in treatment among those who are sick and wounded.

GI Art 12 (3); GII Art 12 (3); AP I Art 10 (2); AP II Art 7 (2)

2. Regardless of the party to which they belong, or whether they are combatants or non-combatants, the wounded, sick and shipwrecked are to be respected and protected without any adverse discrimination.

GI Art 12 (1) & (2); GII Art 12 (1) & (2); AP I Art 10; AP II Art 7

909. MEDICAL EXPERIMENTS

1. It is prohibited to subject the wounded, sick and shipwrecked, even with their consent, to physical mutilations, medical or scientific experiments, or the removal of tissue for transplantation, except where justified by their medical needs.

AP I Art 11 (2) & (3) & reservation wrt Art 11 (2) (c) made by Canada at the time of ratification

910. BLOOD TRANSFUSIONS AND SKIN GRAFTS

1. It is permitted to take donations of blood for transfusion or skin for grafting, provided this is done solely for therapeutic purposes and given voluntarily without coercion or inducement. The taking of blood or skin must be done in conditions consistent with standards and controls designed for the benefit of donor and recipient in accordance with generally accepted medical standards.

AP I Art 11 (3)

911. RIGHT TO REFUSE SURGICAL OPERATIONS

1. The wounded, sick and shipwrecked as well as any person detained as a PW or for any other purpose connected with the conflict is entitled to refuse any surgical operation. In such case, however, every endeavour should be made to secure from the PW a written and signed statement to this effect.

AP I Art 11 (5)

912. ACTS OR OMISSIONS ENDANGERING HEALTH ARE GRAVE BREACHES

1. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person in the power of a party, other than the one on which that person depends and which violates the above prohibitions is a grave breach.

AP I Art 11 (4)

913. OBLIGATION WHEN COMPELLED TO ABANDON WOUNDED AND SICK

1. In land warfare, a belligerent compelled to abandon its wounded and sick is obliged, so far as military considerations permit, to leave medical personnel and equipment to care for them. Their presence does not, however, exempt the Detaining Power from providing any additional assistance that may be necessary.

GI Art 12 (5)

2. A Detaining Power is obliged, regardless of rank or number, to repatriate seriously wounded and sick prisoners, after having cared for them until they are well enough to make the journey. Arrangements may also be made for the seriously sick and wounded among PWs to be cared for in neutral countries.

GIII Art 109

SECTION 3 - MEDICAL PERSONNEL, ESTABLISHMENTS AND TRANSPORTS

914. MEDICAL AND RELIGIOUS PERSONNEL

1. "Medical personnel" are those persons, military or civilian, assigned exclusively to medical purposes or to the administration of medical units, or the operation or administration of medical transports. Such assignment may be permanent or temporary. In addition to doctors, dentists, nurses, medical orderlies, and hospital administrators, "medical personnel" includes personnel of national Red Cross and other voluntary aid societies recognized and authorized by a party to the conflict. The term also includes medical personnel attached to civil defence units, any persons made available for humanitarian purposes by a neutral state, a recognized and authorized aid society of such a state, or an impartial international humanitarian organization.

API Art 8 (3) & (11) & 9 (2)

2. "Religious personnel" have the same protections as medical personnel. They are non-combatants. In all cases, the provisions relating to distinctive emblems, such as ID cards and status upon capture for medical personnel applies equally to religious personnel.

API Art 8 (4)

3. Medical personnel cannot be required to provide preferential treatment to any sick or wounded person except on medical grounds. They may not be compelled to carry out any act incompatible with their humanitarian mission or medical ethics. Furthermore, no one may be punished for carrying out their medical activities in accordance with medical ethics, regardless of the nationality or status of the person treated.

GI Art 12 (3); GII Art 12 (3); API Art 16 (1) & (2); AP II Art 9

4. Medical and religious personnel whose detention is no longer necessary for the care and ministrations of the wounded and sick should be allowed to return to their own party. No discrimination on racial, religious or political grounds shall be made in selecting those for return. The length of time in enemy hands and the state of health of the personnel concerned may, however, be taken into consideration.

GI Arts 28 (1), 30 (1) & 31 (1); GII Art 37

915. DISTINCTIVE EMBLEM

1. Medical and religious personnel, whether belonging to the belligerents, relief societies or neutral powers, are required to wear on their left arm a water-resistant armlet bearing the distinctive emblem (Red Cross or Red Crescent on a white background), issued and stamped by the military authority to which they are attached. They are also required to carry an official identity card. (See Annex A of Chapter 4 for the distinctive emblem and Annex B for the official identity card)

GI Art 40; GII Art 42; AP I Art 8 (12), 18 (3) & Anx I as Amended 30 Nov 93 Arts 2 - 5; AP II Art 12

2. All medical units and transports must also be clearly marked with the distinctive emblem. Fixed or mobile units like hospitals or ambulances must fly a flag portraying the distinctive emblem and if the unit belongs to a neutral state the national flag should be flown together with the flag of the belligerent to which they are attached. In the case of parties to the conflict, it is a matter of discretion whether the national flag is flown by land installations.

GI Art 36 (2), 38, 39, 42 (1) & 43 (1); AP I Art 18 (1) & (2); AP II Art 12

916. HOSPITAL SHIPS MUST DISPLAY THE DISTINCTIVE EMBLEM

1. Military hospital ships, and hospital ships used by National Red Cross Societies and other recognized relief societies or private persons, whether belonging to nationals of a party to the conflict or a neutral, must be painted white with large dark red crosses on the sides and on horizontal surfaces so they may be visible from the sea and the air. In addition to the mandatory use of the distinctive emblem, there are additional optional signals that may be utilized such as the emission of special radio signals. Small craft employed by the state or officially recognized lifeboat institutions for coastal rescue work also must display the distinctive emblem.

GII Art 43; AP I Arts 18 (5), 23 (1) & Anx I as Amended 30 Nov 93 Arts 6 - 9

917. MEDICAL AIRCRAFT MUST DISPLAY THE DISTINCTIVE EMBLEM

1. Medical aircraft must be marked clearly with the distinctive emblem together with the national emblem on their lower, upper and lateral surfaces, as well as with any other emblems, which may be agreed upon by the parties to the conflict. In addition to the mandatory use of the distinctive emblem, there are optional signals, such as flashing blue lights and special radio emissions, which may be used (AP I).

GII Art 39 (2); AP I Art 18 (5) & Anx I as Amended 30 Nov 93 Arts 6 - 9; SRM para 175

918. PROTECTION OF MEDICAL ESTABLISHMENTS, TRANSPORT, AIRCRAFT AND HOSPITAL SHIPS

1. Medical establishments on land, hospital ships, medical aircraft, and medical transports must be respected and protected at all times and must not be attacked. If they are used for purposes hostile to the adverse party and outside their humanitarian purpose, protection may cease. Protection will only cease, however, following a clear warning which has remained unheeded.

GI Arts 19 (1), 20 & 21; GII Art 22 (1), 34 & 39 (1); AP I Arts 13 (1), 23 (3); AP II Art 11

919. MEDICAL UNITS, ESTABLISHMENTS, AND TRANSPORTS

1. Medical units and establishments, whether military or civilian, organized for medical purposes, may be fixed or mobile, permanent or temporary. Medical transports are any means of transportation, military or civilian, permanent or temporary, assigned exclusively to medical transportation and under control of a competent authority of a party to the conflict. The rights guaranteed by the Conventions apply equally to both temporary and permanent personnel, units and transports.

AP I Art 8 (3), (5), (7) & (11)

2. The material of mobile medical units falling into enemy hands must be reserved for the care of wounded and sick. The buildings, materials and stores of fixed medical establishments may not be diverted from their purpose so long as they are required for the care of the wounded and sick. Commanders in the field may use them in the event of urgent military necessity, so long as proper arrangements are made for the care of the wounded and sick nursed in them.

GI Art 33 (1) & (2)

920. SICK BAYS AND HOSPITAL SHIPS

1. The sick bay on a warship must, in case of combat on board, be respected and protected as far as this is possible. A captor may, however, use the sick bay for other purposes if this is militarily necessary, provided proper care is taken of the wounded and sick.

GII Art 28

2. Hospital ships and other craft employed on medical duties are subject to control and search. They may be required to follow a particular course and their radios and other means of communication may be controlled. The medical services may be controlled or even rejected. Depending on the circumstances, they may be detained for up to seven days. Neutral observers may also be put on board to ensure that the provisions of the Convention are strictly obeyed.

GII Art 31 (1) & (4)

3. Hospital ships found in a port at the time of its occupation by an adverse party must be allowed to leave. Hospital ships do not rank as warships with regard to their stay in neutral ports.

GII Arts 29 & 32

921. MEDICAL AIRCRAFT

1. Medical aircraft are free to fly over land physically controlled by their own or friendly forces, and over sea areas not under enemy control. It is advisable; however, that the adverse party be informed if such flights are likely to bring the aircraft within range of surface-to-air weapon systems of the adverse party.

AP I Art 25

2. Flight of medical aircraft over enemy or enemy-occupied territory is forbidden without prior agreement. In the absence of agreement, medical aircraft operating in parts of the contact zone controlled by friendly forces, and over areas the control of which is doubtful, do so at their own risk. "Contact zone" means any area on land where the forward elements of opposing forces are in contact with each other, especially where they are exposed to direct fire from the ground.

GI Art 36 (3); AP 1 Art 26 & 27 (1)

3. Provided prior agreement has been obtained from the adverse party, medical aircraft belonging to a combatant remain protected while flying over land or sea areas under the physical control of the adverse party. If the aircraft lags or deviates for any reason from the terms of the agreement, the aircraft shall take immediate steps to identify itself. Upon being recognized as a medical aircraft the adverse party may order it to land, or take such other steps to safeguard its own interests, but must allow time for compliance before attacking the aircraft.

AP 1 Art 27

4. Medical aircraft must not be used in order to gain any military advantage. While carrying out flights medical aircraft shall not, without prior agreement, be used to search for the wounded, sick and shipwrecked.

AP 1 Art 28 (1) & (4)

5. If a medical aircraft is ordered by an adverse party to land, it must obey such order and permit inspection. Wounded and sick on board may only be removed if this is essential to enable the inspection to proceed, and only if such removal does not adversely affect their welfare. If the inspection of a landed aircraft, discloses that the aircraft is in fact a medical aircraft, and is not in breach of any special agreement or in violation of the law relating to medical aircraft, the aircraft and its occupants belonging to the aircraft's state or a neutral country must be allowed to leave.

GI Art 36 (4); AP 1 Art 30 (1) - (3)

6. If the aircraft does not satisfy these requirements it may be seized. If, however, the aircraft has been assigned as a permanent medical aircraft, it may be used by the captor only for this purpose. If the aircraft makes an involuntary landing in enemy or enemy-occupied territory, the sick, wounded and shipwrecked as well as the crew become PWs but the medical personnel must be treated in the same way as other medical personnel falling into enemy hands.

AP I Art 30 (4)

7. Medical aircraft shall not fly over neutral territory without prior approval. If a medical aircraft should fly over neutral territory without agreement for any reason, it must make every effort to give notice and identify itself. The medical aircraft must obey any order to land and it cannot be attacked until a reasonable time for compliance has elapsed. When the aircraft lands, it is liable to inspection and if found to be a medical aircraft may leave with its occupants, other than those who must be detained in accordance with International Law. If the wounded, sick or shipwrecked are removed for other than temporary reasons, they must be detained in a manner that precludes their taking any further part in the hostilities. Any restrictions applied by a neutral must be applied to all Parties to the conflict equally.

GI Art 37 (1); AP I Art 31

922. CAMOUFLAGE

1. Medical personnel, hospital ships, medical establishments and units, medical aircraft, and medical transports including ambulances are entitled to protection because of the function, which they fulfil. The purpose of the distinctive emblem is to provide a means to identify objects and persons entitled to special protection. The object and personnel are entitled to protection whether or not they display the distinctive emblem. If they do not display the distinctive emblem, it is more likely they will be incorrectly identified as legitimate military targets and attacked.

GI Art 40 & 42

2. Military authorities may use camouflage to disguise the location of protected objects and personnel and direct that the distinctive emblem not be displayed if military considerations so require. Such a decision must be made by the operational Commander.

GI Art 42 (4)

923. SPECIAL ZONES

1. In regard to permanent medical installations on land, parties may, in peace or after hostilities have commenced, establish in their own and in occupied territory, hospital zones or localities to protect the wounded and sick from war risks. During hostilities parties to a conflict may enter into agreements for the recognition of such zones and localities.

GI Art 23 (1) & (2) & Anx I

924. SEARCH FOR MISSING AND DEAD

1. The Geneva Conventions impose certain obligations on Detaining Powers with regard to the burial and reporting of dead personnel belonging to the adverse party. AP I also imposes obligations to search for the missing and to report upon the disposal of the remains of the dead.

GI Arts 16 (3) & (4) & 17 (1); GIV Art 130; AP I Art 33 (1) & 34 (2)

2. As soon as possible, and certainly immediately upon the end of hostilities, each party to the conflict must search for those reported missing by the adverse party. The requests and all information, which may assist in tracing or identifying such person shall be transmitted through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross (ICRC) or the national Red Cross Societies.

API Art 33 (1) & (3)

3. To facilitate the finding of missing personnel, parties to the conflict shall endeavour to reach agreements to allow teams to search for, identify and recover the dead from battlefield areas. They may also attach to such teams representatives of the adverse party when the search is taking place in areas controlled by the adverse party. While carrying out these duties, members of the teams shall be respected and protected.

API Art 33 (4)

925. CARE OF REMAINS

1. The remains of all persons who have died as a result of hostilities or while in occupation or detention in relation thereto shall be respected, and their gravesites properly respected, maintained and marked.

API Art 34 (1)

2. Parties to the conflict shall ensure that burial or cremation of the dead is carried out individually as far as circumstances permit.

GI Art 17 (1)

3. Burial or cremation must be preceded by a careful examination of the bodies (if possible by a medical examination), with a view to confirming death, establishing identity and enabling a report to be made.

GI Art 17 (1)

4. One half of the double identity disc, on the identity disc itself if it is a single disc, should remain on the body.

GI Art 17 (1)

5. Parties to the conflict shall ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belong.

GI Art 17 (3)

6. Bodies shall not be cremated except for imperative reasons of hygiene or for religious motives.

GI Art 17 (2)

CHAPTER 10
TREATMENT OF PRISONERS OF WAR
SECTION 1 - INTRODUCTION

1001. AIM

1. The aim of this chapter is to summarize the Law of Armed Conflict (LOAC) relating to prisoner of war status and the treatment of prisoners of war (PWs).

1002. THE TREATMENT OF PWS IS A NATIONAL RESPONSIBILITY

1. Captured personnel are the responsibility of the Power detaining them, with their rights and status regulated in accordance with the *Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949* (GIII).

HIVR Art 4; GIII Art 12 (1)

1003. ALL STATES ARE BOUND BY THE PW CONVENTION

1. The rules embodied in the GIII are generally regarded as being part of the customary international law. This implies that the basic principles therein are binding even upon a state, which has not become a party to this Geneva Convention.

HIV Preamble

1004. DEFINITION OF PROTECTING POWER

1. A "Protecting Power" is a neutral state, designated by a party to a conflict and accepted by the adverse party, which has agreed to carry out the tasks assigned to a Protecting Power under the LOAC. These tasks include:

- a. to visit PW camps and assess living conditions;
- b. to monitor penal prosecutions of PWs; and
- c. to lend assistance in case of disagreement with respect to the LOAC.

AP I Art 2 (c)

2. Under GIII the ICRC may assume the functions performed by protecting powers.

GIII Art 10

1005. PERSONS WHO MAY NOT BE MADE PWS

1. Diplomatic representatives of the adverse party must not be made PWs and must be allowed to return to their own country. Neutral diplomats, including military and other service attaches accompanying the forces of the adverse party in the field, may not be taken prisoner so long as they have a certificate of identity and have taken no part in hostilities. They may, however, be ordered to leave the conflict area.

GIV Art 35

SECTION 2 - DETERMINATION OF STATUS

1006. PERSONS ENTITLED TO PW STATUS

1. If captured, the following persons are entitled to PW status:
 - a. combatants (see Chapter 3 for a complete discussion of who is a combatant);
 - b. persons who accompany the armed forces without actually being members thereof (such as civilian members of military aircraft crews, supply contractors, members of labour units or of services responsible for the welfare of the armed forces) provided they have received authorization from the armed forces which they accompany;
 - c. members of crews of the merchant marine or civil aircraft of the parties to the conflict;
 - d. war correspondents; and
 - e. personnel of the armed forces temporarily assigned to medical duties during a limited period of time.

GI Arts 25 & 29; GIII Art 4A

1007. PERSONS NOT ENTITLED TO PW STATUS

1. If captured and detained, the following persons are not entitled to PW status, but they must nevertheless be treated humanely:
 - a. civilians who take part in hostilities other than a *levée en masse*;
 - b. mercenaries; and
 - c. spies.

GIII Art 4A (6); AP I Arts 43, 46 (1) & 47 (1)

1008. MEDICAL AND RELIGIOUS PERSONNEL

1. Medical personnel and chaplains who fall into enemy hands do not become PWs. If the Detaining Power decides to keep them in custody to minister to the medical and spiritual needs of PWs they become "retained personnel". They are entitled, as a minimum to the same benefits and protections to which PWs are entitled under the GIII. Retained personnel are to be returned to their own forces unless there is a need (as there almost always is) for their services on behalf of other PWs.

GI Arts 28 (1) & (2) & 30 (1) & (2); GII Art 37 (1) & (2); GIII Art 33 (1) & (2)

1009. PROCEDURE FOR DETERMINATION OF PW STATUS

1. When there is doubt as to whether a particular captive is entitled to treatment as a PW, the captive shall be treated as such until the status of the person detained has been determined by a properly constituted tribunal. Under Canadian law, a PW status tribunal is provided for in the *Prisoner of War Status Determination Regulations* (QR&O, Vol. IV). Notice of the hearing before a properly constituted tribunal will be given to the Protecting Power.

GIII Art 5 (2); AP I Art 45 (1) & (2)

2. Nationality does not affect entitlement to PW status. This entitlement depends upon the country to which the captive's armed force belongs, so that even though the captive's own country is neutral, a national serving with a party to the conflict becomes a PW if captured.

GIII Art 16

SECTION 3 - RIGHTS OF PWs

1010. DUTY TO RELEASE AND REPATRIATE

1. PWs must be released and repatriated without delay after the cessation of active hostilities.

GIII Art 118 (1)

1011. PRISONERS CANNOT GIVE UP RIGHTS

1. Persons in enemy hands who are entitled to PW status or treatment continue in that position from the moment of capture until their release and repatriation. Moreover, they cannot, even of their own free will, surrender any of the rights of protection they enjoy under GIII.

GIII Arts 5 (1) & 7

2. Since a captive is unable to surrender his rights of protection under GIII, he is considered a PW even if he is a deserter or a defector from his own armed forces.

GIII Art 7

1012. SPECIAL AGREEMENTS

1. Provided there is no attempt to detract from the rights conferred by GIII, the parties to a conflict may make special agreements between themselves for the treatment of PWs.

GIII Art 6

1013. STANDARD OF TREATMENT

1. Persons detained, regardless of status, shall in all circumstances be treated humanely. The standard for all detained persons is that of GIII.

GIII Art 13 (1)

SECTION 4 - TREATMENT OF PWs

1014. RESPONSIBILITY

1. The responsibility for the treatment of PWs rests upon the Detaining Power. Failure to properly care for PWs may make that power liable to pay compensation, while the individuals responsible for such ill-treatment or for allowing it to occur, are liable to be tried as war criminals.

GIII Arts 12 (1), 13, 129 & 130; RS Art 8

1015. ADVERSE DISCRIMINATION PROHIBITED

1. Subject to specified advantageous differences in treatment based on rank, gender or health, all PWs are to be treated alike without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

GIII Art 16

1016. HUMANE TREATMENT MANDATORY

1. PWs must at all times be treated humanely and must be protected, particularly against any acts of violence or intimidation, as well as against insults and public curiosity.

GIII Art 13 (2)

2. PWs are entitled to respect for their persons and honour and must be allowed to exercise the rights attaching to their civil capacity to the extent that the captivity permits. They must also be maintained by the Detaining Power without charge.

GIII Arts 14 (1) & (3) & 15

1017. TREATMENT OF FEMALE PW

1. Female PWs must be treated with due regard to their gender and must in no case be treated less favourably than male PWs. Their gender must also be taken into account in the allocation of labour and in the provision of sleeping and sanitary facilities. They must also be specially protected against rape and other sexual assaults.

GIII Arts 14, 25 (4), 29 (2), 49(1) & 97 (4); AP I Arts 75 (5) & 76 (1)

1018. INTERROGATION

1. A PW may be interrogated but is only required to give name, rank, service number and date of birth. If the PW wilfully refuses to supply such information, the PW may only forfeit privileges due to his or her rank or status.

HIVR Art 9; GIII Art 17 (1) & (2)

2. It is forbidden to apply any form of coercion to PWs in an attempt to secure any other information. All questioning must be done in a language that the PW understands.

GIII Art 17 (4) & (5)

3. The interrogation or debriefing of PWs should only be conducted by qualified CF personnel, usually intelligence personnel, in accordance with the relevant UN, coalition or national direction. Where interrogation or debriefing is conducted by qualified and authorized personnel, no physical or mental torture, or any other form of coercion, shall be inflicted on PWs or detainees to force them to provide information of any kind. PWs who refuse to answer shall not be threatened, insulted or exposed to any unpleasant or disadvantageous treatment.

GIII Art 17 (4)

1019. REPRISALS PROHIBITED

1. Reprisals against PWs are prohibited.

GIII Art 13 (3)

1020. KILLING PW PROHIBITED

1. It is forbidden to kill PWs. The fact that captors are unable to provide the necessary facilities or personnel to restrict their movements or because they will have to be fed, thus reducing the supplies available to the captors, or because they may gain their liberty as a result of an early success by the forces to which they belong are no exceptions to the rule. In other words, self-preservation or military necessity can never provide an excuse for the murder of PWs.

GIII Art 13 (1)

1021. PROPERTY OF PW

1. PWs must be allowed to retain all their personal property, except vehicles, arms, and other military equipment or documents. Protective equipment (such as helmets, gas masks, flak jackets, etc.) must also be left in their possession. Clothing or articles used for feeding, even though the property of their government, must also be left in their possession, as must badges of nationality or rank, and decorations. They must also be allowed to retain articles of sentimental value. If they lack identity cards or papers, they must be provided with these.

GIII Art 18 (1) - (3)

2. Money may be taken from a PW only on the order of an officer, with details as to amount and ownership properly registered and a receipt given. Sums in the currency of the Detaining Power or changed into such currency must be credited to the prisoner's account, as must any sum paid to the PW in respect of pay for work done. A similar account must be kept of any sum paid to the PW by way of advance.

GIII Art 18 (4)

3. All property, other than personal property, taken from PWs is known as booty. Booty belongs to the government of the captors, not to the individual unit or person effecting the capture.

1022. PROTECTING POWERS

1. The GIII is to be applied in co-operation with and under the scrutiny of the Protecting Power, whose duty it is to safeguard the interests of the parties to the conflict. For further discussion as to the role of Protecting Powers regarding PWs see Chapter 15 (Preventive and Enforcement Measures and the Role of Protecting Powers).

GIII Art 8 (1)

1023. EVACUATION OF PW

1. PWs must be evacuated from the combat zone and away from any danger areas as soon as possible. The only exception allowed is in respect of those who, because of wounds or sickness, would run greater risk by being moved. Captives may not be exposed to unnecessary dangers during evacuation. PWs taken in "unusual combat conditions" and who cannot be evacuated must be released and all "feasible" steps taken for their safety.

GIII Art 19; AP I Art 41 (3)

1024. PW CAMPS

1. PWs may only be interned on land. Centres of internment must be established in healthy areas, with PWs having facilities guaranteeing hygiene and healthfulness. They must not be detained in penitentiaries.

GIII Art 22 (1)

2. While officers should be housed separately, PWs should be gathered in camps according to nationality, language and customs, but should not without their consent be separated from others belonging to the forces with which they were serving at the time of capture.

GIII Arts 22 (3) & 97 (3)

3. A captor may restrict the movement of PWs to a fenced area. If they are not so confined, the captor may order them to remain within a defined area. The PWs may not, however, be held in close confinement,

other than by way of penal or disciplinary measures in accordance with GIII, or because such confinement is necessary for their health or safety.

GIII Art 21 (1)

1025. PAROLE

1. PWs may be released on parole, provided their national law permits this. "Parole" is a binding promise by PWs not to resume hostilities against the Detaining Power in exchange for their liberty. Canadian law does not permit members of the CF to give their parole.

GIII Art 21 (2); NDA s. 76; QR & O 103.09

1026. MEDICAL AND SPIRITUAL CARE

1. PWs are to receive medical and spiritual attention, if possible from doctors or chaplains attached to their own forces or of their own nationality.

GIII Arts 30 - 37

2. The Detaining Power must provide retained medical and religious personnel with all the facilities necessary for the medical care and religious ministrations to the PWs.

GIII Art 33 (1) & (2)

1027. COMMAND OF PW CAMPS

1. PW camps are to be under the command of a responsible commissioned officer of the regular armed forces of the Detaining Power. The commandant must be in possession of a copy of the GIII and ensure that its provisions are known and applied by all members of the camp's staff and guard. The commandant is responsible for ensuring its application. A copy of the GIII, in the language of the PWs, must be posted where all may read it.

GIII Arts 39 (1) & 41 (1)

2. PWs are entitled to wear their badges of rank and nationality as well as decorations. They are required to treat officers of the Detaining Power with the same marks of respect as apply in their own forces. The commandant, regardless of rank, is entitled to a salute from all PWs, whatever their rank.

GIII Art 39 (2) & (3) & 40

1028. USE OF WEAPONS AGAINST PWS

1. The use of weapons against PWs, who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by proper warning.

GIII Art 42

1029. PWS' REPRESENTATIVES

1. If officers and other ranks are detained in the same camp, the senior officer among the PWs must be recognized as the prisoners' representative. This senior officer is responsible for representing the PWs in their relations with camp authorities, the Detaining and Protecting Power, as well as the ICRC and all other organizations assisting these Powers or offering relief to the PWs. If no officers are present, the PWs shall elect one of their own as their representative. In an officers' camp, the PWs' representative is the senior officer detained. The PWs' representative shall be assisted by elected representatives chosen from among the officers or the other ranks by themselves, as the case may be. They are not responsible for offences committed by PWs.

GIII Arts 79 (1) & (2) & 80 (3)

1030. WORK OF PWS

1. PWs who are physically fit may be made to work by the Detaining Power. Their age, gender and physical aptitude, must be taken into account with a view to maintaining their physical and mental health. Non-commissioned Officers may only be employed on supervisory work, unless they ask for other employment, while officers may only be employed at their own request.

GIII Art 49

2. The work in which PWs are engaged must not be of a military character or purpose, nor must it be dangerous, unhealthy or humiliating.

GIII Arts 50 (1) & 52 (1) & (2)

1031. CAPTURE CARD

1. Immediately upon capture and upon transfer from one place of detention to another, PWs shall be allowed to send a card to their families and to the Central PWs Agency giving information of their capture, address and state of health. These cards must be forwarded without delay.

GIII Art 70, Anx IV (B) & (C)

1032. CORRESPONDENCE

1. PWs shall be allowed to send and receive letters and cards and, in exceptional circumstances, telegrams as well. They shall also be allowed to receive parcels containing clothing, food, medical supplies, religious and educational material, books, examination papers, musical instruments and the like. They may receive collective relief parcels in accordance with special agreements made between the parties or with the rules annexed to the GIII, and the distribution of these parcels shall be under the supervision of the Protecting Power or the ICRC.

GIII Arts 71 (1) & (2) & 72 (1), (3) & (4), 73 (1) & Anx III

1033. DEATH OR SERIOUS INJURY OF PWS

1. If a PW dies in captivity, no burial or cremation shall take place before a medical examination has been held. The body shall be entitled to honourable treatment in accordance, if possible, with the PW's religious rites. Burial shall normally be in individual graves, which shall be properly marked and maintained, and recorded with a Graves Registration Service established by the Detaining Power.

GIII Art 120 (3) - (6)

2. Every death or serious injury caused to a PW, as well as any other death the cause of which is unknown, shall be immediately followed by an official inquiry by the Detaining Power. The Protecting Power shall be informed and supplied with statements made by all witnesses as well as with a report of the enquiry. If the report indicates any personal guilt, the Detaining Power shall take all measures for the prosecution and punishment of those responsible.

GIII Art 121

1034. WILLS OF PWS

1. PWs shall be enabled to draw up wills in accordance with the law of their own country, which shall inform the Detaining Power of the relevant legal requirements. At the request of the PW, and in all cases

immediately after death, the will shall be transmitted to the Protecting Power, with a certified copy to the Central Agency.

GIII Art 120 (1)

1035. RELEASE AND REPATRIATION DURING OR AFTER HOSTILITIES

1. While all PWs are to be released and repatriated immediately upon the cessation of active hostilities, parties to the conflict are to repatriate, regardless of rank or number, all seriously wounded and sick when fit to travel. When possible, agreements should be made between the parties, with the co-operation of neutral countries, for the detention of such persons in neutral territory pending such repatriation. Arrangements should also be made for the retention in neutral territory of able-bodied PWs who have undergone a long period of captivity. PWs should not be repatriated against their wishes during hostilities.

GIII Arts 118 (1) & 109 & Anx I

1036. INFORMATION BUREAU AND CENTRAL AGENCY

1. On the outbreak of the conflict, and in all cases of occupation, all parties concerned shall set up an official Information Bureau for PWs in their power. Similar action shall be taken by any neutral or non-belligerent state receiving within its territory persons entitled to be treated as PWs. All parties to the conflict, neutrals and non-belligerent states shall inform the Bureau concerning the PWs in their hands, and the Bureau shall pass such information to the Protecting Power and the Central Agency. The Information Bureau is also responsible for replying to enquiries concerning PWs and collecting all personal valuables and documents useful to next of kin, left by PWs who have been repatriated or released, escaped or died.

GIII Art 122

1037. VISITS TO PWS

1. In accordance with GIII delegates or representatives of Protecting Powers and of the ICRC shall be permitted to visit all places where PWs may be, including places of detention and labour, and may interview PWs and PWs' representatives without witnesses, either personally or through interpreters.

GIII Art 126 (1) & (4)

1038. BREACHES OF PW CONVENTION

1. Parties to the conflict shall take such measures as may be necessary to suppress and punish all breaches of the GIII. If a breach amounts to a grave breach all persons responsible therefore, or having ordered such acts, shall, regardless of nationality, be liable to be tried by any party to GIII. They may also be handed over by the latter for trial by any other party to GIII able to prosecute effectively.

GIII Arts 129 & 130

SECTION 5 - PUNISHMENT OF PWs

1039. LAW APPLICABLE TO PW

1. While detained, PWs must comply with the disciplinary regulations of the Detaining Power. However PWs remain subject to their own system of military law and such other regulations as may be issued by the PWs' representative. For example, Section 76 of the *National Defence Act* outlines service offences relating to improperly being made a PW, failure to re-join Her majesty's service when able to do so, and serving with or aiding the enemy while a PW.

GIII Arts 80 & 82; NDA s. 130

2. PWs are also subject to the laws, regulations and orders in force in the armed forces of the Detaining Power and may only be tried by the same courts and under the same procedures applicable to those armed forces.

GIII Art 84

3. The proceedings against PWs may be either judicial or disciplinary, but the Detaining Power is encouraged to exercise leniency and to proceed by way of disciplinary proceedings whenever possible.

GIII Art 83

4. Acts which would be punishable if committed by a PW but not punishable if committed by a member of the armed forces of the Detaining Power may only be punished by disciplinary punishments. PWs may only be tried by a civil court if the Detaining Power's forces may also be so tried for the offence involved, and provided the tribunal offers the essential guarantees of independence and impartiality generally recognized as compatible with the rule of law.

GIII Arts 82 & 84

5. PWs may be tried by the Detaining Power for offences (for example, war crimes) committed before capture, but they retain the benefits of the GIII even if convicted.

GIII Art 85

6. No PW may be punished more than once for the same offence, or on the same charge.

GIII Art 86

7. PWs may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

GIII Art 87 (1)

8. When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance. The Detaining Power shall also consider that the accused is in its power as the result of circumstances independent of the accused's own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the PW is accused and shall therefore not be bound to apply the minimum penalty prescribed.

GIII Art 87 (2)

9. Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and any form of torture or cruelty, are forbidden.

GIII Art 87 (3)

10. The Detaining Power may never take the rank of a PW, or forbid a PW from wearing rank badges.

GIII Art 87 (4)

11. Officers and non-commissioned members who are PWs undergoing a disciplinary or judicial punishment shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

GIII Art 88 (1)

12. PWs who have served disciplinary or judicial sentences may not be treated differently from other PWs.

GIII Art 88 (4)

13. If a PW is tried by disciplinary proceedings, the PW may only be awarded disciplinary punishment.

14. The disciplinary punishments applicable to PWs are the following:

- a. a fine which shall not exceed 50 per cent of the advance of pay and working pay which the PW would otherwise receive during a period of not more than thirty days;
- b. discontinuance of privileges granted over and above the treatment provided for by the GIII;
- c. fatigue duties not exceeding two hours daily; or
- d. confinement.

GIII Art 88 (1)

15. The punishment of fatigue duties shall not be applied to officers. In no case shall disciplinary punishments be inhumane, brutal or dangerous to the health of PWs.

GIII Art 88 (2) & (3)

16. The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a PW.

GIII Art 90 (1)

17. The maximum of thirty days provided above may not be exceeded, even if the PW is answerable for several acts at the same time when the PW is awarded punishment, whether such acts are related or not.

GIII Art 90 (2)

18. The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

GIII Art 90 (3)

19. When a PW is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

GIII Art 90 (4)

20. A PW commits no offence against International Law by attempting to escape. PWs who have made good on their escape by rejoining their own forces and are recaptured, are not liable to punishment in respect of escape.

GIII Art 91

21. PWs who are recaptured before they have successfully completed their escape may only be subjected to disciplinary punishment, even if they have attempted to escape previously. Those assisting a PW to escape are liable to disciplinary punishment only.

GIII Arts 92 (1) & 93 (3)

22. A recaptured PW may not be tried or punished for any offence committed with the sole purpose of facilitating the escape, provided it does not entail any violence to life or limb. Such offences are subject to disciplinary proceedings only.

GIII Art 93 (2)

1040. PRE-TRIAL, TRIAL AND POST-TRIAL PROCEDURAL CONSIDERATIONS

1. PWs charged with disciplinary offences may only be held in confinement prior to the hearing if personnel of the Detaining Power would be so held, but such confinement shall not exceed fourteen days. Without prejudice to the competence of the courts and superior military authorities, disciplinary punishment may only be awarded by the camp commandant or commandant's delegate.

GIII Arts 95 (1) & (2) & 96 (2)

2. No PW may be tried or punished for any offence, which was not, at the time of its commission, forbidden by International Law or the law of the Detaining Power. No force of any kind may be imposed upon a PW to cause the PW to plead guilty. The PW must be allowed to present his or her defence. If tried by judicial proceedings, the PW must be represented by qualified counsel or advocate.

GIII Art 99

3. There are special reporting provisions to Protecting Powers and PWs' representatives that must be adhered to as to the commencement of legal proceedings, trial dates, judgements and sentences. For details on protecting Powers duties regarding PWs and court proceedings see Chapter 15 (Preventative and Enforcement Measures and the Role of Protecting Powers).

This Page Intentionally Blank

CHAPTER 11

TREATMENT OF CIVILIANS IN THE HANDS OF A PARTY TO THE CONFLICT OR AN OCCUPYING POWER

SECTION 1 - INTRODUCTION

1101. AIM

1. The aim of this chapter is to summarize the rules of the LOAC relating to the protection of civilians once they are in the control of a party to the conflict or of an occupying power.

1102. GENERAL

1. This chapter does not address the protection of civilians against the effects of hostilities, which is dealt with in Chapter 4 relating to targeting.

2. This chapter should be read in conjunction with Chapter 12 as the general obligations relating to belligerent occupation described therein affect civilians as well.

3. The Geneva Convention Relative to the Protection of Civilian Persons in time of War (GIV) signed in 1949 was the first attempt to provide some international legal protection to the civilian population in time of armed conflict. These GIV provisions have since been reinforced by Additional Protocol I to the Geneva Conventions (AP I), international customary law and other treaties.

SECTION 2 - PROTECTED PERSONS AND PERIOD OF APPLICATION

1103. PROTECTED PERSONS

1. Generally speaking, persons protected by the GIV are those persons who, "at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or occupying power of which they are not nationals."

GIV Art 4 (1)

2. Nationals of neutral or co-belligerent states in the territory of a belligerent state will not be regarded as protected persons so long as normal diplomatic relations exist between their state and the belligerent.

GIV Art 4 (2)

3. Persons protected as wounded, sick, shipwrecked or as PWs under one of the other Geneva Conventions (GI, GII, and GIII) are not considered protected under GIV as civilians.

GIV Art 4 (4)

4. The rights secured to protected persons by GIV and by any special agreement that may be concluded under it, may in no circumstances be renounced, either in part or in whole.

GIV Art 8

1104. EXCLUSIONS

1. GIV excludes two classes of persons from its protection:

- a. where a belligerent is satisfied that a certain protected person in its territory is definitely suspected of or engaged in activities hostile to the security of the state; and

- b. in occupied territory, where a protected person is detained as a spy or saboteur or as a person under definite suspicion of activity hostile to the security of the occupying power.

GIV Art 5 (1) & (2)

2. If absolute military security so requires, these persons may be deemed to have forfeited the right of communication provided for in GIV. In both cases, however, they are to be treated humanely.

GIV Art 5 (2) & (3)

1105. PERIOD OF APPLICATION

1. GIV comes into operation immediately upon the outbreak of hostilities or the commencement of an occupation and ceases in the territory of parties to the conflict on the general close of military operations. In the case of occupied territory, however, it continues for one year beyond the end of such military operations.

GIV Art 6 (1) - (3)

1106. PROTECTING POWER

1. GIV is to be applied under the scrutiny of and with the co-operation of the Protecting Power (see Chapter 15 for further discussion on Protecting Powers). However, GIV in no way limits the right of the ICRC or other impartial humanitarian organization to fulfil its humanitarian tasks, with the consent of the parties to the conflict.

GIV Arts 9 (1) & 10

SECTION 3 - GENERAL MEASURES FOR THE PROTECTION OF CIVILIANS

1107. APPLICATION

1. This section applies to the whole of the populations of the countries in conflict. It therefore applies to protected persons and all other civilians.

GIV Art 13

1108. HOSPITAL AND SAFETY ZONES

1. Hospital and safety zones and localities may be established either in time of peace or after the outbreak of hostilities. Belligerents may establish such zones and localities in their own territory and, if necessary, in occupied areas for the protection from the effects of war of wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven. To facilitate the institution and recognition of hospital and safety zones, recourse may be had to the good offices of the Protecting Powers and the ICRC.

GIV Art 14 (1) & (3)

1109. NEUTRALIZED ZONES

1. Any belligerent may agree in writing with the opposing force to the establishment in the regions where fighting is going on of neutralized zones, in order to shelter wounded or sick combatants or non-combatants and civilian persons who take no part in hostilities and who perform no work of a military character. The agreement should provide details of the location, administration, provisioning and supervision of the proposed neutralized zone as well as fix its beginning and duration.

GIV Art 15

1110. SPECIAL PROTECTION

1. Special protection and respect must be given to the wounded and sick, the infirm and expectant mothers. As far as military considerations permit, the belligerents must facilitate any steps to search for killed and wounded, to assist shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

GIV Art 16

1111. CIVILIAN HOSPITALS AND MEDICAL PERSONNEL

1. It is forbidden to attack civilian hospitals. The belligerents must provide them with certificates to the effect that they are civilian hospitals and that their buildings are not used for any purpose, which would deprive them of their protection as such. If so authorized by the State, civilian hospitals should be marked with the distinctive emblem, namely the Red Cross or the Red Crescent. Such marking, so far as military considerations permit, must be made clearly visible to the enemy forces. Civilian hospitals should be situated as far as possible from military objectives.

GIV Art 18

2. Civilian hospitals continue to enjoy protection so long as they are not made use of to commit acts harmful to the enemy. However, in the event of such misuse, the hospitals remain protected until due warning within a reasonable time limit has been given and remained unheeded.

GIV Art 19

3. Protection and respect must be extended to persons regularly and solely engaged in the operation and administration of civilian hospitals. Included in this category are persons engaged in the search for, removal, transport and care of wounded and sick civilians. In occupied territory and in zones of military operations such personnel must carry an identity card certifying their status, bearing the photograph of the holder and stamped by the responsible authority. The belligerents must also issue to them special armlets (bearing the Red Cross or equivalent emblem), to be worn while they are carrying out their duties.

GIV Art 20 (1) & (2)

4. Other persons, engaged in the operation and administration of civilian hospitals, are entitled to protection, and to wear the armlet while employed on their duties. Their identity cards must state what those duties are. The management of each hospital must hold at the disposal of the competent national or occupying authorities an up-to-date list of the personnel employed in the hospital.

GIV Art 20 (3) & (4)

1112. MEDICAL TRANSPORTS AND AIRCRAFT

1. Convoys of vehicles or hospital trains on land, and specially provided vessels at sea, conveying wounded and sick civilians, must be protected and respected in the same way as civilian hospitals. Subject to the consent of the State they must bear the distinctive Red Cross or Red Crescent emblem provided for hospitals.

GIV Art 21

2. Aircraft used exclusively for the removal of wounded and sick civilians, or for the transport of medical personnel and equipment must not be attacked when flying at heights, times and on routes specifically agreed upon between all the belligerents concerned. Such aircraft may be marked with the Red Cross or Red Crescent distinctive emblem. In the absence of agreement to the contrary, flights over enemy or enemy-occupied territory are prohibited. Such aircraft must obey every summons to land, but, after landing and examination, may continue their flight.

GIV Art 22

1113. FREE PASSAGE OF SUPPLIES

1. Belligerents must allow the free passage of all consignments of medical and hospital stores and articles necessary for religious worship intended for civilians, including those of an opposing belligerent. This includes all consignments of essential foodstuffs, clothing and tonics intended for children under 15, and expectant and nursing mothers. This obligation is subject to the condition that the belligerent concerned is satisfied that there are no serious grounds for fearing: that the consignments may be diverted from their destination, that control may not be effective, or that the consignments may be of definite advantage to the military effort or economy of the enemy by permitting him to substitute them for goods which he would otherwise have to provide or produce himself.

GIV Art 23 (1) & (2)

2. Permission for the passage of the consignments may be made conditional on distribution taking place under the local supervision of the Protecting Power. Consignments must be forwarded as rapidly as possible, the belligerent who permits their passage being entitled to prescribe the technical arrangements for their transmission.

GIV Art 23 (3) & (4)

1114. CARE OF CHILDREN

1. Belligerents must make provision for the care of children under 15 who have been orphaned or separated from their families as a result of the conflict. They must ensure the maintenance of such children and facilitate the exercise of their religion, while their education must as far as possible be entrusted to persons of a similar cultural tradition. Belligerents must also facilitate the reception of these children by neutral countries for the duration of hostilities, with the consent of the Protecting Power, if any.

GIV Art 24 (1) & (2)

1115. FAMILY CORRESPONDENCE

1. All persons in the territory of the belligerent or in territory occupied by the belligerent must be enabled to transmit to and receive from members of their families, wherever they may be, news of a strictly personal nature. There must be no undue delay in forwarding such correspondence.

GIV Art 25 (1)

1116. CENSORSHIP

1. This correspondence is liable to censorship by the belligerent concerned. If the belligerents consider it necessary to restrict such correspondence the restrictions must be limited to prescribing the compulsory use of standard forms containing 25 freely chosen words, to be despatched at the rate of not less than one a month.

GIV Art 25 (3)

1117. FAMILY ENQUIRIES

1. Belligerents must facilitate enquiries by members of families dispersed as a result of the war, with the object of renewing contact between them. They must also facilitate the work of approved organizations engaged in this task.

GIV Art 26

SECTION 4 - PROVISIONS COMMON TO THE TERRITORIES OF THE PARTIES TO THE CONFLICT AND TO OCCUPIED TERRITORIES

1118. HUMANE TREATMENT OF PROTECTED PERSONS

1. The person, honour, family rights, religious conventions

and practices, and manners and customs of protected persons must in all circumstances be respected. They must be humanely treated and protected against all acts or threats of violence, and against insults and public curiosity.

GIV Art 27 (1)

1119. EQUAL TREATMENT WITHOUT ADVERSE DISTINCTION

1. Women must be specially protected against any attack on their honour, in particular against rape, enforced prostitution or any other form of indecent assault. Subject to special provisions relating to health, age or gender, protected persons must receive equal treatment without any adverse distinction based on race, religion or political opinion. The belligerents may, however take such measures of control or security about protected persons as may be necessary as a result of the war. The presence of a protected person in a particular place or area must not be used to give that place immunity from military operations.

GIV Arts 27 (2) - (4) & 28

1120. HUMANITARIAN ORGANIZATIONS

1. Every opportunity must be given to protected persons to apply to the Protecting Powers, the ICRC, the local National Red Cross (or equivalent) society or any other organization that may assist them. Within the limits of military or security considerations, the belligerent must provide these organizations with all necessary facilities for given assistance. Belligerents must facilitate as much as possible visits to protected persons not only by delegates of the Protecting Powers and of the ICRC but also by representatives of other organizations ministering to their spiritual or material need.

GIV Art 30

1121. PROHIBITED ACTS

1. Belligerents are forbidden to use physical or moral coercion against protected persons, in particular with a view of obtaining information from them or from other persons.

GIV Art 31

2. GIV prohibits taking any measure, which will cause physical suffering to protected persons or will lead to their extermination. This prohibition applies not only to murder, torture, corporal punishment, mutilation or medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other form of brutality, whether applied by civilians or by military personnel. The following are expressly prohibited:

- a. the punishment of a protected person for an offence not committed by that person;
- b. collective penalties and measures of intimidation and terrorism;
- c. pillage;
- d. the taking of reprisals against protected persons and their property; and
- e. the taking of hostages.

SECTION 5 - ALIENS IN THE TERRITORY OF A PARTY TO THE CONFLICT

1122. DEPARTURE OF ALIENS

1. Aliens (who are civilians of enemy nationality) who wish to leave the territory at the outset of or during an armed conflict must be allowed to do so unless their departure is contrary to the interests of the state. "Interests of the state" is broader than concerns regarding security as it may also include economic considerations. Those persons who are permitted to leave must be allowed to bring the necessary funds for their journey and to take with them a reasonable quantity of personal effects. If permission to leave is refused, the persons concerned are entitled to apply to an appropriate court or administrative board designated by the belligerent, for reconsideration of the decision as soon as possible.

GIV Art 35 (1) & (2)

2. Unless prevented by reasons of security, or if the persons themselves object, the belligerent must, on request, supply the Protecting Power with a statement of the reasons why permission was refused, and a list of the persons affected.

GIV Art 35 (3)

3. Authorized departures must be carried out under satisfactory conditions as regards safety, hygiene, sanitation and food. All expenses in connection therewith from the point of exit from the country are to be borne by the country of destination or, in case of accommodation in a neutral country, by the state whose nationals are thus benefited. These provisions are not to prejudice any special agreements between the belligerents concerning the exchange or repatriation of their nationals in enemy hands.

GIV Art 36 (1)

4. Protected persons who are deprived of their liberty pending proceedings against them or while serving a prison sentence must be humanely treated and on their release may apply for permission to leave the territory in accordance with the procedure set out above.

GIV Art 37

1123. TREATMENT OF PROTECTED PERSONS

1. Subject to security requirements protected persons who remain in the territory of the belligerent must, in general, be treated in accordance with the rules governing the treatment of aliens in time of peace. In particular, they must be allowed to receive any individual or collective relief that may be sent to them, to obtain medical and hospital treatment to the same extent as the nationals of the belligerent, to practice their religion, and, to the extent permitted to nationals, to leave areas particularly exposed to the dangers of war.

GIV Art 38

1124. EMPLOYMENT OF PROTECTED PERSONS

1. Protected persons who lose their employment as a result of the conflict must be given the opportunity, on a footing of equality with the belligerent's nationals, to find other paid work. If the measures of control and supervision adopted by the belligerent for security reasons prevent such persons from finding paid employment on reasonable conditions, the belligerent must ensure their support and that of their dependants. Protected persons may receive allowances from their home states, from the Protecting Power, or from relief societies.

GIV Art 39

2. Protected persons may be compelled to work only to the extent, under the same working conditions, and with the same benefits, as the nationals of the belligerent. Protected persons of enemy nationality may be compelled to do only the kind of work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of the population. They must not be required to do work directly related to the conduct of military operations.

GIV Art 40 (1) & (2)

1125. INTERNMENT OF PROTECTED PERSONS

1. If a state considers that the measures of control over protected persons provided in GIV are inadequate, the most severe additional measure of control that may be imposed by that State is that of assigned residence or internment in accordance with the provisions of GIV.

GIV Art 41 (1)

2. A belligerent may order the internment of protected persons, or their being placed in assigned residences, only if security requirements make such a course absolutely necessary. Any person who, through the representatives of the Protecting Power, voluntarily demands to be interned and whose situation renders such a step necessary for his own protection must be interned by the belligerent.

GIV Art 42

3. A person who has been interned or placed in an assigned residence is entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board of the belligerent. If the internment or placing in assigned residence is maintained, the court or administrative board must periodically, and at least twice yearly, reconsider the case with a view to the favourable amendment of the initial decision if circumstances permit. Unless the protected person objects, the belligerent must as soon as possible notify the Protecting Power of the names of those interned or placed in an assigned residence and of their release therefrom.

GIV Art 43

1126. TRANSFER OF PROTECTED PERSONS

1. Except for their repatriation or return to their country of residence after the cessation of hostilities, protected persons must not be transferred to a state, which is not a party to GIV. Moreover, they may only be transferred to a state, which is a party to GIV if the detaining state has satisfied itself that the receiving state is willing and able to apply GIV.

GIV Art 45 (1) - (3)

1127. RESPONSIBLE STATE

1. In the event of transfers taking place, the accepting State becomes responsible for its application. Should that state fail to carry out its obligations in any important respect, it is the duty of the State which made the transfer either to take effective measures to correct the situation or to request the return of the persons affected.

GIV Art 45 (3)

2. In no circumstances may a protected person be transferred to a state where he or she has reason to fear persecution on account of his political opinions or religious beliefs.

GIV Art 45 (4)

3. Protected persons who are accused of offences against the ordinary criminal law remain liable to extradition in pursuance of extradition treaties concluded before the outbreak of an armed conflict.

GIV Art 45 (5)

1128. CANCELLATION OF RESTRICTIVE MEASURES

1. As soon as possible after the close of hostilities the belligerents must cancel all remaining restrictive measures regarding protected persons. All restrictive measures affecting their property must also be cancelled, in accordance with the law of the detaining power.

GIV Art 46

SECTION 6 - TREATMENT OF INTERNEES

1129. GENERAL

1 In many respects the articles contained in GIV as to the treatment of internees are comparable to provisions of GIII concerned with the treatment of PWs.

2. Protected persons may be interned only in accordance with the provisions of GIV and only in cases when they pose a threat to the state in whose hands they are. Internees retain their full civil capacity including the ability to sue and be sued in courts of law. The interning power is obligated to maintain interned persons and to provide them with medical care, all free of charge.

GIV Art 79 - 81 (1) & (2)

3. Wherever possible, internees of the same nationality, language and customs must be interned together and family members must be housed in the same place and premises.

GIV Art 82

4. Internment camps must not be located in areas particularly exposed to the dangers of war and, whenever military considerations permit, must be marked for protection against air attack. Internees shall be accommodated separately from PWs and from imprisoned criminals.

GIV Art 83 & 84

5. The buildings of internment camps must have adequate heat, light and sanitary conveniences. Premises for the holding of religious services must be made available. Canteens must be made available in the camps to purchase local goods unless adequate alternative facilities are available. An adequate number of air raid shelters for the use of internees must be built in every camp.

GIV Arts 85 - 88

6. Effective measures must be provided with adequate food, water, and clothing. Internees shall be medically inspected once a month. They shall enjoy complete freedom to practice their own religion. They shall be given the opportunity to participate in educational, intellectual, and recreational pursuits but may not be compelled to participate.

GIV Art 89, 90, & 92 - 94

7. Internees may not be compelled to work except in a professional medical or dental capacity or for camp maintenance. Wages for work done by internees must be determined on an equitable basis having regard to local conditions and to the fact that the internee is in receipt of free maintenance and medical care. If labour detachments are sent from the camp to do work, the interning power is still responsible for the protection of the internees even though such detachments may be working for private businesses.

GIV Art 95 & 96

8. Provisions for camp administration and discipline are set out in detail in GIV.

GIV Arts 99 - 104

1130. ENQUIRY INTO DEATH OR INJURY OF INTERNEES

1. Whenever the death or serious injury of an internee is caused or suspected to have been caused by a sentry, by another internee, or by any other person, or if the cause of death is unknown, the detaining power must immediately hold an official enquiry into the matter and a report of the result of such enquiry must be sent to the Protecting Power. Should the result of the enquiry point to any person or persons as being guilty, the detaining power must take all necessary steps to ensure the prosecution of those responsible.

GIV Art 131

1131. RELEASE AND REPATRIATION OF INTERNEES

1. Interned persons must be released by the detaining power as soon as the reasons which necessitated internment cease to exist. Internment must also cease as soon as possible after the close of hostilities. However, internees who are in the territory of a belligerent and who are undergoing a sentence of confinement or against whom penal (that is, judicial) proceedings for offences not exclusively subject to disciplinary penalties are pending, may be detained until the close of the proceedings or end of the sentence.

GIV Arts 132 & 133

SECTION 7 - INFORMATION BUREAU AND CENTRAL AGENCY

1132. INFORMATION BUREAU

1. The GIV requires that upon the outbreak of a conflict and in all cases of occupation each of the parties to the conflict must establish an official information bureau to receive and transmit information concerning the protected persons who are in its power. Each party is bound, as soon as possible, to give its bureau full particulars relating to the placing in custody for more than two weeks, the placing in assigned residence, or the internment, of any protected person. It is also the duty of each party to see that its various departments concerned with such matters give the bureau prompt information concerning the protected persons, for example, transfers, releases, repatriations, escape, admissions to hospital, births and deaths.

GIV Art 136

2. Each national bureau must forward without delay information concerning protected persons to the powers of which such persons are nationals or in whose territory they formerly resided. This is to be done through the Protecting Powers and through a central agency, which is to be set up in a neutral country. The national bureau must also reply to all enquiries concerning protected persons unless sending such information would be detrimental to the person concerned or to his or her relatives.

GIV Art 137 (1) & (2)

1133. CENTRAL AGENCY

1. A central information agency for protected persons, particularly internees, must be set up in a neutral country. The ICRC may, if it thinks it necessary, propose to the powers concerned the organization of such an agency. The duty of the agency is to collect the information referred to in the preceding paragraphs and to send it to the countries of origin or residence of the persons concerned, unless this course might be harmful to the persons concerned or their relatives.

SECTION 8 - ADDITIONAL PROTOCOL I

1134. GENERAL

1. AP I includes a number of provisions concerning the treatment of persons in the power of a party to the conflict which go beyond the requirements of GIV. Refugees and stateless persons are deemed to be protected persons within the meaning of GIV. Parties to conflicts are obligated to facilitate the reunion of families dispersed as a result of armed conflicts. Certain additional protections are provided for women and children.

AP I Art 73, 74, 76 & 77

1135. FUNDAMENTAL GUARANTEES

1. AP I provides that all persons in the power of a party to the conflict are entitled to at least a minimum of humane treatment without adverse discrimination on grounds of race, gender, language, religion, political discrimination or similar criteria. It states in part:

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

a. violence to the life, health, or physical or mental well-being of persons, in particular:

- (1) murder;
- (2) torture of all kinds, whether physical or mental;
- (3) corporal punishment; and
- (4) mutilation;

b. outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

c. the taking of hostages;

d. collective punishments; and

e. threats to commit any of the foregoing acts.

AP I Art 75 (1) & (2)

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language that person understands of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

AP I Art 75 (3)

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure.

AP I Art 75 (4)

5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned they shall, whenever possible, be held in the same place and accommodated as family units.

AP I Art 75 (5)

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy those fundamental protections until their final release, repatriation or re-establishment, even after the end of the armed conflict.

AP I Art 75 (6)

7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

- a. persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and
- b. any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall enjoy the fundamental protections, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

AP I Art 75 (7)

8. No provision of these fundamental protections may be construed as limiting or infringing any other more favourable provisions granting greater protection, under any applicable rules of international law, to accused persons.

AP I Art 75 (8)

SECTION 9 - CIVIL DEFENCE

1136. GENERAL

1. AP I contains a number of articles providing specific protection to civil defence organizations and their personnel.

AP I Arts 61 - 67

1137. DEFINITION OF CIVIL DEFENCE

1. Civil defence is defined to mean the performance of specified humanitarian tasks intended to protect the civilian population against the dangers of hostilities or disasters and to help it recover from their immediate effects, and to provide the conditions necessary for its survival.

AP I Art 61 (1)

1138. CIVILIAN CIVIL DEFENCE ORGANIZATIONS ENTITLED TO PROTECTION

1. Civilian civil defence organizations and their personnel must be respected and protected and are entitled to carry out their tasks, subject to imperative military necessity.

AP I Art 62 (1)

2. Civilians who respond to a call by the competent authorities to participate in civil defence activities are equally protected, even though they are not members of civil defence organizations, and provided that they carry out their functions under the control of such authorities.

API Art 62 (2)

3. The rights and protection enjoyed by civilian civil defence personnel are also enjoyed by neutral nationals performing such tasks in the territory of a party to the conflict, with the consent of that party, but notification of such assistance must be given to the adverse party.

API Art 64 (1)

4. Buildings and materiel used for civil defence purposes are protected from attack in the same way as other non-military objects. The same exemption applies to shelters provided for the civilian population. Objects which are intended for civil defence purposes may only be destroyed or diverted from this use by the party to which they belong, and shelters provided for or needed by the civilian population must not be diverted from such use or requisitioned by the Occupying Power.

API Arts 62 (3) & 63 (6)

1139. CIVILIAN CIVIL DEFENCE ORGANIZATIONS IN OCCUPIED TERRITORY

1. Civilian civil defence organizations in occupied territory shall be provided with by Occupying Power of such facilities as are necessary to enable them to fulfil their special tasks. They cannot be compelled to perform any task which would interfere with their civil defence activities.

API Art 63 (1)

2. The Occupying Power is not permitted to make any change in the structure or personnel of civilian civil defence organizations if such change might jeopardize the efficient performance of their task, nor may it require such organizations to give priority to the interests of nationals of itself as Occupying Power.

API Art 63 (1)

1140. CIVILIAN CIVIL DEFENCE PERSONNEL MAY CARRY WEAPONS

1. Civilian civil defence personnel may carry light individual weapons for the purpose of self-defence or maintaining order. If they are operating in areas where land fighting is likely to take place, such weapons must be confined to handguns. If, in such areas, they are in fact carrying other light weapons, they are entitled to protection as soon as their status is established. The Occupying Power is entitled to disarm such personnel for security reasons.

API Art 65 (3)

1141. TERMINATION OF PROTECTION

1. As with other protected personnel and organizations, the protection enjoyed by civil defence personnel and organizations ceases if they are used, outside their proper task, for acts inimical to the adverse party.

API Art 65 (1)

2. Civil defence activities carried out under the direction or control of the armed forces, or in cooperation with these forces, or with military personnel attached to civilian defence organizations, or for the benefit of military victims shall not be considered as acts harmful to the enemy provided such benefit is incidental to normal civil defence activities.

API Art 65 (2)

1142. PROTECTIVE EMBLEMS

1. For the protection of civil defence personnel, their establishments and their materiel, the international distinctive civil defence emblem shall be used in a manner identifiable by the adverse party.

AP I Art 66 (1) - (4)

2. Medical and religious personnel may be attached to civil defence units and they are then protected by the provisions of AP I relating to the civil defence emblem (see Chapter 4 Annex A) as well as by the distinctive emblem (Red Cross or Red Crescent).

AP I Arts 18 & 66 (1) - (4)

1143. MILITARY PERSONNEL AND EQUIPMENT ASSIGNED TO CIVIL DEFENCE DUTIES

1. Members of the armed forces may be assigned to civil defence organizations and shall be respected as such, provided they are assigned on a permanent basis and only fulfil civil defence activities and no military duties throughout the duration of the conflict.

AP I Art 67 (1) (a) & (b)

2. Military personnel assigned to civil defence duties must be clearly identifiable from other members of the armed forces. Such identification shall be by way of the international civil defence emblem prominently displayed and by the issue of civil defence identity cards.

AP I Art 67 (1) (c)

3. As with civilian civil defence personnel, military personnel assigned to civil defence duties may only carry light individual weapons for maintaining order or self-defence.

AP I Art 67 (1) (d)

4. Military personnel assigned to civil defence duties must not commit any act, outside their civil defence duties, which may be harmful to the adverse party. They may only perform their civil defence duties within their own national territory.

AP I Art 67 (1) (e) & (f)

5. Any military buildings or major items of equipment and transport used for civil defence purposes must be clearly marked with the distinctive sign, which shall be as large as appropriate.

AP I Art 67 (3)

6. If captured by the adverse party, military personnel assigned to civil defence duties do not lose their status as members of the armed forces. They become PWs and must be treated as such. Materiel and buildings belonging to the military but permanently assigned to civil defence purposes and exclusively used for such, are, if they fall into enemy hands, to be treated in accordance with the LOAC. They may not be diverted from their civil defence purpose so long as they are required for this purpose, except due to imperative military necessity, and then only when alternative arrangements for civil defence have been made.

AP I Art 67 (2) & (4)

This Page Intentionally Blank

CHAPTER 12
RIGHTS AND DUTIES OF OCCUPYING POWERS
SECTION 1 - INTRODUCTION

1201. AIM

1. The aim of this chapter is to provide a brief overview of the rights and duties of occupying powers.

1202. GENERAL

1. The belligerent occupation of enemy territory triggers many legal considerations and obligations such as running the justice system and taxation to the general treatment of the civilian population. By necessity this chapter only sets out the functions that may most concern CF members if in an occupation situation.
2. "Belligerent occupation" is the military occupation of enemy territory. The Law of Belligerent Occupation refers to those provisions of customary or conventional international law, which regulate the conduct of a belligerent in occupied territory.
3. The provisions in the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GIV) and in The Hague Rules on this subject are closely interwoven and for that reason they will be considered together in this chapter. This chapter should be read in conjunction with Chapter 11 (Treatment of Civilians in the Hands of a Party to the Conflict or an Occupying Power).

SECTION 2 - COMMENCEMENT AND TERMINATION OF BELLIGERENT OCCUPATION

1203. COMMENCEMENT

1. Commencement of occupation is essentially a question of fact. Territory is considered occupied when it is actually placed under the authority of the hostile army. This occupation extends only to the territory where such authority has been established and can be exercised.

HIVR Art 42

2. Occupation must be actual and effective, that is, there must be more than a mere declaration or proclamation that possession has been taken, or that there is the intention to take possession. Occupation does not take effect merely because the main forces of the country have been defeated. On the other hand, to occupy a district it is not necessary to keep troops permanently stationed in every isolated village or town.
3. The fact that there is a defended place or zone still in possession of the national forces within an occupied district does not make the occupation of the remainder invalid, provided that such place or defended zone is surrounded and effectively cut off from the rest of the occupied district.
4. Valid occupation rests on two conditions: first, the legitimate government should, by the act of the invader, be rendered incapable of publicly exercising its authority within the occupied territory; secondly, the invader should be in a position to substitute his own authority for that of the legitimate government. These conditions afford in most cases a useful guide.
5. The test of the commencement of occupation is the establishment of the occupant's authority by the presence of a sufficient force following on the cessation of local resistance, in consequence of the surrender, defeat or withdrawal of the enemy's forces, and the submission of the inhabitants. In practice the moment may be difficult to determine, and considerable latitude must therefore be allowed.

6. It is desirable that the invader should proclaim to the population of invaded territory as soon as possible the fact that the territory is occupied and the effects, which result from the occupation. The occupier should also take some steps to ensure that its authority is visibly manifested by, for example, stationing a few troops in the area.

7. Once occupation is established, it must be maintained. If the occupying power is able to maintain effective power over the territory through the use of only a small body of troops, then this fact does not of itself terminate the occupation. Occupation is not invalid because some of the inhabitants are in a state of rebellion or a local resistance movement is in existence.

1204. TERMINATION OF OCCUPATION

1. Occupation may be terminated in at least three ways.

- a. The occupying power may withdraw from the occupied territory.
- b. The occupying power may be ejected from the occupied territory by force.
- c. The sovereign of the occupied territory may be totally defeated and part or all of the occupied territory may be annexed by the occupying power.

2. The general termination of hostilities does not automatically terminate occupation. Occupation does not terminate until a state exercises sovereign authority over the area as part of its own territory. Most of the GIV provisions concerning occupied territory continue in effect for one year after the general termination of hostilities. Thereafter, a number of core provisions continue in effect until the occupation is in fact terminated.

GIV Art 6 (3)

3. These core provisions, which continue in effect, preserve the right to basic humanitarian treatment, the right to a fair trial, and protection against forced transfers, evacuations and deportations.

SECTION 3 - GENERAL EFFECTS OF OCCUPATION

1205. LIMITS ON LEGISLATIVE POWER OF OCCUPANT

1. During occupation by the enemy, the sovereignty of the legitimate government continues to exist but it is temporarily latent. The powers of the occupant are of a provisional nature and it should only take measures, which are necessary for the purposes of the armed conflict, the maintenance of order and safety and the proper administration of the occupied territory. Generally speaking, the occupant is not entitled to alter the existing form of government, to upset the constitution and domestic laws of the occupied territory, or to set aside the rights of the inhabitants.

1206. ANNEXATION PROHIBITED

1. It is unlawful for the occupant to annex the occupied territory while the armed conflict continues. Neither purported annexation nor agreements between the occupant and puppet governments established in the territory have any effect on the legal rights of protected persons under GIV.

GIV Art 47

1207. MAINTENANCE OF PUBLIC ORDER

1. The occupant has a right to demand and enforce such measures of obedience from the population of the territory as are necessary for the security of the occupant's forces, the maintenance of order, and the

proper administration of the country. The occupant has an obligation to maintain public order and it is obliged under the GIV to carry out certain duties with regard to the inhabitants of the territory.

SECTION 4 - ADMINISTRATION OF OCCUPIED TERRITORY

1208. GENERAL

1. All functions of the legitimate government in the occupied territory cease when occupation commences. The occupant may, however, allow civil servants and other officials of the local government to continue to perform their routine duties.

1209. LAW APPLICABLE IN OCCUPIED TERRITORY

1. The occupying power does not bring with it the ordinary civil and criminal laws and jurisdiction of its own country. Generally speaking, the civil and penal laws of the occupied country continue to be valid and the ordinary courts continue to sit. The ordinary courts usually continue to try all criminal charges against the inhabitants which are not of a military nature and do not affect the safety of the army of occupation

GIV Art 64

2. If military necessity, the maintenance of order, or the welfare of the population so require, it is within the power of the occupant to alter or suspend or repeal any of the existing laws, or to promulgate new laws.

HIVR Art 43; GIV Art 64 (3)

3. The occupant may not, however, declare that the rights of enemy subjects are abolished, suspended or inadmissible or unenforceable in a court of law in the occupied territory.

1210. OCCUPYING FORCE EXEMPT FROM LOCAL LAWS

1. Members of an occupying force are not subject to the jurisdiction of the local courts as their offences will be dealt with under the military law of their own armed forces. The occupant will generally ensure that some system of law is available to handle legal problems arising between inhabitants of the occupied territory and members of the occupation forces.

1211. OCCUPATION COSTS

2. The occupying power is entitled to require the occupied territory to bear the expenses of the occupation provided that these expenses are not greater than the economy of the territory can reasonably be expected to bear. The occupant is not allowed to pillage the occupied territory or to take from it any money or goods in excess of the occupation costs.

1212. TAXATION

1. The financial administration of the territory passes into the hands of the occupant but the pre-existing tax structure remains in effect.

HIVR Art 48

1213. CURRENCY

1. The use of the occupant's own currency, in addition to that of the occupied territory, is a general and necessary practice, which is permitted

1214. COMMERCIAL RESTRICTIONS

1. The occupant may place such restrictions and conditions upon all commercial intercourse with the occupied territory as deemed suitable for the occupant's military purpose. Likewise existing restrictions, for example, customs tariff in force, may be removed.

1215. CENSORSHIP

1. The occupant may establish censorship of the press, radio, theatre, motion pictures, television, correspondence, and of all other means of communication. It may prohibit entirely the publication of newspapers or prescribe regulations for their publication and circulation. The occupant is not required to furnish facilities for postal service, but may take charge of them itself, especially if the officials of the occupied district fail to act or to obey its orders.

HIVR Art 43

1216. FREEDOM OF RELIGION

1. The occupant is obligated to allow freedom of religion in the occupied territory. However, the clergy are obligated to refrain from reference to politics and are liable to appropriate sanctions if they use their position to incite resistance.

GIV Art 64

1217. CONTROL OVER TRANSPORTATION

1. All means of transport, both public and private, come under the authority of the occupying power and the occupier may introduce such regulations as it deems fit concerning their operation. If the occupying power decides to seize any means of privately owned transport, they must be restored and compensation paid when peace is made.

1218. WELFARE MEASURES

1. Foodstuffs and medical supplies in the occupied territory may only be requisitioned for use by the occupation and administration personnel so long as the requirements of the civilian population have been taken into account. If the local food and medical resources are inadequate for the purposes of the local population, the occupying power is under a duty to bring in such supplies as are necessary. Civilian hospitals may only be temporarily requisitioned, and only in the event of urgent necessity for the care of military wounded and sick, provided adequate arrangements are made for the care of the local population. The occupying power must also ensure the provision of clothing, bedding, means of shelter and other supplies essential to the survival of the civilian population, together with those objects which are required for religious worship.

GIV Arts 23 (1), 55 (1) & (2), 57 (1)

2. The occupying power must take the necessary steps to ensure that children under fifteen separated from their families are not left to their own resources, and that proper steps are taken to maintain their education and religious welfare. They must also enable all persons in the occupied territory to exchange news of a personal nature with members of their families.

GIV Arts 24 (1) & 25

1219. RELIEF MEASURES

1. The occupying power is under an obligation to allow free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended for civilians in occupied territory, as well as of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and

maternity cases. However, it may, require that distribution of such supplies be under the supervision of the Protecting Power.

GIV Art 23 (1) & (3)

1220. POPULATION MOVEMENTS INTO OCCUPIED TERRITORY PROHIBITED

1. The occupying power is forbidden to move parts of its own population into the occupied territory, with the intention of changing the nature of the population or annexing or colonizing the area.

GIV Art 49 (6)

SECTION 5 - EFFECTS OF OCCUPATION ON THE POPULATION

1221. DUTY TO OCCUPYING POWER

1. It is debatable whether or not the inhabitants of occupied territories owe any duty to the occupying power. The Hague Rules forbid the occupying power to compel the inhabitants of occupied territory to swear allegiance to it. On the other hand, these Rules obligate the occupying power to attempt to restore public order and safety. The inhabitants may be punished for attacks on the occupying power but such attacks are not automatically classified as war crimes.

HIVR Art 43 & 45

2. Any claim to obedience due to the occupant is limited by the following three Hague Rules:
- a. a belligerent is forbidden to compel the subjects of the hostile party to take part in the operations of war directed against their own country, even if they were in the service of the belligerent before the commencement of the war;
 - b. the services demanded of inhabitants shall be of such nature as not to involve them in the obligation of taking part in military operations against their own country; and
 - c. a belligerent is forbidden to compel the inhabitants of territory occupied by the belligerent to furnish information about their armed forces, or about its means of defence.

HIVR Art 44

1222. RIGHTS OF INHABITANTS OF OCCUPIED TERRITORY

1. It is the duty of the occupant to see that the lives of the inhabitants are respected, that their domestic peace and honour are not disturbed, that their religious convictions are not interfered with, and generally that duress, unlawful and criminal attacks on their person, and illegal interference with their property, are punished as if committed in time of peace.

2. In all circumstances protected persons are entitled to respect for their person, their honour, their family rights, their religious conventions and practices and their manners and customs. Protected persons must be humanely treated at all times and they must be especially safeguarded against all acts of violence or threats of violence and against insults and public curiosity. Women must be especially protected against any attack on their honour; in particular against rape, enforced prostitution or any other form of indecent assault. All protected persons must be treated with the same consideration, without any adverse distinction based, in particular, on race, religion or political opinion.

GIV Art 27 (1) - (3)

3. It is forbidden to use the presence of protected persons to render certain points or areas immune from military operations.

GIV Art 28

1223. CONTROL OF PERSONS IN OCCUPIED TERRITORY

1. Military authorities in occupied territories have the right to perform police functions and to protect their own security.

2. Permissible measures of population control include:

- a. restricting freedom of movement,
- b. evacuation,
- c. under certain exceptional circumstances, persons may be held without any right to communicate for a limited period,
- d. judicial process,
- e. assigned residence, and
- f. internment.

GIV Arts 27 (4), 42, 43, 49 (2), 64, 66 & 78

3. The following measures of population control are forbidden at all times:

- a. violence,
- b. physical or moral coercion, particularly to obtain information,
- c. brutality,
- d. punishment for acts of others, that is, reprisals or collective penalties, and
- e. deportations.

GIV Arts 31, 32, 33 (1) & (3) & 49 (1)

1224. FORCED ENLISTMENT

1. The occupying power is prohibited from compelling protected persons to enlist in its armed forces and may not use any pressure or propaganda aimed at securing their voluntary enlistment. To compel the population of occupied territory so to enlist is a grave breach of GIV.

GIV Art 51 (1)

1225. COMPULSORY LABOUR

1. The occupying power may only compel persons over the age of eighteen to work, and only on work for the needs of the army of occupation, the public utility services, or for the feeding, clothing, sheltering, transportation or health of the population of the occupied territory. The population cannot be compelled to participate in any work, which would involve participation in military operations.

GIV Art 51 (2)

1226. PUBLIC OFFICIALS IN OCCUPIED TERRITORY

1. The occupying power is the administrator of the occupied territory. As such, it has an unlimited power to remove public officials, including judges, from their posts. However, the occupying power may not apply sanctions, other than removal, against public officials who refuse to carry out their functions for reasons of conscience.

GIV Art 54

2. The occupant may not compel inhabitants to perform political, judicial, or other executive functions. If the occupying power keeps officials of the legitimate sovereign in office, and if it collects the taxes, it is obligated to continue paying these officials their salaries.

HIVR Art 48

1227. RIGHT OF NON-NATIONALS TO LEAVE OCCUPIED TERRITORY

1. Non-nationals of the former sovereign under the occupation of the adverse party must be allowed to leave the territory in accordance with the procedures laid down by the occupying power.

GIV Art 48

SECTION 6 - ADMINISTRATION OF CRIMINAL LAW IN OCCUPIED TERRITORIES**1228. CONTENT OF CRIMINAL LAW**

1. The occupying power may only amend or suspend the ordinary civil and penal law of the occupied territory when any particular rule thereof constitutes a danger to the continuance of the occupation or the authority of the occupying power.

GIV Art 64 (1)

2. The ordinary courts of the land shall, to the extent that the judges are willing to cooperate, be allowed to function. However, the occupying power may introduce any penal legislation that may be necessary to enable the occupying power to carry out its obligations under the GIV or for the security of the occupation, including the occupying power's lines of communication.

GIV Art 54 (1) & 64 (2) & (3)

1229. RESTRICTIONS ON POWERS OF OCCUPANT WITH REGARD TO CRIMINAL LAW AND PUNISHMENT

1. Under GIV the legislative powers of the occupant in the sphere of criminal law are restricted in the following ways:

- a. The penal provisions enacted by the occupant must not be retroactive and penalties shall be proportionate to the offences.
- b. The courts are expressly enjoined to take into consideration the fact that the accused is not a national of the occupying power.
- c. The kinds of punishment which the occupant may adopt are also limited. Protected persons who commit an offence which is intended only to harm the occupant, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damages the property of the occupying forces or administration or the installations used by them, shall only be liable to internment or simple imprisonment.

- d. Protected persons must not be arrested, prosecuted or convicted for acts committed or opinions expressed before the occupation or during a temporary interruption of it.

GIV Arts 67, 68 (1) & 70 (1)

2. Nationals of the occupying power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied state, must not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities or for offences, which would have justified extradition in time of peace.

GIV Art 70 (2)

1230. ESTABLISHMENT OF SPECIAL COURTS

1. While, in general, the occupant is bound to maintain the jurisdiction of the ordinary criminal courts in occupied territory, in case of a breach of criminal laws promulgated by the occupant, accused may be handed over to properly constituted non-political military courts sitting in the occupied territory. Courts of appeal should also preferably sit in occupied territory.

GIV Art 66

1231. IMPRISONMENT PENDING TRIAL

1. In all cases, the duration of the period to which a protected person accused of an offence is detained pending trial or punishment shall be deducted from any period of imprisonment awarded.

GIV Art 69

2. The Geneva Convention Against Torture expressly prohibits torture or abuse of any kind and at any time against detainees.

3. 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment Art 11

1232. TRIAL AND POST-TRIAL PROCEDURES

1. Sentences may be pronounced only after a regular trial. Accused persons must be promptly informed, in writing, and in a language, which they understand, of the charges brought against them. They must be brought to trial as rapidly as possible.

GIV Art 71 (1) & (2)

1. The Protecting Power must be informed of all proceedings instituted by the occupant against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it must be enabled, at any time, to obtain information regarding the state of such proceedings.

GIV Art 71 (2)

2. Representatives of the Protecting Power have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held **in camera** in the interests of the security of the occupant, who must then so notify the Protecting Power. A notification in respect of the date and place of the trial, however, must be sent to the Protecting Power.

GIV Art 74

3. Accused persons have the right to present evidence necessary to their defence and may, in particular, call witnesses. They have the right to be assisted by a qualified advocate or counsel of their own choice, who must be able to visit them freely and to be provided with the necessary facilities for preparing the

defence. Failing a choice by the accused, the Protecting Power may provide the accused with an advocate or counsel.

GIV Art 72 (1) & (2)

4. When an accused person has to meet a serious charge and the Protecting Power is not functioning, the occupying authorities must, subject to the consent of the accused, provide an advocate or counsel. Unless they voluntarily waive such assistance, accused persons must be aided by an interpreter, both during preliminary investigation and during the hearing in court. They have the right at any time to object to the interpreter and to ask for a replacement.

GIV Art 72 (2) & (3)

5. There is no absolute right of appeal against sentence. GIV merely states that "The convicted persons shall have the right of appeal provided for by the laws applied by the court".

GIV Art 73 (1)

6. Any judgement involving a sentence of death, or of imprisonment for two years or more, must be communicated, together with the relevant grounds, as rapidly as possible to the Protecting Power. The notification must contain a reference to the notification made under GIV, and, if the sentence be imprisonment, the name of the place where the sentence is to be served.

GIV Art 74 (2)

7. In no case may persons condemned to death be deprived of the right of petition for pardon or reprieve. No death sentence may be carried out before the expiration of a period of at least six months from the date of receipt by the Protecting Power of notification of the confirmation of the death sentence, or of an order denying pardon or reprieve. The six months' period of suspension of the death sentence may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the occupying power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

GIV Art 75

1233. TREATMENT OF PERSONS UNDERGOING SENTENCES OF IMPRISONMENT

1. GIV contains stringent provisions concerning the treatment of persons undergoing sentence of imprisonment. These are as follows:

- a. Protected persons accused of offences must be detained in the occupied country, and if convicted they must serve their sentences in that country. They must, if possible, be separated from other detained persons and must enjoy conditions of food and hygiene sufficient to keep them in good health and at least equal to those obtaining in prisons in the occupied country.
- b. They must receive the medical attention required by their state of health. They have the right to receive any spiritual assistance, which they may require. Women must be confined in separate quarters and placed under the direct supervision of women. Proper regard must be paid to the special treatment due to minors.
- c. Protected persons who are detained have the right to be visited by delegates of the Protecting Power and of the ICRC.
- d. They have the right to receive at least one relief parcel monthly.

GIV Art 76

1234. POSITION AFTER THE CLOSE OF OCCUPATION

1. After the end of the military occupation, imprisoned protected persons who have been accused or convicted for offences in the occupied territory must be handed over to the authorities of the liberated territory.

GIV Art 77

1235. PRIVATE AND PUBLIC PROPERTY

1. Enemy property must be dealt with differently if it belongs to the enemy state than if it belongs to individuals or organizations.

HIVR Art 46 & 53

2. The distinction between public and private property is not an easy one to draw. The primary test is that of ownership or legal title. If the owner is a public body then the property belongs to the state. If the owner is an individual or a private organization then the property is private. Under certain circumstances strict reliance on legal title does not produce a fair result. For example, pension funds or private bank deposits may be held in a state owned bank.

HIVR Art 53

3. If property is of mixed ownership, that is partly owned by the state and partly owned by private persons, then, if the occupant appropriates the property for its own benefit, the private owners should be compensated for their portion of the property. If property is of unknown ownership, then it should be treated as public property until its actual ownership is determined.

1236. PILLAGE PROHIBITED

1. Pillage is prohibited. Pillage is the seizure or destruction of enemy private or public property or money by representatives of a belligerent, usually soldiers, for private purposes. Soldiers may, under certain circumstances seize enemy property but once such property has been seized it belongs to the state which the soldiers are serving. Soldiers are not allowed to become thieves or bandits on their own account merely because they are involved in an armed conflict. The rule against pillage is directed against all private acts of lawlessness committed against enemy property.

HIVR Art 47; GIV Art 33 (2)

1237. DESTRUCTION

1. Destruction is the partial or total damage of property. Property of any type or ownership may be damaged when such is necessary to, or results from, military operations either during or preparatory to combat. Destruction is forbidden except where there is some reasonable connection between the destruction of the property and the overcoming of the enemy forces.

HIVR Art 23 (g); GIV Art 53

1238. CONFISCATION

1. Confiscation is the taking of enemy public movable property without the obligation to compensate the state to which it belongs. All enemy public movable property which may be usable for military operations may be confiscated. Private property may not be confiscated. Enemy public immovable property may be administered and used but it may not be confiscated.

HIVR Arts 46 & 55

1239. SEIZURE

1. The seizure of private movable property is governed by the Hague Rules. All appliances adapted for the transmission of news or for the transport of persons or goods by land, sea or air, stores of arms and in general every kind of war material, even if they belong to private individuals, may be seized. If seized, however, they must be restored and the indemnity fixed when peace is made.

HIVR Art 53

2. These objects may be seized by, but they do not become the property of, the occupant. The seizure merely acts as a transfer of the possession of the object to the occupant while the ownership remains in the private owner.

HIVR Art 46

3. Insofar as the objects seized are capable of physical restoration they must be restored at the conclusion of peace, and insofar as they have been consumed or have been destroyed or have perished, a cash indemnity must be paid when peace is made.

HIVR Art 46

4. No provision in the Hague Rules obliges the belligerent who effects the seizure to give a receipt, or to carry out the seizure in any formal manner, but the fact of seizure should obviously be established in some way, if only to give the owner an opportunity of claiming the compensation expressly provided for.

1240. REQUISITION

1. Requisition may be made of all commodities necessary for the maintenance of the occupying army. This includes: food and fuel supplies, liquor and tobacco, cloth for uniforms, leather for boots, and the like. The taking of such articles is forbidden unless they are actually required for the needs of the occupying army. Even if foodstuffs, goods or medical supplies available in the occupied territory are subject to requisition because they are needed for the forces of occupation and for administrative personnel, they may be requisitioned only after the requirements of the civilian population have been taken into account. In any case, the articles taken must be duly requisitioned, and the amount taken must be in proportion to the resources of the country.

HIVR Art 52

2. Articles requisitioned should be paid for in ready money, but if this is not possible a receipt must be given for them and payment of the amount due must be made as soon as possible. Articles properly requisitioned become the property of the occupant and pass out of the ownership of their former owner.

HIVR Art 52

3. Requisitions of supplies may be made in bulk. A community may be called upon to supply certain quantities, or a return may be called for from inhabitants giving the amounts in their possession of which a proportion may then be requisitioned, or the householders may be requisitioned to feed or partly feed the soldiers quartered on them. In fact, any way that is convenient may be employed provided that the above-mentioned rules and the provisions of GIV are observed.

4. The right to billet troops on the inhabitants follows from the right to requisition.

1241. CONTRIBUTIONS

1. Contributions are requisitions of money, over and above taxes, from the inhabitants of occupied territory. Contributions are imposed in order to distribute the burden of occupation costs more equitably among the population of the occupied territory. Contributions may be applied only to the costs of the occupation. The proceeds should not be used to enrich the occupant or to punish the inhabitants of an area.

HIVR Arts 49 & 50

1242. OTHER CONTROL MEASURES

1. All property within occupied territory may be controlled by the occupant to the degree necessary to prevent its use for the benefit of the enemy or in a manner harmful to the occupant. Property control is temporary in nature. The property must be returned to the owners when the reason for the control no longer exists. Therefore, the control must not extend to confiscation

1243. REAL PROPERTY OF THE STATE

1. Real property belonging to the State which is essentially of a civil or non-military character, such as public buildings and offices, land, forests, parks, farms, and mines, may not be damaged unless their destruction is imperatively demanded by the exigencies of war. The occupant becomes the administrator of the property and is able to use the property, but must not exercise its rights in such a wasteful or negligent way as will decrease its value. The occupant has no right of disposal or sale.

HIVR Art 55

2. Public real property, which is of an essentially military nature such as airfields and arsenals remain at the absolute disposal of the occupant.

1244. MUNICIPAL AND CHARITABLE PROPERTY

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

HIVR Art 56

CHAPTER 13
RIGHTS AND DUTIES OF NEUTRAL POWERS
SECTION 1 - INTRODUCTION

1301. AIM

1. The aim of this chapter is to summarize the Law of Armed Conflict (LOAC) relating to Neutrality and to describe the duties and obligations imposed by international law upon those States who do not participate in an armed conflict. This chapter should be read in conjunction with the provisions relating to neutrals in Chapter 7 (Air Operations) and Chapter 8 (Maritime Operations)

1302. GENERAL

2. For most states neutrality is a result of their non-participation in an armed conflict. However, other states, have assumed a legal obligation to remain permanently neutral (for example, Switzerland).

3. These States are described as neutrals and the law governing their behaviour is known as the Law of Neutrality.

4. Neutrals are entitled to have their territory and all of their activities respected and unaffected by the consequences of an armed conflict, so long as their activities do not interfere with the legitimate activities of a belligerent or benefit one belligerent at the expense of the other.

HV Art 1

1303. COMMENCEMENT OF NEUTRAL STATUS

1. Apart from those States, which apply permanently the Law of Neutrality, the neutrality of a non-participating state commences with the outbreak of an armed conflict between other States.

2. A neutral state does not need to declare its status formally. A formal declaration of neutrality will only have the effect of making such status better known.

3. Neutrality can result from the factual behaviour of a state.

SECTION 2 - RIGHTS AND DUTIES ON AND OVER NEUTRAL LAND AND WATER TERRITORY**1304. GENERAL DUTY OF NEUTRAL STATES**

1. In general, the territory of a neutral State, including its airspace and territorial waters, are inviolate and must be respected. Belligerents are forbidden from violating or carrying on hostilities in or across this territory.

HV Arts 1 - 3

2. A neutral State may not support any of the parties to the conflict.

HV Art 5 (1); HXIII Arts 6, 8 & 9

3. A neutral state is permitted to resist any attempted violation of its borders by force and such resistance does not make the neutral a party to the conflict. If enemy forces enter neutral such territory and the neutral state is unwilling or unable to intern or expel them, the opposing party is entitled to attack them there, or to demand compensation from the neutral for this breach of neutrality.

HV Arts 5 & 10; HXIII Art 25; SRM paras 15 & 22

1305. RECRUITMENT FOR BELLIGERENT ARMED FORCES

1. It is prohibited to recruit and raise troops on neutral territory to assist one of the parties to the conflict. However, it is not a breach of neutrality, if individuals or small-unorganized groups cross neutral territory with the intention of enlisting with one of the belligerents.

HV Arts 4 & 6

2. It is not a breach of neutrality for a neutral to permit its nationals to enlist in the armed forces of a belligerent, so long as this permission operates equally as between belligerents. Members of the forces of the neutral may not enlist in a belligerent's forces. Any neutral armed forces personnel that are seconded to another country that then becomes a belligerent must be recalled.

HV Art 6

1306. TRADE WITH BELLIGERENT STATES

1. A neutral is under no obligation to prevent the supply of munitions or any other military materiel by resident individuals or companies, nor is it required to prevent the passage of such goods across its territory.

HV Art 7; HXIII Art 7

2. Neutral nationals are free to continue trading with either or both belligerents, subject to any regulations imposed by their own government. However, their products may become liable to seizure as prize.

HV Art 7; SRM Art 147 & 154

1307. TREATMENT OF MEMBERS OF BELLIGERENT ARMED FORCES

1. It is not a violation of neutrality for a neutral state to allow belligerent troops to take refuge in its territory. However, these troops must be interned and prevented from taking any further part in the hostilities. Whether or not the neutral power is a party to the Geneva Convention Relative to the treatment of Prisoners of War (GIII), it must afford such internees treatment at least up to the standard required by that Convention.

HV Arts 11 (1) & 12 (1)

2. Escaped PWs and prisoners brought by forces seeking refuge in neutral territory are to retain their liberty, although the neutral power may assign them a place of residence.

HV Art 13

3. Agreements may be drawn up between the belligerents and an agreed neutral for the internment of the wounded, sick, shipwrecked and PWs in neutral territory until the close of hostilities.

GIII Arts 109 (2) & 111

4. A neutral power, which has received PWs within its territory, must set up an Information Bureau as those established in belligerent territory.

GIII Art 122 (1)

1308. MEDICAL TRANSPORTS AND MEDICAL AIRCRAFT

1. Medical transport carrying sick and wounded persons may be allowed to pass through neutral territory without any breach of neutrality arising. The neutral power concerned must ensure that there are no

fighting personnel or military material in the transport. If any sick or wounded are left in such neutral territory, the neutral power must ensure that they take no further part in military operations.

HV Art 14

2. Neutral powers which retain sick and wounded in its territory must apply to them the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (G I).

HV Art 15

3. It is not a breach of neutrality for belligerent medical aircraft to fly over or land on neutral territory, but this may only be done with the prior agreement of the neutral state concerned. Such aircraft must always obey summons by the neutral to land, as well as any restrictions that the neutral may impose in respect of such passage.

AP I Art 31 (1)

4. Any conditions or restrictions in respect of such flights must be applied equally to all belligerents. If a belligerent medical aircraft should enter neutral airspace without prior agreement, it must take every effort to give notice of the flight and identify itself, and if ordered to land must comply. If the neutral recognizes the aircraft as being medical it must take all reasonable efforts to give an order to land and allow time for compliance before attacking.

AP I Art 31 (2) & (5)

SECTION 3 - RIGHTS AND DUTIES ON AND OVER HIGH SEAS

1309. OBLIGATION TO ACCEPT EXERCISE OF BELLIGERENT RIGHTS

1. It is the duty of a belligerent to respect neutral territory, including its territorial sea and airspace, and its right to continue intercourse with other states, even including the enemy. However, the belligerent has the right to demand that the neutral shall, in addition to its duty to behave with impartiality, recognize the validity of a blockade of the enemy country and to observe any rules relating to contraband which may have been proclaimed.

HV Arts 1 - 3; SRM paras 30 & 146 (a) & (f) - 150 & 153 (a) & (f) - 155

1310. BELLIGERENT WOUNDED, SICK AND SHIPWRECKED ON NEUTRAL SHIPS

2. If wounded, sick or shipwrecked personnel belonging to a belligerent are taken on board a neutral warship or military aircraft, steps shall be taken by the neutral authority to ensure that, where required by international law, they are unable to take any further part in hostilities.

GII Art 15

1311. NEUTRAL MAIL

1. Mail may be liable to censorship if it originates in belligerent countries and is intended for neutral recipients or originates in neutral territory and is directed to recipients in a belligerent or occupied territory.

SECTION 4 - RIGHTS AND DUTIES IN BELLIGERENT CONTROLLED TERRITORY

1312. ROLE AS REPRESENTATIVE OR PROTECTING POWER UNOBJECTIONABLE

1. It is not a breach of neutrality for a neutral power to represent the interests of a belligerent in the territory of the adverse party or to serve as a Protecting Power. It is not a breach either for one or more of its nationals to serve as a member of an International Fact Finding Commission (see Chapter 15) investigating breaches of the LOAC.

GI Arts 8, 10 & 11; GII Arts 8, 10 & 11; GIII Art 8, 10 & 11; GIV Art 9 (1) & 12 (1); AP I Art 90 (1)

1313. NATIONALS OF NEUTRAL STATES IN BELLIGERENT TERRITORY

1. Neutrals present in belligerent territory, other than on a temporary or transient basis, may be treated by the adverse party as enemies and be subject to the same restrictions as are enemy nationals. Companies owned by Nationals of neutral states in or operating from enemy territory may be considered as enemies for the purposes of Trading with Enemy legislation restricting trade with enemy states.

GIV Arts 4 & 27

2. Nationals of neutral states who remain in the territory of a belligerent are only entitled to treatment as protected persons under the GIV if they are nationals of a state, which is a party to that Convention, so long as that state does not maintain normal diplomatic representation in the territory in question.

GIV Art 4 (2)

3. Neutral diplomatic agents present in belligerent or occupied territory may find themselves and their correspondence subject to certain restrictions in the interest of the security of the governing authority.

GIV Art 27 (4)

1314. NATIONALS OF NEUTRAL STATES IN OCCUPIED TERRITORY

1. Nationals of neutral states in occupied territory may leave the territory unless their departure is contrary to the interests of the Occupying Power.

GIV Art 48

1315. HUMANITARIAN ACTIVITIES

1. The national Red Cross, or Red Crescent Society of a neutral country is permitted to offer its services to a belligerent with the consent of its own government. If its services are accepted, the party accepting them must inform the adverse party of this fact and the Society in question comes under the control of the belligerent to which it is attached.

GIV Art 10 & 11 (1) - (4)

1316. NEUTRAL AIRCRAFT

1. Neutral aircraft are entitled to continue with their normal operations, but if they fly into belligerent airspace or combat zones they do so at their own risk.

SRM paras 53, 56, 70 & 72

1317. INDIVIDUALS

1. A neutral national loses his status as a neutral if he commits hostile acts against a belligerent or acts in favour of a belligerent, particularly if he enlists in the armed forces of a belligerent.

HV Art 17

2. Nationals of neutral states resident in or visiting belligerent or occupied territory may be tried for war crimes and grave breaches of the LOAC in the same manner as any other offender.

GIV Art 146 (2)

This Page Intentionally Blank

CHAPTER 14

COMMUNICATIONS AND CONTACT BETWEEN OPPOSING FORCES

1401. AIM

1. The aim of this chapter is to summarize the rules of the LOAC relating to direct communication between the opposing forces, particularly under field conditions.
2. Direct contact between belligerent armies is sometimes necessary; for example contact for the arrangement of a local truce or surrender. Today most communication tends to be made on an inter-government level, thereby avoiding actual negotiations between belligerent commanders. The rules regarding contact between opposing forces are nevertheless important to know and understand.

1402. PARLEMENTAIRES

1. Negotiations between belligerent commanders may be conducted by intermediaries known as parlementaires. The wish to negotiate by parlementaires is frequently indicated by the raising of a white flag, but any other method of communication such as radios may be employed.

HIVR Art 32

2. Parlementaires normally operate under a white flag of truce. A parlementaire may be accompanied by other personnel agreed upon by the commanders involved. In order to indicate good faith the belligerent wishing to despatch, a parlementaire should cease firing until a reply is received from the adverse party.

HIVR Art 32

3. There is no obligation upon the adverse party to receive a parlementaire. The adverse party does not have to cease combat. The belligerent may not fire upon the parlementaire, white flag or party. The parlementaire and those who are in his or her party are entitled to complete inviolability, so long as they do nothing to abuse this protection, or to take advantage of their protected position.

HIVR Art s 33 & 34

4. To fire intentionally upon the white flag carried by a parlementaire is a war crime.

HIVR Arts 23 (c); AP I Art 85 (3) (e)

5. The belligerent to whom a parlementaire is proceeding may take all steps necessary to protect the safety of the belligerent's position, and prevent the parlementaire from taking advantage of the visit to secure information. The adverse party may therefore prescribe the route to be taken by the parlementaire, employ blindfolds, limit the size of the party, or take similar action. A parlementaire may proceed on foot, by vehicle, or otherwise, as agreed with the adverse party.

HIVR Art 33

6. Although reinforcements may be brought up while the parlementaire is conducting negotiations, it is an abuse of the white flag to make use of it solely for the purpose of moving troops without interference by the adverse party.

HIVR Art 34

7. After making contact with the adverse party, the parlementaire must obey any orders that a party provides regarding the entry of that party's lines, and must withdraw if so instructed. During the withdrawal and return to the parlementaire's own lines, the parlementaire continues to enjoy inviolability and may not be attacked. When ordered to withdraw, the parlementaire must be given a reasonable time in which to do so. Failure to withdraw results in loss of protection and the parlementaire may then be fired upon. If the parlementaire remains within enemy lines after being ordered to withdraw, he loses his inviolability and may

be made a PW. Detention may occur if the parlementaire has abused the position of parlementaire, for example, by collecting information covertly. It is not an abuse of the position for the parlementaire, however, to report on observations made.

GIV Art 34

8. Only the parlementaire and an interpreter are entitled to enter enemy lines. The other members of the party must obey orders given by the adverse party. They remain entitled to protection until the parlementaire rejoins them and they return to their own lines. Whenever possible, the parlementaire should be an officer and is always entitled to the courtesies related to that rank.

9. A parlementaire should, whenever possible, carry messages in writing, and the contents should be clear and unambiguous. The parlementaire cannot demand to be taken to the adverse party's commanding officer, unless this has been previously arranged. The parlementaire must hand the message, or if it is verbal deliver it, to the officer who receives him. The parlementaire is entitled to a receipt for any message given to a receiving officer, or to the adverse party's commanding officer. If the message is verbal in character, the receiving officer is entitled to demand that it be reduced to writing. Any measure that may be taken against the parlementaire or attending members of the party must be reported to the sending belligerent without delay.

1403. AGREEMENTS

1. Any agreement made by belligerent commanders must be adhered to, and any breach of its conditions would involve international responsibility if ordered by a government, and personal liability, (which might amount to a war crime) if committed by an individual on his or her own authority. The terms of any agreement should be clear and precise and carefully explained to the troops affected by it. Whenever possible it should be reduced to writing.

HIVR Art 38 & 41

2. Between combatants, the most common purpose of such agreements is to arrange for an armistice or truce, whether for a specific purpose or more generally.

HIVR Art 37

1404. CAPITULATION (SURRENDER)

1. If the agreement is in the nature of a capitulation, its terms must be in accord with rules of military honour. A capitulation is a purely military agreement concerned with the surrender of troops, the place they are defending and their disposition thereafter. If the capitulation relates to the surrender of an inhabited place, it may contain stipulations concerning the treatment of the civilian population. The conditions embodied in a capitulation must relate only to the immediate purpose of effecting the surrender.

HIVR Art 35

2. As with other agreements between the belligerents, the terms of a capitulation should be reduced to writing and, so far as this is possible, should be specific and unambiguous.

3. Personnel affected by a capitulation become PWs and their position is regulated by the terms of Geneva Convention Relative to the Treatment of Prisoners of War (GIII). Upon capitulation the troops who have surrendered become subject to the orders of the adverse party and are liable to punishment if such orders are disobeyed. The freedom of the captor in giving orders is limited by GIII, the Hague Rules and customary international law. Immediately upon capitulation, all warlike acts must cease on the part of those affected by the surrender. A commander contemplating surrender is permitted to destroy any materiel, weapons, etc., in his possession in order to prevent them falling into enemy hands when the capitulation takes place. Such destruction must, however, be effected before the offer to capitulate is accepted.

1405. PASSPORTS AND SAFE CONDUCTS

1. Arrangements are sometimes made regarding passports or safe conducts. Occasionally, the terms 'pass' or 'permit' have also been used. The decisive factor is the purpose for which the document has been issued, and not its terminology. A passport is a document issued by a commander to a person or group of persons permitting unmolested movement within the territory occupied by troops led by the commander. Such passport may be general or limited in character and for a limited or unlimited period of time. It should also specify what persons may accompany the holder and what goods may be carried by the holder. Passports may be granted on the commander's own authority or in accordance with the commander's own military law. They may also be granted as the result of an agreement reached with the adverse party or a neutral or Protecting Power.

2. Safe-conducts are issued by an individual commander to persons or groups of persons, for a limited or unlimited period, when they seek to go to some place which cannot be reached other than by passing through an area under occupation by troops lead by the commander, particularly when such troops are in contact with the adverse party.

3. Safe-conducts are also used to authorize an enemy or neutral national to stay, permanently or temporarily, within such an area. Safe-conducts may be issued in respect of goods. Such safe-conducts may be licenses to trade by the individual to whom they are issued or a guarantee against seizure. Safe-conducts may be issued to the diplomatic representatives of neutral states who may be required to travel through occupied territory in order to carry out their diplomatic duties.

4. The persons to whom passports and safe-conducts are issued remain protected so long as they comply with any conditions set out therein. They must also refrain from any unfriendly actions, which may be construed as incompatible with the purpose for which the document was issued. Such documents are non-transferable and may only be used by the person or persons to whom they have been issued. In the case of goods, however, these may be transferred from one person to another, unless such transfer is expressly forbidden. Passports and safe-conducts may be revoked at the discretion of the commander issuing them. In the event of such revocation, the person to whom they have been issued must be permitted to withdraw in safety. Revocation must not be used as an excuse for detention.

1406. SAFEGUARDS

1. It is sometimes necessary to leave a party of soldiers as a safeguard for enemy or neutral persons or property when the main body of troops departs. Such safeguards are only regulated by international law when they are the result of arrangements made between the combatants. Persons left behind as safeguards are inviolable and if they fall into the hands of the adverse party it is usual to allow them to return to their own lines as soon as military exigencies permit. The violation of a safeguard is a violation of the LOAC and is punishable as a war crime.

1407. SPECIAL ZONES

1. Agreements may also be made between the belligerents for particular areas to be placed, either on a permanent or temporary basis, outside of the zone of operations. Such arrangements may be made directly or through the good offices of a neutral power of the protecting power. These agreements may be concerned with the establishment of safety zones, neutralized zones, exclusion zones, open cities and undefended places. These zones are defined and discussed in Chapter 4, Targeting.

AP I Arts 59 & 60

This Page Intentionally Blank

CHAPTER 15

PREVENTATIVE AND ENFORCEMENT MEASURES AND THE ROLE OF PROTECTING POWERS

SECTION 1 - INTRODUCTION

1501. AIM

1. The aim of this chapter is to summarize the preventative and enforcement measures available to ensure that the Law of Armed Conflict (LOAC) are adhered to. The special role of the Protecting Powers is also discussed.

1502. GENERAL

1. At present there is no permanent international criminal court to secure the observance or enforcement of the LOAC. The means for securing observance depends upon the actions of the States, which are bound by particular treaties in accordance with the terms of those treaties, or on their obligation to give effect to the requirements of customary international law.

2. Once hostilities have commenced, the means of securing observance of LOAC are limited. Publicity in order to secure the support of public opinion against the offender, particularly in neutral countries, is one such means. Others include protest and demand for compensation by a belligerent or neutral power and solicitation of the intervention and good offices of neutral powers, or some recognized international humanitarian body like the International Committee of the Red Cross (ICRC).

3. In accordance with Common Article 3 of the GCs, the ICRC may offer its services to the parties to the conflict. Good offices, mediation and PW visits and exchanges are examples of such services.

4. A party to an international armed conflict is bound to comply with the LOAC even if an adverse party breaches the law. Compliance with the law by one party is a strong inducement for the adverse party to comply with the law. As a practical matter, if one party treats PWs properly or confines its attacks to military objectives, the adverse party is less likely to be tempted to breach the law.

SECTION 2 - PREVENTIVE MEASURES

1503. DISSEMINATION

1. The most important factor in ensuring that the LOAC is applied by all parties to an armed conflict is knowledge of the law. Canada has the obligation, as a party to Additional Protocol I to the Geneva Conventions (AP I), to instruct the CF on the LOAC, in time of peace as well as in time of armed conflict. Canada also has the obligation to include the study of LOAC in military instruction programmes and to encourage the study of the LOAC by the civilian population.

AP I Art 83 (1)

1504. COMMAND RESPONSIBILITY

1. Commanders have a responsibility to ensure that forces under their command are aware of their responsibilities related to the LOAC and that they behave in a manner consistent with the LOAC. Commanders may be held personally and criminally liable in respect of illegal acts committed by those under their command, especially if they knew or should have known that such acts were being committed or were likely to be committed. For further discussion regarding command responsibility, see Chapter 16.

AP I Art 87

1505. LEGAL ADVISERS

1. As a party to AP I, Canada has the obligation to ensure that legal advisors are available to advise military commanders on the application of the LOAC and the appropriate instruction to be given to the CF. Legal officers with the Office of the Judge Advocate General fulfil this mandate.

AP I Art 82

SECTION 3 - ENFORCEMENT MEASURES

1506. STATE RESPONSIBILITY

1. Parties to the conflict are responsible for all acts committed by persons forming part of its armed forces. a state which violates the LOAC shall, if the case demands, be liable to pay compensation.

AP I Art 91

1. Heads of state as well as members of the administration may be held personally and criminally responsible for illegalities committed in the performance of their official duties or by persons under their authority if they knew, should have known or acquiesced in such behaviour.

AP I Art 86 (2); RS Art 27 (1)

2. No state is allowed to absolve itself of any liability in respect to the Geneva Conventions.

GI Art 51; GII Art 52; GIII Art 131; GIV Art 148

1507. REPRISALS

1. In the event of serious or persistent breaches of the LOAC it may be necessary for the adverse party to resort to a reprisal in an attempt to terminate the illegality. a reprisal is an illegal act resorted to after the adverse party has performed illegal acts and has refused to stop after being called upon to do so.

2. The use of reprisals has great political and strategic implications. The decision to take reprisal action must therefore be authorized at the highest political level. Operational commanders on their own initiative are not authorized to carry out reprisals.

3. Reprisal is not a retaliatory act or a simple act of vengeance. It must be proportionate to the original wrongdoing, and must be terminated as soon as the original wrongdoer ceases the illegal actions. Proportionality is not strict, for, if the reprisal is to be effective, it may often be greater than the original wrongdoing. Nevertheless, there must be a reasonable relationship between the original wrong and the reprisal measure.

4. Reprisals against the following categories of persons and objects are prohibited.

- a. the wounded, sick, medical personnel, medical buildings or equipment protected by GI;
- b. the wounded, sick and shipwrecked persons, the personnel, the vessels and equipment protected by GII;
- c. prisoners of war (PWs);
- d. civilians in the hands of a party to the conflict of which they are not nationals, including inhabitants of occupied territory ;
- e. civilians ;
- f. civilian objects ;

- g. cultural objects and places of worship ;
- h. objects indispensable to the survival of the civilian population ;
- i. the natural environment; and
- j. works and installations containing dangerous forces.

GI Art 46; GII Art 47; GIII Art 13 (3); GIV Art 33 (3); AP I Arts 20, 51 (6), 52 (1), 53 (c), 54 (4), 55 (2) & 56 (4)

5. Reprisals are permitted against combatants and against objects constituting military objectives.
6. To qualify as a reprisal, an act must satisfy the following conditions:
 - a. It must respond to serious violations and manifestly unlawful acts committed by an adversary government, its military commanders or combatants for whom the adversary is responsible;
 - b. It must be accomplished for the purpose of compelling the adversary to observe the LOAC. Reprisals cannot be undertaken for revenge or punishment. They are directed against an adversary in order to induce compliance with the LOAC. Thus, reprisals serve as a law enforcement mechanism. Above all, reprisals are justifiable only to force an adversary to stop its illegal activity. If, for example, a party to an armed conflict commits a breach of law but follows that violation with an expression of regret and promise that it will not be repeated, and even takes steps to punish those responsible, then any action taken by another party to "redress" the situation cannot be justified as a lawful reprisal;
 - c. There must be reasonable notice that reprisals will be taken. What degree of notice is required will depend upon the particular circumstances of each case. Notice is normally given after the violation but may, in appropriate circumstances, predate the violation. An example of notice is an appeal to the transgressor to cease its offending conduct and punish those responsible. Thus, such an appeal may serve both as a plea for compliance and a notice to the adversary that reprisals will be undertaken;
 - d. The victim of a violation must first exhaust other reasonable means of securing compliance in order to justify taking a reprisal;
 - e. A reprisal must be directed against the personnel or property of an adversary. This requirement seems self-evident except for the economic interdependence of states. If a party to a conflict responds to a violation of the neutrality of its suppliers' shipping by striking at other neutral ships carrying cargo to the adversary, the action could not be justified as a reprisal;
 - f. A reprisal must be proportional to the original violation. Although a reprisal need not conform in kind to the same type of acts complained of (bombardment for bombardment, weapon for weapon) it may not significantly exceed the adversary's violation either in violence or effect
 - g. It must be publicized. Since reprisals are undertaken to induce an adversary's compliance with the recognized rules of LOAC, any action taken as a reprisal must be announced as a reprisal and publicized so that the adversary is aware of its obligation to abide by the law; and
 - h. It must be authorized by national authorities at the highest political level as it entails full state responsibility. Therefore military commanders are not on their own authorized to carry out reprisals.

The Naulilaa Arbitration (1922) 2 R.I.A.A. 1073 (Reports of International Arbitral Awards)

1508. COMPLAINT PROCEDURE UNDER THE GENEVA CONVENTIONS

1. At the request of a party to the conflict, an enquiry shall be instituted in a manner to be decided between the interested parties, concerning any alleged violation of the Geneva Conventions. If a violation is

established, parties to the conflict must put an end to it and punish those responsible with the least possible delay.

GI Art 52; GII Art 53; GIII Art 132; GIV Art 149

1509. FACT-FINDING COMMISSION UNDER PROTOCOL I

1. An International Fact Finding Commission has been established under AP I as an enforcement measure. The Commission is competent to enquire into any facts alleged to be a grave breach of the LOAC and to facilitate, through its good offices, the restoration of an attitude of respect for the LOAC.

AP I Art 90 (2) (c) (i) & (ii)

2. The Commission may institute an inquiry at the request of a party to the conflict with the consent of the other party or parties concerned. The Commission may submit to the parties a report on the findings of fact along with such recommendations as it may deem appropriate.

AP I Art 90 (2) (d) & (5)

1510. COMPLAINTS, GOOD OFFICES, MEDIATION AND INTERVENTION

1. As there is usually diplomatic intercourse between the contending States during an armed conflict, complaints of breaches of LOAC may be delivered either under the protection of a flag of truce, by broadcasts, or through a neutral State which lends its good offices. Complaints may also be lodged with neutral States, with or without a view to soliciting their good offices for the purpose of making the opposing force observe the LOAC

2. The provision of good offices and mediation by neutral States for the purpose of settling differences are friendly acts, in contradiction to intervention, which amounts to interference for the purpose of making the belligerents comply with the LOAC.

SECTION 4 - RIGHTS AND DUTIES OF PROTECTING POWERS

1511. GENERAL

1. A Protecting Power is a state appointed by a party to an international armed conflict and accepted by an adverse party to the conflict for the purpose of representing the interests and protecting the nationals of the appointing party in territory controlled by the adverse party. Protecting Powers are also assigned specific rights and duties under the Geneva Conventions of 1949 and AP I.

AP I Art 2 (c)

1512. DEVELOPMENT OF THE PROTECTING POWER CONCEPT

1. In time of peace, when diplomatic relations are broken off between two countries, the normal practice is for them to nominate a third state which can represent the interests and protect their nationals in the territory of the other.

AP I Art 2 (c)

2. In the event of armed conflict, diplomatic relations between the parties may well be broken off. In such circumstances, protecting powers are normally nominated. However, in addition to these diplomatic functions, a Protecting Power may be nominated to look after the interests of persons in the hands of an adverse party and to supervise the application of the various Geneva Conventions.

GI Art 11 (1); GII Arts 11 (1); GIII Arts 11 (1); GIV Art 12 (1)

3. Some humanitarian organizations may fulfil some of the functions of Protecting Powers. One such organization, the International Committee of the Red Cross (ICRC), for example, is recognized as offering all guarantees of impartiality necessary to offer its good offices to the parties to the conflict. The ICRC may offer to help the parties agree on the choice of Protecting Powers or to act as a substitute when the states cannot reach an agreement. Parties to the conflict must accept such an offer.

GI Arts 9 & 10; GII Arts 9 & 10; GIII 9 & 10; GIV Arts 10 & 11; AP I Art 5 (3) & (4)

1513. RIGHTS AND DUTIES OF PROTECTING POWERS

1. The Protecting Power's duty is to safeguard the interests of the parties to the conflict. In order to fulfil this task, the Protecting Power may appoint representatives from its diplomatic or consular service, or from its own or other neutral nationals, provided that each representative is approved by the belligerent where the duties will be performed.

GI Art 8 (1); GII Art 8 (1); GIII Art 8 (1); GIV Art 9 (1)

2. Parties to the conflict must apply the system of Protecting Powers from the commencement of hostilities.

AP I Art 5 (1)

3. If the Protecting Power considers it advisable in the interests of protected persons, it may offer its good offices with a view to settling disputes. It may suggest to the parties a meeting of representatives for this purpose to take place on neutral territory. The Protecting Power may also recommend that a representative of the ICRC or of a neutral state participate. Parties to the conflict are obligated to accept such proposals.

GI Art 11 (2); GII Art 11 (2); GIII Art 11 (2); GIV Art 12 (2)

1514. DUTIES OF PROTECTING POWERS RELATED TO PWS

1. If PWs are transferred by the captor to another state, the Protecting Power on ascertaining that the transferee is not fulfilling its obligations under GIII may request the transferring power to secure the return of the PWs.

GIII Art 12 (3)

2. The Protecting Power has the right to visit the places where PWs are detained and to see that the standards of such places conform to the requirements of GIII with regard to health, safety, warmth, and the like. The Protecting Power must also be kept informed of the location of all labour detachments dependent on a PW camp and is entitled to visit them as well as the camp.

GIII Arts 25, 56 (3) & 126 (1) & (2)

3. Representatives of the Protecting Power are entitled to communicate with and receive communications from PWs on a private basis and may interview them without any representative of the Detaining Power present. They may also receive communications on an unrestricted basis from PWs' representatives, including periodic reports on camp conditions.

GIII Arts 78 (2) - (4) & 126 (1)

3. Any action taken by the Detaining Power against PWs must be reported to the Protecting Power.

GIII Arts 104 (1) & 107 (1) & (2)

4. The Protecting Power is the intermediary for informing the home state of the measures which the Detaining Power has introduced to give effect to its obligations under GIII with respect to the relations of PWs with the exterior.

GIII Art 69

5. One important function of the Protecting Power is to ensure that PWs charged with penal offences receive a proper trial. The Protecting Power is to be notified of any judicial proceedings to be launched against a PW and when necessary the Protecting Power shall be responsible for finding counsel for an accused PW. Unless the trial is held in camera, the representative of the Protecting Power is entitled to attend. Any judgement or sentence imposed upon a PW must be brought to the notice of the Protecting Power.

GIII Arts 104 (1), 105 (2) & (5) & 107 (1)

6. The Protecting Power is to be informed of all offences, which carry the death penalty, and no such penalty may be carried out until six months have elapsed since the Protecting Power has been notified that such a sentence has been delivered.

GIII Art 101

7. If a PW suffers serious injury or dies other than by natural causes, the Protecting Power is to be informed and must be given a copy of the report of the official inquiry held in connection therewith.

GIII Art 121 (1) & (2)

8. The Protecting Power, and its representatives have the right to take the steps they consider necessary to enable them to carry out their obligations in connection with the treatment of PWs. To this end, they are at liberty to choose which places they will visit, and the frequency of their visits. Visits may only be restricted on a temporary basis for reasons of overwhelming military necessity. If the parties involved agree, co-nationals of the PWs may be members of the visiting parties.

GIII Art 126 (1) - (3)

1515. DUTIES OF PROTECTING POWERS RELATED TO CIVILIANS

1. As with PWs, the main function of the Protecting Power is to co-operate in the administration and supervision of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GIV). To this end, it may offer its good offices in the event of a dispute between the parties as to the interpretation or application of the Convention.

GIV Art 12 (1)

2. To the extent that civilians may be detained or interned, the rights of visitation enjoyed by the Protecting Power concerning PWs apply equally to civilians in question.

GIV Art 143

3. The passage and distribution of medical and hospital supplies, material for religious worship, essential foodstuffs and clothing may be made subject to the supervision of the Protecting Power.

GIV Art 59 (4) & 61 (1)

4. If children under fifteen are orphaned or separated from their families and it becomes necessary to evacuate them to a neutral country the Protecting Power shall supervise their evacuation and their reception.

GIV Art 24 (2)

5. The Protecting Power must be provided with the names of persons denied the right of repatriation, together with the reasons for such denial. The Protecting Power shall also be informed of any protected

persons who have been placed in internment or assigned residence, of those who have been released and of decisions of hearing boards. Any protected person who wishes to be placed in voluntary internment must make his application through the Protecting Power.

GIV Arts 35(3), 42 (2) & 43 (2)

6. In the event that protected persons have lost their means of livelihood and are unable to support themselves or their dependants, the Protecting Power may make the necessary relief allowances.

GIV Art 39

7. If relief supplies are passing through the territory of one party to the conflict to territory occupied by the adverse party, the Protecting Power must satisfy the country of transit that these relief supplies will in fact be used on behalf of the population of the occupied territory and not by the Occupying Power.

GIV Art 59 (4)

8. In the event of a protected person being charged with an offence for which the Occupying Power may impose the death penalty or imprisonment for two years or more, the Protecting Power must be informed of the proposed proceedings and no trial may proceed until the Protecting Power has been so informed.

GIV Art 71 (2) & (3)

9. The Protecting Power has the right to attend any trial of a protected person, unless it has been notified by the Occupying Power that, as an exceptional measure and in the interests of that Power's security, the trial is being held in camera.

GIV Art 74 (1)

10. The Protecting Power has the right to visit any protected person who is detained both before and after sentence, and to interview detainees personally and without witnesses. The duration and frequency of such visits may only be restricted as an exceptional and temporary measure for reasons of imperative military necessity.

GIV Art 143 (1) - (3)

11. The Protecting Power may receive any complaints about conditions of detention from individual internees or the Internee Committee in places of internment, and this Committee may send periodic reports on conditions and treatment within such places to the Protecting Power.

GIV Art 101 (2) - (4)

12. Interned protected persons may be subject to disciplinary punishments, but a record of such punishments must be open to inspection by representatives of the Protecting Power. The same right of visit and inspection applies to places of detention.

GIV Arts 117 (1) & (2), 123 (4) & 143 (1)

1516. RELATIONS BETWEEN PROTECTING POWERS AND OTHER AGENCIES

1. The presence of a Protecting Power does not interfere with or inhibit the activities of the ICRC, National Red Cross or Red Crescent Societies, or other impartial humanitarian organizations.

GIV Art 10

This Page Intentionally Blank

CHAPTER 16**WAR CRIMES, INDIVIDUAL CRIMINAL LIABILITY AND COMMAND RESPONSIBILITY****SECTION 1 - INTRODUCTION****1601. AIM**

1. The aim of this chapter is to explain the term “war crime”, identify those who may be held criminally liable for violations of the laws and customs of war, list possible defences to these types of charges, and to describe war crimes trial procedures. This chapter also describes the responsibility of commanders related to the prevention, investigation and suppression of breaches of the LOAC and the conditions under which commanders may be held criminally liable for violations committed by those under their command.

1602. GENERAL

1. The term “war crime” may be considered in a broad sense as well as in narrow, technical sense. Broadly speaking “war crimes” include all violations of International Law in relation to an armed conflict for which individuals may be prosecuted and punished including crimes against peace, crimes against humanity and genocide. In the narrow, technical sense “war crimes” are violations of the laws and customs of war.

RS Art 8

SECTION 2 - WAR CRIMES IN THE BROADEST SENSE**1603. CRIMES AGAINST PEACE**

1. Crimes against peace can be described as the illegal use of force under International Law. Crimes against peace include the planning, preparation, initiation, or waging of a declared or undeclared war of aggression or war otherwise in violation of international treaties, agreements, or assurances. Charges of crimes against peace are most likely to be laid against high-level policy planners such as heads of state or senior government officials.

1604. CRIMES AGAINST HUMANITY

1. Crimes against humanity were first prosecuted before the Nuremberg International Military Tribunal following World War II. Crimes against humanity was a collective category of major crimes committed against any civilian population (local or foreign) in relation to an armed conflict. The definition of crimes against humanity has since been refined to include the following crimes directed against any civilian population:

- a. murder;
- b. extermination;
- c. enslavement;
- d. deportation;
- e. imprisonment;
- f. torture;
- g. rape;

- h. persecutions on political, racial, and religious grounds; and
- i. other inhumane acts.

RS Art 7

- 2. Crimes against humanity may be committed during an armed conflict or in time of peace.

1605. GENOCIDE

1. In 1948 the UN General Assembly defined "genocide" in the Convention on the Prevention and Punishment of the Crime of Genocide. "Genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national ethnic, racial or religious group:

- a. killing members of the group;
- b. causing serious bodily or mental harm to members of the group;
- c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. imposing measures intended to prevent births within the group; and
- e. forcibly transferring children of the group to another group.

Genocide Convention Art II; RS Art 6

- 2. The crime of genocide may be committed during an armed conflict or in time of peace.

Genocide Convention Art I

SECTION 3 - WAR CRIMES IN THE NARROW SENSE

1606. DEFINITION

1. The term "war crime" in its narrower meaning is a technical expression for a violation of the laws or customs of war. This includes:

- a. grave breaches of the Geneva Convention or Additional Protocols to the Geneva Conventions;
- b. violations of the Hague Conventions; and
- c. violations of the customs of war.

RS Art 8

1607. GRAVE BREACHES OF THE 1949 GENEVA CONVENTIONS

1. The Geneva Conventions of 1949 and their Additional Protocols of 1977 introduced a distinction between offences considered to be "grave breaches" and other offences.

GI Art 50; GII Art 51; GIII Art 130; GIV Art 147; AP I Art 85

2. Generally speaking, "grave breaches" are serious violations of the Geneva Conventions or Additional Protocols and will be subject to greater international sanctions and punishment.

3. States have the obligation to repress grave breaches (i.e., ensure perpetrators are accused and tried) and to take measures necessary to suppress (i.e., bring to an end) all other violations.

GI Art 49 (1) - (3); G II Art 50 (1) - (3); GIII Art 129 (1) - (3); GIV Art 146 (1) - (3)

4. Grave breaches of GI and GII include wilful killing, torture and inhumane treatment along with wilfully causing great suffering or serious injury to the wounded, sick and shipwrecked. Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, are also grave breaches.

GI Art 50; GII Art 51

5. It is also a grave breach to compel a PW to serve in the forces of the hostile power or to deprive a PW of the right to a fair and regular trial as prescribed in GIII.

GIII Art 130

6. In the case of civilians in the hands of the adverse party, it is also a grave breach:

- a. to unlawfully deport or transfer a protected person;
- b. to unlawfully confine a protected person;
- c. to compel a protected person to serve in the forces of a hostile power;
- d. to wilfully deprive a protected person of the rights of a fair and regular trial prescribed by the Geneva Convention for Civilians (GIV); and
- e. to take hostages.

GIV Art 147

1608. GRAVE BREACHES OF ADDITIONAL PROTOCOL I

1. It is a grave breach of AP I to commit a wilful act or omission that seriously endangers the physical or mental health or integrity of any person who is in the power of a party other than the one on which that person depends. The wilful act or omission may consist of,

- a. subjecting a person to a medical procedure that:
 - (1) is not indicated by the state of health of that person, and
 - (2) is not consistent with generally accepted medical standards applicable in similar circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty; or
- b. subjecting a person, even with that person's consent, to any of the following:
 - (1) physical mutilations,
 - (2) medical or scientific experiments,
 - (3) removal of tissue or organs for transplantation (except for donations of blood or of skin for grafting given voluntarily and in conformity with generally accepted medical standards), unless justified by the medical needs of the person.

API Art 11 (1) - (3)

2. AP I provides that the following acts constitute grave breaches if they are committed wilfully, in violation of the relevant provisions of the Protocol, and cause death or serious injury to body or health:
- a. making the civilian population or individual civilians the object of attack;
 - b. launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive collateral civilian damage;
 - c. launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive collateral civilian damage;
 - d. making non-defended localities and demilitarized zones the object of attack;
 - e. making a person the object of attack knowing he is *hors de combat*; or
 - f. perfidious use of the distinctive emblem of the Red Cross or Red Crescent or other protective signs recognized by the Geneva Conventions or AP I.

AP I Art 85 (3)

3. AP I also provides that certain acts are grave breaches when committed wilfully and in violation of the Geneva Conventions or AP I namely,
- a. transfer by an occupying power of parts of its own civilian population into occupied territory or deportation or transfer of all or parts of the population of that territory within or out of the territory;
 - b. unjustifiable delay in repatriating prisoners of war or civilians;
 - c. practices of apartheid and other inhumane and degrading practices involving outrages upon personal dignity based on racial discrimination;
 - d. attacks against clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, where there is no evidence of prior use of such objects in support of the adverse party's military effort and where such places are not located in the immediate proximity of legitimate targets; and
 - e. denial of a fair and regular trial to any person protected by the Geneva Conventions or AP I.

AP I Art 85 (4)

4. The *Geneva Conventions Act* makes the Geneva Conventions and their two Additional Protocols part of Canadian law. Under that *law*, a person found guilty of a grave breach is liable to up to 14 years imprisonment. Where the grave breach involves a loss of life, the punishment is life imprisonment.

1609. VIOLATIONS OF HAGUE CONVENTIONS AND CUSTOMARY LAW

1. In addition to actions that are grave breaches under the Geneva Conventions and AP I, other violations of the LOAC are also war crimes and are punishable as such.
2. In accordance with the Hague Rules, a number of acts are "especially forbidden". The commission of the following especially forbidden acts is a war crime:
 - a. using poison or poisoned weapons;
 - b. treacherously killing or wounding any individual belonging to the hostile nation or army;
 - c. killing or wounding an enemy who, having laid down his arms or no longer having a means of defence, has surrendered;

- d. declaring that no quarter will be given;
- e. employing arms or other weapons that are calculated to cause unnecessary suffering;
- f. improperly using a flag of truce, the national flag or military insignia and uniform of the enemy, or the distinctive emblems of the Geneva Conventions;
- g. destroying or seizing enemy property, unless imperatively demanded by the necessities of war;
- h. declaring abolished, suspended or inadmissible in a court of law the rights and actions of enemy nationals; or
- i. compelling enemy nationals to take part in hostilities against their own country, even if they were members of the particular belligerent's forces before the commencement of the conflict.

HIVR Art 23

3. Other war crimes recognized by the LOAC include:
- a. mutilation or other maltreatment of dead bodies,
 - b. looting or gathering trophies;
 - c. use of a privileged building for improper purposes;
 - d. attacking a privileged or protected building;
 - e. attacking a properly marked hospital ship or medical aircraft;
 - f. firing upon shipwrecked personnel;
 - g. participation in hostilities by non-combatants;
 - h. using asphyxiating, poisonous and other gases;
 - i. using bacteriological methods of warfare; and
 - j. genocide.

GIJ Art 12 (1); AP I Arts 22 (2), 23 (1), 24 (1), 34 (1), 43 (2), 51 (2), 52, 53; 1925 Geneva Protocol For the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare; 1948 Convention on the Prevention and Punishment of the Crime of Genocide

4. The fact that a particular act is not listed here as a war crime does not preclude its being treated as a war crime if it is a violation of the laws and customs of war (LOAC).

5. Under the 1998 Rome Statute of the International Criminal Court, the Court will have jurisdiction to try individuals for the crime of genocide, crimes against humanity, and war crimes.

RS Art 5 (1)

SECTION 4 - INDIVIDUAL CRIMINAL RESPONSIBILITY

1610. WHO CAN BE PROSECUTED AND PUNISHED FOR WAR CRIMES

1. Any person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a war crime described in Sections 2 and 3 may be held criminally responsible for the crime.

RS Art 25 (3)

2. The official position of any accused person, whether as Head of State or as a responsible government official, does not relieve such person of criminal responsibility nor mitigate punishment.

RS Art 27 (1)

3. Pursuant to section 130 of the *National Defence Act*, offences under other federal statutes such as torture (section 269.1 of the *Criminal Code of Canada* - See Annex A) and the improper use, possession, transfer, etc. of anti-personnel mines (the *Anti-personnel Mines Convention Implementation Act*- See Annex B) are offences under the *Code of Service Discipline*.

4. The fact that any such crime was committed by a subordinate does not relieve a superior of criminal responsibility if the superior knew or had reason to believe that the subordinate was about to commit a war crime, and the superior failed to take the necessary and reasonable measures to prevent or to punish the crime.

RS Art 28 (2)

5. The fact that an accused person acted pursuant to an order of a Government or a superior does not relieve this person of criminal responsibility. As Mr. Justice Cory stated in the Supreme Court of Canada case of *R. v. Finta*, "...it is the commander who gives the orders who must accept responsibility for the consequences that flow from the carrying out of his or her orders." However, in some cases the fact that an accused acted pursuant to a superior order may be considered in mitigation of punishment.

[1994] 1 S.C.R. 701

1611. RESPONSIBILITIES FOR OFFENCES WITHIN THE CF

1. Section 72 of the *National Defence Act* indicates who can be held responsible for offences under Canadian military law. It provides:

72. (1) Every person is a party to and guilty of an offence who
- a) actually commits it;
 - b) does or omits an act for the purpose of aiding any person to commit the offence;
 - c) abets any person in commission of the offence; or
 - d) counsels or procures any person to commit the offence.
- (2) Every person who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended, whether under the circumstances it was possible to commit such offence or not.
- (3) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to and guilty of that offence."

SECTION 5 - POSSIBLE DEFENCES

1612. MILITARY NECESSITY

1. Since the conventional laws of armed conflict have been drafted with the concept of military necessity in mind, it is not open to a person accused of a war crime to plead this in defence, unless the act in question relates to a breach of a treaty provision, which stipulates that military advantage may be taken into consideration. Some treaty provisions do specify that certain acts may be done if required by military necessity. If a commander performs these acts, then a subsequent assessment of whether or not these acts

were required by military necessity must be based on the information available to the commander at the time and not in an abuse of hindsight.

eg GI Art 33 (2)

1613. PERSONAL NECESSITY

1. Persons accused of a war crime cannot plead that they acted by way of personal necessity on account of immediate danger to their own lives or property, although this may be taken into consideration in mitigation of punishment.

1614. DURESS

1. Persons accused of war crimes are entitled to plead that they acted under duress. It may be, for example, that such persons were under an immediate and real fear for their own lives. This would be the exception rather than the rule as it would be very difficult to prove. It would not be sufficient, however, that they were threatened with subsequent disciplinary or punitive action if they failed to commit the act in question, although in such circumstances the threat may be considered in mitigation of punishment.

RS Art 31 (1) (d)

1615. SUPERIOR ORDERS

1. It is no defence to a war crime that the act was committed in compliance with an order.

RS Art 33

2. An act is performed in compliance with an order which is manifestly unlawful to a reasonable soldier given the circumstances prevailing at the time does not constitute a defence and cannot be pleaded in mitigation of punishment. In *R. v Finta* the Supreme Court of Canada considered the question of when an order should be considered manifestly unlawful. Mr. Justice Cory stated, "It must be one that offends the conscience of every reasonable, right thinking person: it must be an order which is obviously and flagrantly wrong."

[1994] 1 S.C.R. 701

3. The Statute of the International Criminal Court states that:

- (1) The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government of or a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
 - (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
 - (b) The person did not know that the order was unlawful; and
 - (c) The order was not manifestly unlawful.
- (2) For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

RS Art 33

SECTION 6 - JURISDICTION FOR THE PROSECUTION OF WAR CRIMES

1616. CANADIAN LAW

1. As a general principle, a member of the CF accused of committing a war crime would not normally be prosecuted in a Canadian court for a "war crime." Such a CF member would more likely be charged with

committing an analogous offence under Canadian law (e.g., murder) and would be court martialed under the *Code of Service Discipline*.

2. The *Criminal Code of Canada* contains several provisions that allow Canadian courts to assume jurisdiction over and try alleged war criminals in a wide variety of circumstances. Section 7 (3.71) states:

“...every person who, either before or after the coming into force of this subsection, commits an act or omission outside Canada that constitutes a war crime or a crime against humanity and that, if committed in Canada, would constitute an offence against the laws of Canada in force at the time of the act or omission shall be deemed to commit the act or omission in Canada at that time if,

(a) that person is a Canadian citizen or is employed by Canada in a civilian or military capacity...”

1617. INTERNATIONAL LAW

1. Any state into whose hands a person who has allegedly committed a grave breach falls is entitled to institute criminal proceedings, even though that state was neutral during the conflict in which the offence was alleged to have been committed. Since 1945, it has been generally accepted that if a state is unwilling to institute its own proceedings, it may hand the person over to a claimant state on presentation of *prima facie* evidence that the alleged offender has committed the offence in question.

GI Art 49 (2); GII Art 50 (2); GIII Art 129 (2); GIV Art 146 (2)

2. While International Law authorizes the trial of accused war criminals, the courts are established in accordance with the national law of the state having custody of the accused. Procedure is also left to that state.

GI Art 49 (2); GII Art 50 (2); GIII Art 129 (2); GIV Art 146 (2)

3. Currently, ad hoc International Criminal Tribunals have been established under the authority of Chapter VII of the UN Charter in relation to specific conflicts. The International Criminal Tribunal for the Former Yugoslavia has been given jurisdiction to prosecute violations of the LOAC, grave breaches, genocide and crimes against humanity related to the conflict in the Balkans. The International Tribunal for Rwanda has been given jurisdiction to prosecute genocide, crimes against humanity and violations under Additional Protocol II to the Geneva Conventions related to the non-international armed conflict (and genocide) which took place in Rwanda.

4. On 17 July 1998 the Statute of the International Criminal Court was adopted in Rome by the United Nations Conference on the Establishment of an International Criminal Court. Canada was among the countries that signed the Statute. Once the Statute has been ratified by 60 states, the Court will be a permanent body that will judge the most serious crimes of concern to the international community as a whole: genocide, crimes against humanity and war crimes.

RS Art 5

5. No person may be tried for a war crime unless the crime in question was an offence at the time of its commission in accordance with national legislation or International Law.

RS Art 24 (1)

6. The four Geneva Conventions obligate the parties thereto to enact such legislation as may be necessary to provide effective sanctions for persons committing or ordering any of the acts which would constitute grave breaches under the Conventions. They also provide that the parties will take the measures necessary to suppress any violation of the Conventions not amounting to grave breaches.

GI Art 49 (1) & (3); GII Art 50 (1) & (3); GIII Art 129 (1) & (3); GIV Art 146 (1) & (3)

SECTION 7 - TRIAL PROCEDURES

1618. PRETRIAL CONSIDERATIONS

1. All military persons in the hands of the adverse party, including alleged war criminals, are to be treated as PWs until it is proved that they are not entitled to such status.

GIII Art 5 (2)

2. If an alleged war criminal is a PW, that person is entitled to be treated, until conviction, in the same way as any other PW. The PW must be tried by the same tribunal and in accordance with the same rules and procedures as members of the armed forces of the state having custody of the PW.

GIII Arts 84 (2), 105 & 129

3. The Geneva Conventions provide that all persons accused of grave breaches enjoy the safeguards of a proper trial and defence in accordance with international standards.

GI Art 49 (4); GII Art 50 (4); GIII Art 129 (4); GIV Art 146 (4); AP I Art 75 (7)

1619. POST-TRIAL CONSIDERATIONS

1. GIII provisions relating to the release of PWs do not apply to PWs against whom proceedings for an indictable offence are pending, or who have not completed any punishment to which they have been sentenced.

GIII Art 119 (5)

1620. TRIALS OF FOREIGN CIVILIANS FOR WAR CRIMES

1. Where civilians accused of war crimes are held for trial by a power of which they are not nationals, they are entitled to the safeguards of a proper trial and defence, which shall be not less than those provided for PWs. In addition, they must always be submitted for prosecution and trial in accordance with the applicable rules of International Law. If they do not enjoy more favourable treatment under the Geneva Conventions and AP I, they are to be afforded the fundamental guarantees embodied in Article 75 of the Protocol.

AP I Art 75

SECTION 8 - RESPONSIBILITIES OF COMMANDERS

1621. DUTY OF COMMANDERS

1. Commanders are responsible, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities, breaches of the LOAC.

AP I Art 87 (1)

2. In order to prevent and suppress breaches, commanders are responsible for ensuring that members of the armed forces under their command are aware of their obligations under the LOAC.

AP I Art 87 (2)

3. A commander who is aware that subordinates or other persons under his control are about to commit or have committed a breach of the LOAC is required to initiate such steps as are necessary to prevent violations of the LOAC and, where appropriate, to initiate disciplinary or penal action against these persons.

API Art 87 (3)

4. The International Criminal Court will have jurisdiction to try individuals for crimes relating to command responsibility. The Statute of the Court states:

- (1) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
 - (a) The military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (b) That the military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (2) With respect to superior and subordinate relationships not described in paragraph 1 [i.e. that between superior and civilian employees], a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
 - (a) The superior either knew, or consciously disregarded information, which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - (b) The crimes concerned activities that were within the effective responsibility and control of the superior; and
 - (c) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

RS Art 28

1622. FAILURE TO ACT

1. The fact that a subordinate committed a breach of the LOAC does not absolve superiors from penal or disciplinary responsibility. Superiors are guilty of an offence if they knew, or had information which should have enabled them to conclude, in the circumstances ruling at the time, that the subordinate was committing or about to commit a breach of the LOAC, and they did not take all feasible measures within their power to prevent or repress the breach.

RS Art 28 (2) (c)

ANNEX A - CRIMINAL CODE OF CANADA. R.S.C. 1985, CHAP. C-46

CRIMINAL CODE OF CANADA. R.S.C. 1985, CHAP. C-46

269.1. (1) Every official, or every person acting at the instigation of or with the consent or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

(2) For the purposes of this section,

"official" means

- (a) a peace officer,
- (b) a public officer,
- (c) a member of the Canadian Forces, or
- (d) any person who may exercise powers, pursuant to a law in force in a foreign state, that would, in Canada, be exercised by a person referred to in paragraph (a), (b), or (c), whether the person exercises powers in Canada or outside Canada;

"torture" means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

- (a) for a purpose including
 - (i) obtaining from the person or from a third person information or a statement,
 - (ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed, and
 - (iii) intimidating or coercing the person or a third person, or
- (b) for any reason based on discrimination of any kind, but does not include any act or omission arising only from, inherent in or incidental to lawful sanctions.

(3) It is no defence to a charge under this section that the accused was ordered by a superior or a public authority to perform the act or omission that forms the subject-matter of the charge or that the act or omission is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency.

(4) In any proceedings over which Parliament has jurisdiction, any statement obtained as a result of the commission of an offence under this section is inadmissible in evidence, except as evidence that the statement was so obtained. R.S.C. 1985, c. 10 (3rd Supp.), s. 2.

This Page Intentionally Blank

ANNEX B - 1997 ANTI-PERSONNEL MINES CONVENTION IMPLEMENTATION ACT

6. (1) No person shall
- (a) place an anti-personnel mine under, on or near the ground or other surface area with the intent to cause the explosion of the anti-personnel mine by the presence, proximity or contact of a person; or
 - (b) develop, produce or otherwise acquire, possess or transfer to anyone, directly or indirectly, an anti-personnel mine, or stockpile anti-personnel mines.
- (2) Except as authorized under the Export and Import Permits Act, no person shall export or import an anti-personnel mine.
- (3) Subsections (1) and (2) do not prohibit
- (a) the placement, acquisition, possession or transfer of a number of anti-personnel mines, as authorized under section 10, for the development of, and training in, mine detection, mine clearance or mine destruction techniques;
 - (b) the acquisition, possession or transfer of anti-personnel mines for the purpose of their destruction;
 - (c) the acquisition, possession or transfer of an anti-personnel mine that has been deactivated as prescribed by regulation or that has been deactivated by
 - (i) removing all explosive substances, including the priming charge, booster charge and main charge, from the anti-personnel mine, including from any fuse, percussion cap or detonator, and
 - (ii) removing or destroying the anti-personnel mine's priming or detonating mechanism or rendering the mechanism inoperable in such a way that its function cannot readily be restored; or
 - (d) participation in operations, exercises or other military activities with the armed forces of a state that is not a party to the Convention that engage in an activity prohibited under subsection (1) or (2), if that participation does not amount to active assistance in that prohibited activity.

...

21. (1) Every person who contravenes section 6 or 8 or subsection 11(2), 13(3) or 17(1) is guilty of an offence and liable
- (a) on summary conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding eighteen months, or to both; and
 - (b) on conviction on indictment, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding five years, or to both.
- (2) Every person who contravenes a regulation made under section 19, the contravention of which has been made an offence by that regulation, is guilty of an offence punishable on summary conviction.

This Page Intentionally Blank

CHAPTER 17

NON-INTERNATIONAL ARMED CONFLICTS

SECTION 1 - INTRODUCTION

1701. AIM

1. The aim of this chapter is to describe how the Law of Armed Conflict (LOAC) applies to non-international armed conflicts.

1702. GENERAL

1. Common Article 3 to the 1949 Geneva Conventions and Additional Protocol II to the Geneva Conventions (AP II) are the legal instruments dealing specifically with non-international armed conflicts.

2. Today a significant number of armed conflicts in which the CF may be involved are non-international in nature. As stated, the law applicable to such conflicts is limited. It is CF policy, however, that the CF will, as a minimum, apply the spirit and principles of the LOAC during all operations other than domestic operations.

SECTION 2 - NON-INTERNATIONAL ARMED CONFLICT

1703. RULE OF NON-INTERVENTION

1. It is an established rule of International Law that states have no right to intervene in the domestic affairs of another state. The UN, however, has for some time had the authority to intervene pursuant to Article 2 (7) of the UN Charter, which states:

“Nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter; *but this principle shall not prejudice the application of enforcement measures under Chapter VII.*”

1704. HISTORICAL BACKGROUND

1. Traditionally, non-international armed conflict was outside the scope of the LOAC unless the scale and intensity of the conflict was such that it affected the interests of third states, leading them to issue declarations of neutrality. Parties to such conflicts may also declare that they accept and apply the LOAC.

1705. SPECIAL AGREEMENTS

1. It is open to states to declare that a particular non-international armed conflict has reached a level of intensity that warrants treating the conflict, in whole or in part, as being subject to the entire body of the LOAC.

SECTION 3 - COMMON ARTICLE 3 TO GENEVA CONVENTIONS

1706. PURPOSE AND FIELD OF APPLICATION

1. The first attempt to lay down rules regulating non-international armed conflicts is Common Article 3, found in all four Geneva Conventions of 1949.

2. The purpose of Common Article 3 is to set out the provisions of the LOAC that must be observed, as a minimum, during a non-international armed conflict. This Article, which provides no definition of a non-international armed conflict, does not affect the legal status of the parties to the conflict. Therefore, a

governmental authority is still entitled to treat its opponents in accordance with its national legislation (i.e., as traitors or common criminals).

1707. OTHER ARTICLES OF GENEVA CONVENTIONS NOT APPLICABLE

1. With the exception of Common Article 3, none of the provisions of the Geneva Conventions apply to a non-international armed conflict, unless the parties to that conflict agree otherwise.

1708. PROTECTIONS PROVIDED BY ARTICLE 3

1. By Common Article 3, the parties to a non-international armed conflict occurring in the territory of a party to the Conventions are obliged to apply, as a minimum, the following provisions:

- a. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, gender, birth or wealth, or any other similar criteria.

To this end, the following are at any time and in any place prohibited with regard to such persons:

- i violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - ii taking of hostages;
 - iii outrages upon personal dignity, in particular, humiliating and degrading treatment;
 - iv the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- b. The wounded and sick shall be collected and cared for.

2. Common Article 3 also provides that the International Committee of the Red Cross (ICRC), or some other impartial humanitarian body, is authorized to offer its services to parties to a non-international armed conflict. This is known as the right of initiative, which is recognized under the LOAC.

3. Common Article 3 further provides that the parties to the conflict should endeavour to reach agreements to bring the other provisions of the Geneva Conventions into force for that conflict. This procedure has been used on occasion, such as in the former Yugoslavia, to facilitate the broader use of LOAC standards of conduct in non-international armed conflicts.

SECTION 4 - ADDITIONAL PROTOCOL II OF 1977

1709. FIELD OF APPLICATION

1. AP II is a major attempt to ensure the application of additional rules of the LOAC to non-international armed conflicts.

2. AP II defines a non-international armed conflict as one which takes place in the territory of a party to the Protocol between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of the national territory as to enable them to carry out sustained and concerted military operations and to implement the Protocol.

AP II Art 1 (1)

3. According to AP II, its provisions do not apply to internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as these are not considered to be armed conflicts.

AP II Art 1 (2)

4. Broadly speaking, the effect of AP II is that in the event of a non-international armed conflict, the forces on both sides should behave in accordance with the minimum requirements of the LOAC applicable to international armed conflicts.

AP II Preamble

1710. PROTOCOL II DOES NOT AUTHORIZE INTERVENTION

1. International law generally limits intervention in the domestic affairs of another state. AP II provides, therefore, that nothing within AP II may be invoked for the purpose of affecting the sovereignty of a state, nor to limit the government's responsibility to maintain or re-establish, by all legitimate means, law and order within the state, or defend the national unity and territorial integrity of the state.

AP II Art 3 (1)

1711. NO ADVERSE DISCRIMINATION

1. AP II applies without any adverse distinction founded on race, colour, gender, language, religion or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria.

AP II Art 2 (1)

2. AP II provides that all persons not participating in the conflict or who have ceased to do so are entitled, whether under restriction or not, to respect for their persons, honour and convictions, and religious practices, and are, in all circumstances, to be treated humanely and without adverse distinction.

AP II Art 4 (1)

1712. QUARTER MUST BE GRANTED

1. Article 4 (1) of AP II extends to non-international armed conflicts the principle of customary international law that it is prohibited to order that there shall be no survivors.

1713. FUNDAMENTAL GUARANTEES

1. Although AP II contains no provisions relating to enforcement or punishment of breaches, it does contain a statement of fundamental guarantees prohibiting at any time and anywhere:

- a. violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- b. collective punishment;
- c. taking of hostages;
- d. acts of terrorism;
- e. outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- f. pillage; or
- g. threats to commit any of the foregoing.

AP II Art 4 (2)

1714. TREATMENT OF CHILDREN

1. AP II provides that children are to receive such aid and protection as required including:
 - a. an education which makes provision for their religious and moral care;
 - b. steps to reunite them with their families; and
 - c. a ban on their enlistment or participation in the hostilities while under the age of fifteen.

AP II Art 4 (3) (a) - (c)

2. Children under fifteen who do take part in hostilities remain protected. If the children's safety requires their removal from the area in which they are, this should be done whenever possible with the consent of their parents or guardians. Persons responsible for the safety and well being of the children should also accompany them.

AP II Art 4 (3) (d) & (e)

1715. TREATMENT OF PERSONS WHO'S LIBERTY HAS BEEN RESTRICTED

1. Since non-international armed conflicts often reflect ideological and emotional conflict even more than is the case in international conflicts, the need to protect those detained or in any way restricted for reasons connected with the conflict is very important. AP II therefore seeks to protect those whose liberty has been restricted, whether they are detained, interned or subjected to any limitations on their freedom.

2. The wounded and sick among such persons are to be treated humanely and receive such medical care as their condition requires, without discrimination. All detained persons are to be supplied with food and water, and to enjoy the same safeguards as regards health and hygiene and protection against the climate and the dangers of the conflict as the local civilian population. Detained persons are to receive individual and collective relief. They must be allowed to practise their religions and to receive spiritual assistance from those performing religious functions. If made to work, they must enjoy the benefit of working conditions and safeguards similar to those enjoyed by the local population.

AP II Art 5 (1)

3. The authority responsible for the detention or internment of persons during a non-international armed conflict shall, unless family members are detained together, detain men and women separately, with women under the direct supervision of women. Detained persons shall be allowed to send and receive letters and cards, subject to such numerical restrictions as may be imposed by the detaining authority. Places of internment or detention shall not be located close to the combat zone. When the place of detention becomes particularly exposed to danger from the conflict, persons held shall be evacuated under conditions of safety. Detained persons and internees shall receive the benefit of medical examination. Their physical and mental health and integrity shall not be endangered by any unjustified act or omission.

AP II Art 5 (2)

4. When persons who have been detained or interned are released, the detaining authority is obliged to take such steps as are necessary to ensure their safety.

AP II Art 5 (4)

1716. TRIAL AND PUNISHMENT RESTRICTIONS AND GUARANTEES

1. No sentences shall be passed or penalties executed for offences related to the conflict except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality.

AP II Art 6 (2)

2. As a minimum, accused persons:
 - a. shall be informed of the particulars of the offence charged and be afforded all the necessary rights and means of defence;
 - b. shall not be convicted of an offence except on the basis of individual penal responsibility;
 - c. shall not be found guilty of an offence in respect of any act or omission which was not an offence at the time of commission, nor shall any punishment be more severe than was applicable at that time, although, if the punishment has been alleviated, the accused shall benefit accordingly;
 - d. shall be presumed innocent until proved guilty according to law;
 - e. shall have the right to be present at trial;
 - f. shall not be compelled to testify against themselves or to confess their guilt; and
 - g. shall be told, if convicted, of their judicial and other remedies and appellate procedures.

AP II Art 6 (2) & (3)

3. Regardless of the offence committed, no death penalty shall be pronounced upon persons under the age of eighteen at the time of the offence. Further, the death penalty shall not be carried out on pregnant women or mothers of young children.

AP II Art 6 (4)

1717. AMNESTIES ENCOURAGED

1. At the end of hostilities, and in order to facilitate a return to peaceful conditions, the authorities in power are to endeavour to grant the broadest possible amnesty to those who have participated in the conflict, or been deprived of their liberty for reasons related thereto, whether they are interned or detained.

AP II Art 6 (5)

1718. COLLECTION OF WOUNDED, SICK AND SHIPWRECKED

1. After any engagement and whenever circumstances permit, all possible steps must be taken without delay to search for and collect the wounded, sick and shipwrecked; to protect them against pillage and ill-treatment; and ensure their adequate care. Steps must also be taken to search for the dead, prevent their despoliation and provide for their decent disposition.

AP II Art 8

1719. RIGHTS AND DUTIES OF MEDICAL AND RELIGIOUS PERSONNEL

1. Medical and religious personnel, together with medical units and transports shall, under the direction of the competent authority concerned, display the distinctive emblem of the Red Cross or Red Crescent which emblem is to be respected at all times, and must not be used improperly.

AP II Art 12

2. In accordance with general medical practice, medical personnel may not be required to give priority to any person except for medical reasons. Medical and religious personnel are to be respected and protected at all times, receive all available aid to enable them to fulfil their duties, and may not be compelled to perform any action incompatible with their humanitarian mission. Medical units and transports are to be respected at all times and not be made the object of attack. This protection shall only cease if they commit

hostile acts outside their humanitarian function. In such circumstances, a warning must be given, and protection only ceases if such warning remains unheeded.

AP II Arts 9 & 11

3. Medical aid is to be offered to all without distinction. Persons may not be punished for carrying out any medical activities compatible with their own medical ethics. Medical personnel may not be compelled to perform acts contrary to, or refrain from acts, required by their medical ethics or other rules for the protection of the sick, wounded or shipwrecked.

AP II Art 10 (1) & (2)

4. The professional obligations of medical personnel must be respected with regard to information concerning those under their care. This is subject to the requirements of national law.

AP II Art 10 (3)

1720. GENERAL PROTECTION OF CIVILIAN PERSONS

1. The civilian population and civilians are to be protected against the dangers arising from the conflict. Neither the civilian population nor individual civilians may be made the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited.

AP II Art 13 (1) & (2)

1721. STARVATION AS METHOD OF COMBAT PROHIBITED

1. Starvation of civilians as a method of combat is forbidden. It is prohibited to attack, destroy, remove or render useless for that purpose, objects considered indispensable to the survival of the civilian population such as foodstuffs, agricultural areas, livestock, drinking water installations, irrigation works and similar objects.

AP II Art 14

1722. ATTACKS ON INSTALLATIONS CONTAINING DANGEROUS FORCES PROHIBITED

1. It is forbidden to attack certain works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, even if they may be regarded as legitimate targets, if such an attack might cause the release of dangerous forces and consequent severe losses among the civilian population.

AP II Art 15

1723. ATTACKS ON CULTURAL OR RELIGIOUS OBJECTS PROHIBITED

1. It is forbidden to commit any hostile acts directed against historic monuments, works of art or places of worship that constitute the cultural or spiritual heritage of peoples. It is also forbidden to use them in support of the military effort.

AP II Art 16

1724. RESTRICTIONS ON FORCIBLE MOVEMENT OF THE CIVILIAN POPULATION

1. It is forbidden to displace the civilian population for reasons connected with the conflict unless their security or imperative military reasons so demand. If they do have to be displaced, arrangements must be made, if possible, for their shelter, hygiene, health, safety and nutrition. It is equally forbidden to compel civilians to leave their own territory for reasons connected with the conflict.

AP II Art 17

1725. BREACHES OF PROTOCOL II

1. When AP II was adopted, states refused to make violations of its provisions regarding criminal offences. Certain nations were reluctant to allow other states to interfere in their internal affairs by way of trials for war crimes alleged to have taken place in their national territory.
2. Today, however, many provisions of AP II are nevertheless recognized under customary International Law as prohibitions that entail individual criminal responsibility when breaches are committed during internal armed conflicts.
3. Violations of many provisions of AP II committed by individual members of a party to an internal conflict are thus criminal offences under International Law. Such crimes may be tried by international tribunals such as the International Criminal Tribunal for Rwanda.

This Page Intentionally Blank

ANNEX A - MAIN INTERNATIONAL TREATIES ON THE LAW OF ARMED CONFLICT RELATING TO CANADA

- H III Convention Relative to the Opening of Hostilities. The Hague, 18 October 1907**
Not signed or ratified by Canada but accepted by Canada as customary law.
- H IV Convention Respecting the Laws and Customs of War on Land. The Hague, 18 October 1907.**
Not signed or ratified by Canada but accepted by Canada as customary law.
- H IV R Regulations Respecting the Laws and Customs of War on Land. The Hague, 18 October 1907.**
Not signed or ratified by Canada but accepted by Canada as customary law.
- H V Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The Hague, 18 October 1907.**
Not signed or ratified by Canada but accepted by Canada as customary law.
- H VI Convention Relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities. The Hague, 18 October 1907.**
Not signed or ratified by Canada but accepted by Canada as customary law.
- H VI Convention Relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities. The Hague, 18 October 1907.**
Not signed or ratified by Canada but accepted by Canada as customary law.
- H VII Convention Relating to the Conversion of Merchant Ships into Warships. The Hague, 18 October 1907.**
Not signed or ratified by Canada but accepted by Canada as customary law.
- H VIII Convention Relative to the Laying of Automatic Submarine Contact Mines. The Hague, 18 October 1907.**
Not signed or ratified by Canada but accepted by Canada as customary law.
- H IX Convention Concerning Bombardment by Naval Forces in Time of War. The Hague, 18 October 1907.**
Not signed or ratified by Canada but accepted by Canada as customary law.
- H X Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention. The Hague, 18 October 1907.**
Not signed or ratified by Canada but accepted by Canada as customary law.
- H XI Convention Relative to Certain Restrictions with Regard to the Exercise of the Right of Capture in Naval War. The Hague, 18 October 1907.**

Not signed or ratified by Canada but accepted by Canada as customary law.

H XIII Convention Concerning the Rights and Duties of Neutral Powers in Naval War. The Hague 18 October 1907.

Not signed or ratified by Canada but accepted by Canada as customary law.

G BC Protocol for the Prohibition of the use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Geneva, 17 June 1925.

Signed by Canada June 17, 1925

Ratified by Canada May 6, 1930

Reservations made by Great Britain and accepted as binding on Canada:

“...the Protocol is only binding as regards those states and powers which have signed and ratified or have finally acceded thereto:

...the Protocol shall cease to be binding toward at enmity with him whose armed forces or the armed forces of whose allies, fail to respect the prohibitions laid down in the Protocols”.

G I Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949 (First Geneva Convention).

Signed by Canada Dec 8, 1949

Ratified by Canada May 14, 1965

No notes, comments or reservations made by Canada.

GII Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949 (Second Geneva Convention).

Signed by Canada Dec 8, 1949

Ratified by Canada May 14, 1965

No notes, comments or reservations made by Canada.

GIII Convention Relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 (Third Geneva Convention).

Signed by Canada Dec 8, 1949

Ratified by Canada May 14, 1965

No notes, comments or reservations made by Canada.

GIV Convention Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (Fourth Geneva Convention).

Signed by Canada Dec 12, 1977

Ratified by Canada Nov 20, 1990

Reservations made by Canada upon ratifying are as follows:

Canada reserved the right to impose the death penalty under certain circumstances. This reservation is now seen as outdated and of no application.

H CP Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954,

Not signed or ratified by Canada but by policy follows the spirit and principles of this convention.

H CP R Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954.

Not signed or ratified by Canada but by policy follows the spirit and principles of this convention.

H CP P Protocol for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, May 14, 1954.

Not signed or ratified by Canada but by policy follows the spirit and principles of this convention.

CBW Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction Apr. 10, 1972

Signed by Canada Apr 10, 1977

Ratified by Canada Sep 18, 1972

No notes, comments or reservations made by Canada.

ENMOD United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. New York, 10 Dec. 1976.

Signed by Canada May 18, 1977

Ratified by Canada June 11, 1981

No notes, comments or reservations made by Canada.

A P I Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). Geneva, 8 June 1977 (Additional Protocol 1).

Signed by Canada Dec 12, 1977

Ratified by Canada Nov 20, 1990

Reservations made by Canada upon ratification are as follows:

Art 11 Protection of persons (medical procedures)

Canada does not intend to be bound by the prohibitions contained in Art. 11, sub par. 2 (c) with respect to Canadian nationals or other persons ordinarily resident in Canada who may be interned, detained or otherwise deprived of liberty as a result of a situation referred to in Art 1, so long as the removal of tissue or organs for transplantation is in accordance with Canadian laws and applicable to the population generally and the operation is carried out in accordance with normal Canadian medical practises, standards and ethics.

Art 39 Emblems of nationality (enemy uniforms)

Canada does not intend to be bound by the prohibitions contained in para 2 of Art 39 to make use of military emblems, insignia or uniforms of adverse parties in order to shield, favour, protect or impede military operations

Statements of Understanding (conventional weapons)

It is the understanding of Canada that the rules introduced by AP I were intended to apply exclusively to conventional weapons. In particular the rules so introduced do not have any effect on and do not regulate or prohibit the use of nuclear weapons

Art 38 Recognized Symbols (protective emblems)

It is the understanding of Canada that, in relation to Art 38, in situations where the Medical Services of the armed forces of a party to an armed conflict is identified by another emblem than the emblems referred to in Art 38 of GI, that other emblem, when notified, should be respected by the adverse party as a protective emblem in the conflict, under analogous conditions to those imposed by the Geneva Conventions and A P I for the use of emblems referred to in Art 38 of GI and AP I. In such situations, misuse of such an emblem should be considered as misuse of emblems referred to in Art 83 of the GI and the AP I.

Art 41, 56, 57, 58, 78 and 86 Meaning of "feasible"

It is the understanding of Canada that in relation to Art 41, 56, 57, 58, 78 and 86 the word "feasible" means that which is practicable or practically possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations.

Art 44 Combatants and POWs

It is the understanding of Canada that :

- a. the situation described in the second sentence of par. 3 of Art 44 only can exist in occupied territory or in armed conflicts covered by par. 4 of Art 1; and
- b. the word "deployment" in par. 3 of Art 44 includes any movement towards a place from which an attack is to be launched.

Part IV Section 1: General protection against the effect of hostilities (standard for decision making)

It is the understanding of Canada that, in relation to Art 48, 51 to 60 inclusive, 62 and 67, military commanders and others responsible for planning, deciding upon or executing attacks have to reach decisions on the basis of their assessment of the

information reasonably available to them at the relevant time and that such decisions cannot be judged on the basis of information which has subsequently come to light.

Art 52 General provisions of civilian objects (military objectives)

It is the understanding of Canada in relation to Art 52 that:

- a. specific area of land may be a military objective if, because of its location or other reasons specified in the Article as to what constitutes a military objective, its total or partial destruction, capture or neutralization in the circumstances governing at the time offers a definite military advantage: and
- b. the first sentence of par. 2 of the Article is not intended to, nor does it, deal with the question of incidental or collateral damage resulting from an attack directed against a military objective.

Art 53 Protection of cultural objects and of places of worship (cultural objects)

It is the understanding of Canada in relation to Art 53 that:

- a. such protection as is afforded by the Article will be lost during such time as the protected property is used for military purposes; and
- b. the prohibition contained in sub par. (a) and (b) of this article can only be waived when military necessity imperatively requires such a waiver

Art 51 sub par. 5 (b);52 par. 2 and 57 clause 2 (a) (iii) (military advantage)

It is the understanding of Canada in relation to sub par. 5 of Art 51, par. 2 of Art 52 and clause 2 (a) (iii) of Art 57 that the military advantage anticipated from an attack is intended to refer to the advantage anticipated from the attack considered as a whole and not from isolated or particular parts of the attack.

Art 62 General provisions (protection of Civil Defence Personnel)

It is the understanding of Canada that nothing contained in Art 62 will prevent Canada from using assigned civil defence personnel or volunteer civil defence workers in Canada in accordance with nationally established priorities regardless of the military situation

Art 96 Treaty relations upon entry into force of this Protocol par. 3 (declaration by national liberation movements)

It is the understanding of Canada that the making of a unilateral declaration does not, in itself, validate the credentials of the person or persons making such declaration and that states are entitled to satisfy themselves as to whether in fact the makers of such declaration constitute an authority referred to in Art 96. In this respect, the fact that such authority has or has not been recognized as such by an appropriate regional intergovernmental organization is relevant

A P II

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). Geneva, 8 June 1977 (Additional Protocol II).

Signed by Canada Dec 12, 1977

Ratified by Canada Nov 20, 1990

Reservations made by Canada upon ratification as follows:

Canada understands that the undefined terms in AP II which are defined in AP I shall, so far as relevant, be construed in the same sense as those definitions. The understanding expressed by Canada with respect to AP I shall as far as relevant, be applicable to the comparable terms and provisions contained in AP II.

G CW

Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects. Geneva, 10 October 1980, (Conventional Weapons Convention)

Signed by Canada Apr 10, 1981

Ratified by Canada Jun 24, 1994

Reservations made by Canada upon ratification are as follows:

1. It is the understanding of Canada that:
 - a. the compliance of commanders and others responsible for the planning, deciding upon, or executing attacks to which the Convention and its Protocols apply cannot be judged on the basis of information which subsequently comes to light but must be assessed on the basis of information available to them at the time that such actions were taken; and
 - b. where terms are not defined in the present Convention and its Protocols they shall, as far as is relevant, be construed in the same sense as terms contained in AP I
2. With respect to AP I it is the understanding of Canada that the use of plastics or similar materials for detonators or other weapons parts not designed to cause injuries is not prohibited
3. With respect to AP II it is the understanding of Canada that:
 - c. any obligation to record the location of remotely delivered mines pursuant to sub paragraph 1(a) of Art. 5 refers to the location of mine fields and not to the location of individually remotely delivered mines;
 - d. the term "pre-planned", as used in sub paragraph 1(a) of Art. 7 means that the position of the minefield in question should have been determined in advance so that an accurate record of the location of the minefield, when laid, can be made;
 - e. the phrase "similar functions" used in Art 8 includes the concepts of "peace-making preventative peacekeeping and peace enforcement" as defined in an agenda for peace (United Nations document A/47/277 S/2411 of June 17, 1992).
4. With respect to Protocol III it is the understanding of Canada that the expression "clearly separated" in paragraph 3 of Art 2 includes both spatial separation or

separation by means of an effective physical barrier between the military objective and the concentration of civilians.

- G CW P I** **Protocol on Non-detectable Fragments (Protocol 1). Geneva, 10 October 1980.**
- See above Conventional Weapons Convention for dates and reservations
- G CW P II** **Protocol on Prohibitions or Restrictions on the use of Mines, Booby Traps and Other Devices (Protocol II). Geneva, 10 October 1980.**
- See above Conventional Weapons Convention for dates and reservations
- This Protocol was substantially amended May 3, 1996. Amendments not yet in force
- Canada signed the amended Protocol Jan 5, 1998 (as of March 14, 16 out of the necessary 20 have signed and deposited their signatures with the UN in order to trigger the amendment going into effect)
- G CW P III** **Protocol on Prohibitions or Restrictions on the use of Incendiary Weapons (Protocol III). Geneva, 10 October 1980.**
- See above Conventional Weapons Convention for dates and reservations
- G CWP IV** **Protocol on Blinding Laser Weapons 13 Oct 1995**
- Entry into Force July 30, 1998
- Ratified by Canada Jan 5, 1998
- UNCLOS** **1982 United Nations Law of the Sea Convention.**
- Signed by Canada Dec 12, 1982
- No notes, comments or reservations made by Canada
- Torture** **Convention against Torture and Other Cruel and Inhuman or Degrading**
- Convention** **Treatment or Punishment Dec 10, 1984**
- Signed by Canada Aug 23, 1985
- Ratified by Canada Jun 24, 1987
- Canada also declared that it recognized the competence of the Committee against Torture, by virtue of Art 21 and 22.
- C CW** **Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction - Paris, 13 January 1993.**
- Signed by Canada Jan 13, 1993
- Ratified by Canada Sept 26, 1995

Entered into Force Apr 29, 1997

No notes, comments or reservations made by Canada

APM Convention on the Prohibition of Anti-personnel Land Mine Ottawa Dec. 8 1997

Convention Signed by Canada Dec 3, 1997

Ratified by Canada Dec 3, 1997

Statement of Understanding made by Canada:

It is the understanding of the Government of Canada that, in the context of operations, exercises or other military activity sanctioned by the United Nations or otherwise conducted in accordance with international law, the mere participation by the Canadian Forces, or individual Canadians, in operations, exercises or other military activity conducted in combination with the armed forces of States not party to the Convention which engage in activity prohibited under the Convention would not, by itself, be considered to be assistance, encouragement or inducement in accordance with the meaning of those terms in article 1, paragraph 1(c).

1998 Rome Statute of the International Criminal Court.

ANNEX B - CODE OF CONDUCT FOR CF PERSONNEL

1. Engage only opposing forces and military objectives.
2. In accomplishing your mission, use only the necessary force that causes the least amount of collateral civilian damage.
3. Do not alter your weapons or ammunition to increase suffering, or use unauthorized weapons or ammunition.
4. Treat all civilians humanely and respect civilian property.
5. Do not attack those who surrender. Disarm them and detain them.
6. Treat all detained persons humanely in accordance with the standard set by the Third Geneva Convention. Any form of abuse, including torture, is prohibited.
7. Collect all the wounded and sick and provide them with the treatment required by their condition, whether friend or foe.
8. Looting is prohibited.
9. Respect all cultural objects (museums, monuments, etc.) and places of worship.
10. Respect all persons and objects bearing the Red Cross/Red Crescent, and other recognized symbols of humanitarian agencies.
11. Report and take appropriate steps to stop breaches of the Law of Armed Conflict and these rules. Disobedience of the law of armed conflict is a crime.

This Page Intentionally Blank

ANNEX C - CANADIAN LEGISLATION REGARDING THE LAW OF ARMED CONFLICT

ANTI-PERSONNEL MINES CONVENTION IMPLEMENTATION ACT, S.C. 1997 c. 33

Assented to 27 November 1997. In force, 1 March 1999..

CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT, R.S.C. 1995 c 25

Assented to July 13, 1995, to come into force on a day to be fixed by Order in Council, Not in force as of Mar 13, 1998.

CRIMINAL CODE OF CANADA, R.S.C. 1985 c. C-46

THE GENEVA CONVENTIONS ACT, R.S.C, 1985 c. G-3

Amended 1990 c.14 ss1-6 in force Jun 4, 1990

Amended 1995 c. 5 s.25 (1)(o) in force may 13, 1995

NATIONAL DEFENCE ACT, R.S.C. 1985 c. N-5

OCEANS ACT, R. S., c. 31.

Came into force on assent as to s.53 Dec 18, 1996

The balance of the Act came into force Jan 31, 1997

PRIZE ACT, R. S. C. 1970, P-24.

CRIMES AGAINST HUMANITY AND WAR CRIMES ACT

RSC. 2000 C.24

This Page Intentionally Blank

GLOSSARY

Additional Protocol I

Additional Protocol I (AP I) means Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 10 June 1977.

Additional Protocol II

Additional Protocol II (AP II) means Protocol *Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)* of 10 June 1977.

Adverse Party

An adverse party is an opposing state or entity engaging in armed conflict. See also "Party to the Conflict" and "Belligerent".

Aircraft

"Aircraft" means flying machines and guided missiles that derive their lift in flight chiefly from aerodynamic forces (e.g., airplane, helicopter, glider, etc.) as well as flying devices that are supported chiefly by their buoyancy in air (balloon, kite, airship, etc.).

Airspace

"Airspace" means the zone next to the earth characterized by atmosphere. There is no general agreement concerning how far airspace extends above the earth, but it should be noted that the component atoms of the air begin to dissociate at approximately 50 miles above the earth's surface.

Anti-handling Device

An anti-handling device is part of, linked to or under a land mine and detonates when an attempt is made to tamper with the mine. An example of an anti-handling device is a hand grenade with its safety pin removed that is placed under a mine such that the grenade explodes when the mine is moved.

Anti-personnel Mine

An anti-personnel mine is a munitions placed on, under or near the ground or other surface area that:

- a. is designed to be exploded by the presence, proximity or contact of a person; and
- b. will incapacitate, injure or kill one or more persons.

Anti-Personnel Mines Convention

Anti-Personnel Mines Convention means the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, 8 December 1997.

Anti-tank Mine

An anti-tank mine is a munitions placed on, under or near the ground or other surface area that:

- a. is designed to be exploded by the presence, proximity or contact of a vehicle; and
- b. will incapacitate, damage or destroy the vehicle.

APM Convention

APM Convention means the Anti-Personnel Mines Convention.

Archipelagic Sea Lanes

Archipelagic sea lanes are sea lanes and air routes, designated by an archipelagic state, that are suitable for the continuous and expeditious passage of foreign ships and aircraft through and over the archipelagic state's archipelagic waters and the adjacent territorial sea.

Archipelagic Sea Lane Passage

Archipelagic sea-lane passage (ASL passage) means the exercise in accordance with UNCLOS of the rights of navigation and over flight in the normal mode through archipelagic sea lanes solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an EEZ and another part of the high seas or an EEZ. All vessels and aircraft may exercise the right of ASL passage in the normal mode of operation observing the same conditions applicable to transit passage through straits for international navigation. ASL passage may not be suspended or obstructed by the archipelagic state.

Archipelagic Waters

Archipelagic waters are those waters enclosed by archipelagic baselines drawn in accordance with the UNCLOS. The sovereignty of an archipelagic state extends to the waters enclosed by the baselines, regardless of their depth or distance from the coast, as well as the associated seabed, subsoil and airspace.

Armed Conflict

An armed conflict is a conflict between states in which at least one party has resorted to the use of armed force to achieve its aims. It may also embrace conflict between a state and organized, disciplined and uniformed groups within the state such as organized resistance movements.

Armistice

An armistice is an agreement between belligerents for the suspension of hostilities. An armistice does not terminate a conflict but only brings active hostilities to an end in accordance with the terms of the agreement. An armistice may be local or general.

ASL Passage

ASL passage means archipelagic sea-lane passage.

Assassination

Assassination means the killing or wounding of a selected non-combatant for a political or religious motive.

Attack

An attack is an act of violence against an adversary, whether in offence or defence.

Auxiliary Aircraft

An auxiliary aircraft means an aircraft, other than a military aircraft, that is owned by or under the exclusive control of the armed forces of a state and used for the time being on government non-commercial service.

Auxiliary Vessel

An auxiliary vessel means a vessel, other than a warship, that is owned by or under the exclusive control of the armed forces of a state and used for the time being on government non-commercial service.

Belligerent

A belligerent is a state or other entity engaging in armed conflict. The term may also be used to refer to a combatant in some contexts.

Blockade

A blockade is the surrounding or blocking of a place such as a port to prevent entry and exit of supplies.

Booby Trap

A booby trap is any device or material which is designed, constructed or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act.

Booty of War

Booty of war is all enemy public movable property captured or found on a battlefield. It becomes the property of the capturing state. Booty includes all articles captured with prisoners of war, other than their personal property.

Capture Card

A capture card is a card sent by PWs to their families and the Central PW Agency giving information on their capture, address and state of health. a capture card is sent by PWs upon capture and upon transfer from one place of detention to another.

Chaplain

A chaplain is a minister who is a member of the armed forces and who is exclusively engaged in the work of the ministry. See "Religious Personnel".

Chemical Weapons Convention

Chemical Weapons Convention means the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction* of 13 January 1993.

Chivalry

Chivalry refers to the conduct of conflict in accordance with certain recognized formalities and courtesies. The concept of chivalry is reflected in specific prohibitions such as those against dishonourable and treacherous conduct and against the misuse of enemy flags or flags of truce.

Civil Aircraft

A civil aircraft is an aircraft, which is not a state aircraft. See "State Aircraft".

Civil Defence

"Civil defence" means the performance of some or all of the humanitarian tasks intended to protect the civilian population against the dangers of hostilities or disasters, to help the civilian population recover from the immediate effects of such hostilities or disasters, and to provide the conditions necessary for the civilian population's survival.

Civilian

A civilian is a person who is not a combatant.

Civilian Object

A civilian object is any object, which is not a "military objective". See "Military Objective".

Civilian Population

The civilian population comprises all persons who are civilians. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

Code of Service Discipline

Code of Service Discipline means Parts IV to IX of the *National Defence Act* (Canada). The *Code of Service Discipline* sets out the offences for which members of the CF and in some cases civilians may be liable under military law.

Collateral Civilian Damage

Collateral civilian damage is incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, arising from the use of military force. See "Proportionality".

Combatants

Combatants are persons who are legally entitled, under the LOAC, to take a direct part in an armed conflict and, in particular, to engage in hostilities. Combatants who are captured by the enemy are prisoners of war.

Common Article 3 to the Geneva Conventions

Common Article 3 appears in all four Geneva Conventions of 12 August 1949. Common Article 3 is the only provision in the Geneva Conventions that applies to a “non-international armed conflict”. The purpose of Common Article 3 is to set out the provisions of the LOAC, which must be observed, as a minimum, during a non-international armed conflict.

Confiscation

Confiscation is the taking of enemy public movable property without the obligation to compensate the state to which it belongs.

Contact Zone

Contact zone means any area on land where the forward elements of opposing forces are in contact with each other, especially where they are exposed to direct fire from the ground.

Continental Margin

The continental margin is the area comprising the submerged prolongation of the land mass of the coastal stage, and consisting of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

Continental Shelf

The Continental shelf of a coastal state comprises the sea-bed and subsoil to the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Contraband

Contraband is defined as goods that are ultimately destined for territory under the control of the enemy and that may be susceptible for use in an armed conflict.

Conventional Weapons Convention

Conventional Weapons Convention means the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effects*, Geneva, 10 October 1980. Attached to this Convention are protocols dealing with Non-detectable Fragments (Protocol I); Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II); Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III); and Blinding Laser Weapons (Protocol IV).

Cultural Objects

Cultural objects are movable and immovable objects of sufficient artistic or religious importance to constitute the heritage of all people, including that which has been renovated or restored. Cultural objects include historical monuments, archaeological sites, books, manuscripts or scientific papers and the buildings or other places in which such objects are housed.

Cultural Property Convention

Cultural Property Convention means the *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, The Hague, 14 May 1954.

Customary International Law

Customary international law arises where there is a uniform, consistent and general repetition of similar acts by competent state authorities (usage) and recognition by states that such practice is binding upon them as law. The existence of customary international law is dependent upon general agreement, not unanimous agreement. Thus, a state may be bound by a treaty that expresses customary international law, although it is not a party to that treaty.

Demilitarized Zone

A demilitarized zone is an area that the parties to a conflict have agreed not to attack or in which they will not conduct military operations.

Denial of Quarter

Quarter has historically meant mercy offered or granted to an enemy in battle on the condition of surrender. Under the modern LOAC, it is prohibited to "deny quarter." In other words, it is prohibited to order, imply or encourage that no prisoners will be taken; to threaten an adverse party that such an order will be given; or to conduct hostilities on the basis that no prisoners will be taken.

Detaining Persons

All persons held without their consent, including prisoners of War, those not entitled to PW status, and those whose status has not yet been determined.

Detaining Power

Detaining Power means the state into whose power a prisoner of war has fallen.

Disciplinary Measures

Disciplinary measures are proceedings taken against a prisoner of war for an alleged violation of the laws, regulations or orders of the Detaining Power that are applicable to that person. a PW found guilty of such an offence is liable only to "disciplinary punishments". Disciplinary measures must be distinguished from "judicial measures". See also "Judicial Measures".

Disciplinary Punishments

The disciplinary punishments that can be imposed on a prisoner of war are:

- a. a fine;
- b. discontinuance of privileges granted over and above the minimum treatment guaranteed by GIII;
- c. fatigue duties not exceeding two hours daily; or
- d. confinement for a period not exceeding 30 days.

Distinction

The principle of distinction imposes an obligation on commanders to distinguish between legitimate targets and civilian objects and the civilian population.

Dum-dum Bullet

A dum-dum bullet is a bullet that expands or flattens easily in the human body, such as a bullet with a hard envelope that does not entirely cover the core or is pierced with incisions (for example, hollow point bullet).

Environmental Modification Technique

An environmental modification technique is any technique for changing, through the deliberate manipulation of natural processes, the dynamics, composition or structure of the earth, which would have widespread, long-term and severe effects.

Espionage

Espionage is the collection of information clandestinely behind enemy lines or in the zone of operations while wearing civilian clothing or while otherwise disguised or concealed.

Exclusive Economic Zone

The Exclusive economic zone (EEZ) is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in Part V of UNCLOS, under which the rights and jurisdiction of the coastal state and the rights and freedoms of other states are governed by the relevant provisions. The EEZ shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Fact-Finding Commission

See "International Fact-Finding Commission (IFFC)".

Feasible Precautions

Feasible precautions are those precautions that are practicable or practically possible taking into account all circumstances ruling at the time including humanitarian and military considerations.

Free Goods

Free goods are goods that are not on a belligerent's contraband list and therefore are not subject to capture.

Gas Protocol

Gas Protocol means the *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare* of 17 June 1925.

General Assembly

General Assembly means the General Assembly of the United Nations.

Geneva Conventions

Geneva Conventions means:

- a. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (GI);
- b. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 (GII);
- c. Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (GIII); and
- d. Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (GIV).

Genocide

Genocide means acts committed in time of peace or in time of war with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

Genocide Convention

Genocide Convention means a resolution of the United Nations, adopted unanimously in 1948, which confirms that "genocide" is a crime under International Law.

Grave Breach

Grave breach means a grave breach of the Geneva Conventions or AP I. a grave breach is a serious violation of the Geneva Conventions or AP I which will be subject to greater international sanctions and

punishment. For example, grave breaches of GI and GII include wilful killing, torture and inhumane treatment along with wilfully causing greater suffering or serious injury to the wounded, sick and shipwrecked.

Hague Conventions

The Hague Conventions were adopted in 1907. The Conventions are the main source of the LOAC dealing with the conduct of hostilities on land and at sea. The Hague Conventions are considered to have the status of customary international law.

Hospital Ships

Hospital ships are:

- a. vessels built or equipped by a party to the conflict specially and solely with a view to assisting either military and/or civilian wounded, sick or shipwrecked;
- b. vessels of the same nature used by national Red Cross or Red Crescent societies, officially recognized relief societies or by private persons, provided that the party to the conflict on which they depend has given them an official commission; and
- c. vessels of the same nature used by neutral states, their national Red Cross or Red Crescent societies, officially recognized relief societies, private persons of neutral states or impartial international humanitarian organizations, provided that they have placed themselves under the control of one of the parties to the conflict with the authorization of that party and with the previous consent of their own government.

Hospital and Safety Zones

A hospital and safety zone is an area, established by the agreement of parties to a conflict, to protect the following persons from the effects of armed conflict:

- a. wounded, sick and aged persons;
- b. children under the age of fifteen;
- c. expectant mothers; and
- d. mothers of children under the age of seven.

Hospital and safety zones are located in sparsely populated areas away from legitimate targets.

Hors de Combat

Hors de combat (out of combat) means a person who:

- a. is in the power of an adverse party;
- b. clearly expresses an intention to surrender; or
- c. has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and is therefore incapable of self-defence, provided that in any of these cases the individual abstains from any hostile act and does not attempt to escape.

Humanity

The concept of humanity forbids the infliction of suffering, injury or destruction not actually necessary for the accomplishment of legitimate military purposes.

Incendiary Weapons

Incendiary weapons include any weapon or munitions that is designed to set fire to objects or to cause burn injuries to humans through the action of flame, heat or combination of the two caused by a chemical reaction of a substance delivered on target. Examples of incendiary weapons include napalm, flame-throwers, shells, rockets, grenades, mines, bombs and other containers of incendiary materials.

Indiscriminate Attacks

Indiscriminate attacks are those that may strike legitimate targets and civilians or civilian objects without distinction. They are prohibited. Indiscriminate attacks are:

- a. those which are not directed at a specific legitimate target;
- b. those which employ a method or means of combat which cannot be directed at a specific legitimate target; or
- c. those which employ a method or means of combat, the effects of which cannot be limited as required by the LOAC.

Innocent Passage

Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state. Such passage must take place in conformity with the UNCLOS and with other rules of International Law. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal state if the ship engages in any of the following activities in that state's territorial sea:

- a. any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal state, or in any other manner in violation of the principles of International Law embodied in the United Nations Charter;
- b. any exercise or practice with weapons of any kind;
- c. any act aimed at collecting information to the prejudice of the defence or security of the coastal state;
- d. any act of propaganda aimed at affecting the defence or security of the coastal state;
- e. the launching, landing or taking on board of any aircraft;
- f. the launching, landing or taking on board of any military device;
- g. the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal state;
- h. any act of wilful and serious pollution contrary to UNCLOS;
- i. any fishing activities;
- j. the carrying out of research or survey activities;
- k. any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal state; or
- l. any activity not having a direct bearing on passage.

See "Passage".

Internal Waters

Internal waters are waters on the landward side of the baseline of a state's territorial sea, except as provided in Part IV of the UNCLOS.

International Airspace.

“International Airspace” means airspace over the high seas, exclusive economic zones, contiguous zones and areas not subject to territorial sovereignty (e.g. the Arctic). International airspace is open to aircraft of all nations. Accordingly, military aircraft are free to operate in international airspace without interference from any other nation.

International Armed Conflict

International armed conflict means an armed conflict that takes place between sovereign states, even if a state of war is not recognized by one of them. Armed conflicts in which peoples are fighting against colonial domination and foreign occupation and against racist regimes in the exercise of their right of self-determination are also considered to be international armed conflicts.

International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) is an international humanitarian organization whose headquarters are located in Geneva, Switzerland.

International Court of Justice

The International Court of Justice (ICJ) is a court established by the United Nations Charter to adjudicate issues of International Law.

International Fact-Finding Commission

International Fact-Finding Commission (IFFC) means an organization established pursuant to AP I to inquire into any facts alleged to be a grave breach of the LOAC and to facilitate, through its good offices, the restoration of an attitude of respect for the LOAC.

International Humanitarian Law

See “Law of Armed Conflict”.

International Law

International Law is the body of law, which governs relations between sovereign states.

International Straits

International straits are straits used for international navigation between one part of the high seas or an EEZ and another part of the high seas or EEZ.

Internment Camp

An internment camp (IC) is, as a general rule, a place where civilians are detained by an occupying power. An occupying power may also decide to intern the present or former members of the armed forces of an occupied territory. Persons entitled to the status of prisoner of war under Article 4 of the GIII may also be interned where they fall into the power of a state that is neutral or is not a party to the conflict. Internment camps should be marked with the letters “IC” placed so as to be clearly visible in the daytime from the air.

Judicial Measures

Judicial measures are proceedings taken against a prisoner of war for an alleged violation of the laws, regulations or orders of the Detaining Power that are applicable to that person. a PW found guilty of such an offence is liable only to a punishment that could apply to a member of the armed forces of the Detaining Power who committed the same acts. However, the punishments, which can be imposed on a PW are not limited to “disciplinary punishments.” See also “Disciplinary Measures” and “Disciplinary Punishments”.

Land Mine

A land mine is a munitions placed on, under or near the ground or other surface area and designed to be detonated by the presence, proximity or contact of a person or a vehicle.

Law of Armed Conflict

The Law of Armed Conflict (LOAC) is the body of international law that governs the conduct of hostilities during an armed conflict. The LOAC is often referred to as the “law of war” or “International Humanitarian Law” (IHL).

Law of Geneva

The Law of Geneva, based upon the Geneva Conventions of 1949 along with the Additional Protocols of 1977, is concerned with the law relating to the protection of persons not involved in a conflict such as civilians, prisoners of war, and the sick and wounded.

Law of The Hague

The Law of the Hague, based upon the Hague Conventions of 1907, is concerned with the law relating to the actual conduct of military operations including methods and means of combat.

Law of War

See “Law of Armed Conflict”.

Lawful Combatants

Lawful combatants are those persons who are legally entitled to engage in hostilities under the LOAC (i.e., combatants). See “Combatants”.

Legitimate Targets

Legitimate targets include combatants, unlawful combatants and military objectives. Legitimate targets may be lawfully attacked under the LOAC, provided that the attack meets the proportionality test. See “Proportionality”.

Levée en masse

As a general rule, civilians are non-combatants and cannot lawfully engage in hostilities. There is, however, an exception to this rule for civilian inhabitants of a territory that has not been occupied by the enemy. Where they have not had time to form themselves into regular armed units, inhabitants of a non-occupied territory are lawful combatants if:

- a. on the approach of the enemy they spontaneously take up arms to resist the invading forces;
- b. they carry arms openly; and
- c. they respect the LOAC.

This situation is referred to as a *levée en masse*.

Martens Clause

The *Martens Clause* is a declaration adopted by the delegates at the 1899 Hague Conference as the preamble to the Convention Respecting the Laws and Customs of War on Land. The *Martens Clause* represents a link between treaty law and customary international law dealing with the LOAC. The declaration states:

“The High Contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking [i.e., treaty], be left to the arbitrary judgement of military commanders. Until a more complete code of the laws of war is issued, the High Contracting Parties deem it expedient to declare that in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations [i.e., customary international law], as they result from the usage established between civilized nations, from the laws of humanity, and the dictates of the public conscience”.

Medical Aircraft

Medical aircraft means any medical transports by air.

Medical Duties

Medical duties means:

- a. the search for the wounded, sick and shipwrecked;
- b. the collection, transportation, diagnosis or treatment (including first aid treatment) of the wounded, sick and shipwrecked; and
- c. medical activities for the prevention of disease.

Medical Personnel

Medical personnel means those persons assigned, by a party to the conflict, exclusively to medical duties, the administration of medical units, or the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term “medical personnel” includes:

- a. medical personnel of a party to the conflict, whether military or civilian, including those described in GI and GII and those assigned to civil defence organizations;
- b. medical personnel of national Red Cross and Red Crescent Societies and other national voluntary aid societies duly recognized and authorized by a party to the conflict; and
- c. medical personnel of permanent medical units or medical transports made available to a party to the conflict by:
 - (1) a neutral or other state which is not a party to that conflict;
 - (2) a recognized and authorized aid society of such a state; or
 - (3) an impartial international humanitarian organization.

See also “Medical Duties”, “Medical Transports” and “Medical Units”.

Medical Transports

Medical transports include any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a party to the conflict.

Medical Units

Medical units means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment including first aid treatment of the wounded, sick and shipwrecked or for the prevention of disease. The term includes hospitals and other similar units, blood transfusion centres, preventative medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary.

Mercenary

A mercenary is any person who:

- a. is specially recruited locally or abroad in order to fight in an armed conflict;
- b. takes part in hostilities;

- c. is motivated to take part in hostilities essentially for the desire for private gain and is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party;
- d. is neither a national of a party to the conflict nor a resident of the territory controlled by a party to the conflict;
- e. is not a member of the armed forces of a party to the conflict; and
- f. has not been sent by a state which is not party to the conflict on official duty as a member of its armed forces.

Merchant Vessel

A merchant vessel is a vessel (other than a warship, auxiliary vessel or state vessel such as a customs or police vessel) that is engaged in commercial or private service.

Military Advantage

The military advantage at the time of an attack is that advantage anticipated from the military campaign or operation of which the attack is part, considered as a whole, and not only from isolated or particular parts of that campaign or operation. a “concrete and direct” military advantage exists if the commander has an honest and reasonable expectation that the attack will make a relevant contribution to the success of the overall operation. Military advantage may include a variety of considerations including the security of attacking forces. See also “Proportionality” and “Military Objective”.

Military Aircraft

A military aircraft is an aircraft belonging to the armed forces of a state bearing national markings, under the command of a military officer and staffed by a crew subject to military discipline.

Military Necessity

The concept of military necessity justifies the application of force not forbidden by International Law, to the extent necessary, to bring about the complete submission of the enemy at the earliest possible moment with the least possible expenditure of personnel and resources.

Military Objective

A military objective is an object which, by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. a specific area of land may constitute a military objective.

Mine

See “Land mine” or “Sea mine”.

National Airspace

National airspace is all airspace above a state’s national waters (including internal waters, territorial sea and archipelagic waters) and land territory.

Neutral

Neutral means any state not a party to a conflict.

Neutral Airspace

Neutral airspace is all airspace above the national waters (including internal waters, territorial sea and archipelagic waters) and land territory of a state that is not a party to the conflict.

Neutral Jurisdiction

Neutral jurisdiction means the land territory and territorial sea of a state not a party to a conflict along with the airspace above those areas.

Neutral Waters

Neutral waters are the internal waters, territorial sea and archipelagic waters of neutral states.

Neutralized Zone

A neutralized zone is an area, established by agreement of the parties to the conflict, in the regions where fighting is taking place to shelter the following persons from the effects of the conflict:

- a. wounded and sick combatants and non-combatants; and
- b. civilian persons who take no part in the hostilities and who, while they reside in the zone, perform no work of a military character.

Non-combatants

Non-combatants comprise all persons who are not combatants. Provided they do not take a direct part in hostilities, non-combatants are not legitimate targets. Civilians are generally the largest category of non-combatants. Religious and medical personnel are non-combatants, even if they are in uniform and members of the armed forces of a party to the conflict.

Non-defended Locality

A party to a conflict may declare as a non-defended locality any inhabited place near or in a zone where armed forces are in contact. The non-defended locality is then open for occupation by the adverse party.

Non-discrimination

The principle of non-discrimination has two aspects. First, the LOAC binds both sides to a conflict, regardless of which one may be the aggressor. Second, the LOAC must be applied without any adverse distinction founded on race, colour, religion or faith, gender, birth or wealth, or any similar criteria. One party to a conflict is not entitled to apply the LOAC in a different way because the other party may be an aggressor or is of a different race, colour, religion, etc.

Non-international Armed Conflict

A non-international armed conflict is one that takes place on the territory of a state between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over part of the state's territory as to enable them to carry out sustained and concerted military operations and to implement AP I.

Objects Indispensable to the Survival of the Civilian Population

Objects indispensable to the civilian population include, but are not limited to:

- a. foodstuffs;
- b. agricultural areas for the production of foodstuffs;
- c. crops;
- d. livestock;
- e. drinking water installations and supplies; and
- f. irrigation works.

Other Devices

Other Devices means manually emplaced munitions and devices including improvised explosive devices designed to kill, injure or damage and which are activated manually, by remote control or automatically after a lapse of time.

Parlementaire

A parlementaire is an intermediary who assists in negotiations between belligerent commanders. a parlementaire normally operates under a white flag of truce to facilitate a face-to-face meeting.

Parole

Parole is a binding promise by PWs not to resume hostilities against the Detaining Power in exchange for their liberty. PWs who are paroled are released from the custody of the Detaining Power and returned to their own lines. They must then comply with the terms of their parole. a person who resumes hostilities against the Detaining Power in violation of parole forfeits the right to be treated as a prisoner of war and may be tried as a war criminal.

Party to a Conflict

A party to a conflict is a state or other entity engaging in armed conflict. See also "Adverse Party" and "Belligerent".

Passage

Passage means navigation through the territorial sea of a state for the purpose of:

- a. traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
- b. proceeding to or from internal waters or a call at such roadstead or port facility.

Passage must be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as such acts are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Passport

A passport is a document issued by a commander to a person or group of persons permitting unmolested movement within the territory occupied by troops led by that commander. a passport may be general or limited in character and for a limited or unlimited period of time. It should specify what persons may accompany the holder and what goods may be carried by the holder.

Perfidy

Acts inviting the confidence of adversaries and leading them to believe that they are entitled to protection or are obliged to grant protection under the LOAC, with intent to betray that confidence, constitute perfidy. In other words, perfidy consists of committing a hostile act under the cover of a legal protection.

Pillage

Pillage is the violent acquisition of property for private purposes. Pillage is theft, and therefore is an offence under the *Code of Service Discipline*.

Prisoner of War

Prisoner of War means a person belonging to one of the categories set out in Article 4 of the GIII and Article 43 of AP I who falls into the power of an adverse party. In particular, a lawful combatant who falls into the power of an adverse party is a prisoner of war. Prisoner of war camps should be marked with the letters "PW" or "PG" placed so as to be clearly visible in the daytime from the air.

Prisoner of War Status Determination Regulations

The *Prisoner of War Status Determination Regulations* are Canadian regulations, made pursuant to the Geneva Conventions Act (Canada), that establish a tribunal to determine whether a person is a prisoner of war under Article 5 of GIII or Article 45 of AP I.

Prisoners' Representative

A prisoners' representative is a PW who represents the interests of the PWs at his camp before the military authorities, Detaining Power, Protecting Powers, International Committee of the Red Cross and any other organization which may assist them.

Prize

Prize is a technical term referring to ships or goods that may be legitimately seized and become the property of the captor if they were intended for or may be used on behalf of the adverse party's war effort.

Proportionality

The principle of proportionality establishes a link between the concepts of military necessity and humanity. The test for proportionality is as follows: *Is the attack expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof ("collateral civilian damage"), which would be excessive in relation to the concrete and direct military advantage anticipated?* If the answer is "yes", an attack must be cancelled or suspended. The proportionality test must be used in the selection of any target.

Protected Persons

Protected persons are persons who are protected by the LOAC.

Protected Vessels

Protected vessels, which may not be attacked as a general rule, include:

- a. hospital ships;
- b. small craft used for coastal rescue operations and other medical transports;
- c. vessels granted safe conduct by agreement between the belligerent parties (e.g., vessels transporting PWs or engaged in humanitarian missions);
- d. vessels engaged in transporting cultural property under special protection;
- e. passenger vessels carrying only civilian passengers;
- f. vessels charged with religious, non-military scientific or philanthropic missions;
- g. small coastal fishing vessels and small boats engaged in local coastal trade, but they are subject to the regulations of a belligerent naval commander operating in the area and to inspection;
- h. vessels which have surrendered; and
- i. life rafts and life boats.

Protecting Power

The Geneva Conventions provide that the treatment of prisoners of war, interned civilians and inhabitants of occupied territory be monitored by a neutral nation known as a Protecting Power. It is a neutral state or body designated by a party to the conflict and accepted by the adverse party. As nations often disagree as to which nations are neutral or otherwise, the International Committee of the Red Cross has been authorized to perform some of the functions of the Protecting Power.

Protective Emblem

Protective emblem means the Red Cross or Red Crescent. The protective emblem is used to identify medical and religious personnel as well medical units and establishments. See Annex a to Chapter 4 (Targeting).

Protective Signs

Protective signs mean the signs recognized by the LOAC for the protection of cultural property, works and installations containing dangerous forces (dams, dykes and nuclear electrical generating stations), civil defence installations and personnel, prisoner of war camps, internment camps, and hospital and safety zones. See Annex a to Chapter 4, Targeting.

Reciprocity

The principle of reciprocity refers to the old saying, "Treat others the way you would like to be treated". Compliance with the LOAC is mandatory. If one party to an armed conflict scrupulously complies with the LOAC, there is a greater chance that the other side will do so as well.

Relief Action

A relief action for the benefit of the civilian population affected by an armed conflict means the provision of food, water, medical supplies, clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population, and objects necessary for religious worship.

Relief Consignment

A relief consignment means supplies intended to benefit the civilian population affected by an armed conflict and includes food, water, medical supplies, clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population, and objects necessary for religious worship.

Religious Personnel

Religious personnel mean military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached to:

- a. the armed forces of a party to the conflict;
- b. medical units or medical transports of a party to the conflict;
- c. medical units or medical transports made available to a party to the conflict by:
 - (1) a neutral or other state which is not a party to that conflict;
 - (2) a recognized and authorized aid society of such a state; or
 - (3) an impartial international humanitarian organization; or
- d. civil defence organizations of a party to the conflict.

Remotely-delivered Mine

A remotely delivered mine is a mine not directly emplaced but delivered by artillery, missile, rocket mortar or similar means, or dropped from an aircraft. Mines delivered from a land-based system from less than 500 metres are not considered to be remotely delivered.

Requisition

A requisition is an official order-laying claim to the use of property or materials.

Reprisal

An act, otherwise unlawful under the LOAC conflict, utilized for the purpose of coercing an adversary to stop

violating the recognized rules of armed conflict.

Retaliation

Retaliation means to repay an injury or insult in kind. Retaliation should be distinguished from reprisal.

Riot Control Agents

Riot control agents mean tear gas and other gases that have debilitating but non-permanent effects.

Roadstead

Roadsteads are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly beyond the limits of the territorial sea, are included within the territorial sea. Roadsteads included within the territorial sea must be clearly marked on charts by the coastal or island nation.

Rules of Engagement

Orders issued by competent military authority, which delineate the circumstances and limitations within which force may be applied by the CF to achieve military objectives in furtherance of national policy.

Ruses of War

Ruses of war are measures taken to obtain advantage over the enemy by confusing or misleading them. Ruses of war are more formally defined as acts, which are intended to mislead adversaries or to induce them to act recklessly.

Sabotage

Sabotage consists of acts of destruction committed by persons operating behind the lines of an adverse party.

Saboteurs

Saboteurs are persons operating behind the lines of an adverse party to commit acts of destruction.

Safe Conduct

A safe conduct is a document issued by an individual commander to persons or groups of persons, for a limited or unlimited period of time, when they seek to go to some place that cannot be reached other than by passing through an area under occupation by troops led by the commander, particularly when such troops are in contact with the enemy.

Safeguard

A safeguard is a party of soldiers left behind when the main body of troops departs to protect enemy or neutral persons or property. Persons left behind as safeguards are inviolable, and if they fall into the power of the adverse party it is usual to allow them to return to their own lines as soon as military exigencies permit.

Sea mine

An explosive device laid in the water on the sea bed or in the subsoil, with the intention of damaging or sinking ships or of deterring ships from entering an area.

Self-deactivating Mine

A self-deactivating mine permanently stops functioning when a component (e.g., battery) is exhausted. a self-deactivating mine is lawful unless it is used with an anti-handling device that continues to function after the mine has stopped functioning.

Shipwrecked

Shipwrecked means persons, whether military or civilian, who are in peril at sea or in other waters as a result

of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility.

Spy

A spy is a person who engages in espionage.

State Aircraft

A state aircraft is an aircraft that is used in military, customs and police services, including military aircraft.

Superfluous

Superfluous means more than enough, redundant, needless.

Targeting

Targeting is the process of identifying targets for possible engagement and determining the attack system to capture, destroy, degrade or neutralize them.

Territorial Sea

Territorial sea means the sea adjacent to a state up to a limit not exceeding 12 nautical miles, measured from the baselines.

Torture

Torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as:

- a. obtaining from that person or a third person information or a confession;
- b. punishing that person or a third person for an act he or a third person has committed or is suspected of having been committed;
- c. intimidating or coercing that person or a third person; or
- d. for any reason based on discrimination of any kind;

when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Torture Convention

Torture Convention means the *Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment*, 10 December 1984.

Transit Passage

Transit passage means the exercise of the freedom of navigation and over flight solely for the purpose of continuous and expeditious transit of the straight between one part of the high seas or an EEZ and another part of the high seas or an EEZ. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a state bordering the strait, subject to the conditions of entry to that state. See "Passage".

Treaty

A treaty is an agreement concluded by states whereby they accept a legal obligation to do or not do something.

Unlawful Combatants

Unlawful combatants are persons who engage in hostilities but are not legally entitled to do so under the LOAC. Unlawful combatants include:

- a. civilians who take a direct part in hostilities (other than as part of a levee en masse);
- b. mercenaries; and
- c. spies who engage in hostilities while not in the uniform of their armed forces.

Visit and Search

Visit and search is the legal right in an international armed conflict at sea of belligerent warships and military aircraft to visit and search merchant vessels outside neutral waters where there are reasonable grounds for suspecting the merchant vessels are subject to capture.

War Crimes

The term “war crime” may be considered in a broad sense and in a narrow, technical sense. Broadly speaking, “war crimes” include all violations of International Law in relation to an armed conflict for which individuals may be prosecuted and punished including crimes against peace, crimes against humanity and genocide. In the narrow sense, “war crime” is a technical expression for a violation of the laws and customs of war. The following are examples of war crimes in the narrow sense:

- a. grave breaches of the Geneva Conventions or AP I;
- b. violation of the Hague Conventions; and
- c. violations of the customs of war.

Warship

A warship is a ship belonging to the armed forces of a state bearing national markings, under the command of a military officer, and staffed by a crew that is subject to military discipline.

Works and Installations Containing Dangerous Forces

Works and installations containing dangerous forces means dams, dykes and nuclear electrical generating stations.

Wounded and sick

The “wounded” and “sick” mean persons, whether military or civilian who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms can include maternity cases, newborn babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility.

Zone

A zone is an area on and over water established by a party to a naval conflict that denies or restricts access to vessels and aircraft of states that are not parties to the conflict.

This Page Intentionally Blank

LIST OF ABBREVIATIONS

AP I	AP I means Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 10 June 1977.
AP II	AP II means Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 10 June 1977.
APM Convention	APMC means the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.
CF	CF means the Canadian Forces.
EEZ	EEZ means the exclusive economic zone.
ENMOD	ENMOD means the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 18 May 1977.
GI	GI means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949.
GII	GII means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949.
GIII	GIII means the Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949.
GIV	GIV means the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949.
HIV	HIV means The Hague Convention (IV) Respecting the Laws and Customs of War on Land of 18 October 1907.
HIVR	HIVR means Regulation annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land of 18 October 1907.
IC	IC means internment camp.
ICJ	ICJ means the International Court of Justice.
ICRC	ICRC means the International Committee of the Red Cross.
IFFC	IFFC means an International Fact-Finding Commission.
IHL	IHL means International Humanitarian Law. See "Law of Armed Conflict."
LOAC	LOAC means the Law of Armed Conflict.
PG	PG means prisonnier de guerre (prisoner of war).
PW	PW means prisoner of war.
RS	RS means the 1998 Rome Statute of the International Criminal Court
SRM	SRM means the San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994
UNCLOS	UNCLOS means the United Nations Convention on the Law of the Sea of 1982.

This Page Intentionally Blank

INDEX

"	9
"booty"	6-7
"dum-dum" bullets	5-1
"Other Devices"	5-6
"attack"	4-3
"Belligerent occupation"	12-1
"booby trap"	5-6
"civilian object"	4-6
"Contact zone"	9-6
"free goods"	8-19
"Genocide"	16-2
"IC"	4-15
"indiscriminate"	8-7
"Medical personnel"	9-4
"Medical units"	4-13
"military objective"	4-6
"Military objectives"	4-1
"Neutral waters"	8-2
"Non-combatants"	3-1
"Other devices"	5-8
"Parole"	10-6
"Permanent blindness"	5-4
"Protecting Power"	10-1
"remotely delivered"	5-8
"Superfluous"	5-1
"Unlawful"	3-1
"war correspondents."	3-4
"war crime"	16-1
"wounded, sick and shipwrecked"	9-3
I	
188 state ratifications	1-3
1948 the UN General Assembly	16-2
1982 UN Law of the Sea Convention	8-1
1998 Rome Statute of the International Criminal Court	16-5
2	
25 freely chosen words	11-4
3	
30 January 1998	1-5
30 June 1997	1-3
5	
50 per cent of the advance of pay	10-10
7	
72 hours	5-3
8	
8 January 1998	1-5
90 degrees	5-3
A	
accommodation in a neutral country	11-6
accordance with the LOAC	11-13
acquisition or adoption of a new weapon	5-9
act as auxiliaries	8-18
act as auxiliaries to the enemy's armed forces	8-10
acts of violence or intimidation	10-4
acts on behalf of the enemy	8-9
Acts or threats of violence	4-6
acts under duress	16-7
ADDITIONAL PROTOCOL II	
Internal Disturbances	17-2
Additional Protocols	1-1, 1-4
Additional Protocols of 1977	16-2
adequate alternative facilities	11-8
administration of civilian hospitals	11-3
adverse distinction	10-3
<i>adverse parties</i>	6-3
age of fifteen	17-4
age, gender and physical aptitude,	10-7
agreements	16-1
agreements between commanders	9-2
<i>air delivered incendiary weapons</i>	5-5
air or subsurface force	8-12
AIR WARFARE	
Disabled enemy aircraft	7-4
General Area of Air Warfare	7-1
Medical aircraft	7-5
Military Aircraft	7-2
Neutral Airspace	7-1
Operational Zones	7-1
Surrenders in air combat	7-3
aircraft	6-5
aircraft and its occupants	9-6
Aliens	11-6
All appliances	12-11
ambushes	6-1
ammunition	4-2
and sick civilians	11-3
anti-personnel mines	5-3, 5-6
anti-tank mine	5-7
AOR	5-3
AP I	7-1, 9-5
AP II	1-4
apply sanctions	12-7
appropriate sanctions	12-4
Archipelagic Sea	8-5
are those who engage in espionage	6-4
armed forces	10-2
Armed forces	3-2

armed forces temporarily assigned to medical duties 3-4
 armed forces to kill 6-4
 Arms and Ammunition 1-3
 Article 3 to the 1949 Geneva Conventions 17-1
 Article 4 (1) of AP II 17-3
 Article 75 of the Protocol 16-9
 artillery 6-5
 arts and sciences 12-12
 ASL passage 8-4, 8-5
 asphyxiating 5-4, 16-5
 assurances 16-1
 attacking force 6-5
 attacks which may affect the civilian population 4-5
 attempt to escape 7-3
 attempting to escape 10-6
 authorities 4-17
 authorized to accompany the armed forces 4-6
 auxiliary aircraft 8-9
 auxiliary to an enemy's armed forces 8-9
 auxiliary to an enemy's armed forces 7-7
 award pronounced against a PW 10-10

B

bacteriological methods of warfare 16-5
 Bacteriological/biological methods 5-4
 badges of nationality or rank, and decorations 10-5
 baring access to the ports 8-12
 battery 5-7
 battlefield 6-7
 bedding 8-20
 belligerent compelled to abandon its wounded 9-4
 belligerent forces 8-2
 belligerent in the zone 8-14
 belligerent may agree in writing with the opposing force 11-2
 belligerent naval commander 8-8
 belligerent to furnish information about their armed forces 12-5
 belligerent war effort 7-8
 belligerent's contraband 8-19
 Belligerents in transit 8-5
 blockade 8-10, 13-4
 blockade is the surrounding 8-11
 blood transfusion centres 4-13
 bogus dispatches 8-14
 bombardment 7-1
 bombs 5-5
 booty 6-7
 breach of neutrality 13-2
 breaches under the Conventions 16-8
 breaching 8-10
 breaching a blockade 7-8
 breaching or attempting to breach a blockade 7-8
 buildings 4-15, 6-5
 buildings and objects that provide administrative

and logistical support 4-2

C

camouflage 7-2
 campaign of threats 6-6
 campaign or operation 4-4
 Capture of a neutral merchant vessel 8-19
 captured neutral merchant vessel 8-20
 cartel vessels 8-15
 Central PWs Agency 10-7
 certificate of identity 10-1
 cessation 8-12
 cessation of active hostilities 10-3
 chaplains 10-6
 Chaplains 3-4
 Chapter 1, section 106 2-2
 charges 12-8
 chemicals 5-4
 children 16-2
 children under 15 11-4
 children under the age of fifteen 4-16
 children's safety 17-4
 children's toys 5-6
CHIVALRY **2-1**
 circumstances of non-compliance 8-9
 civil aircraft 3-5
 civil aircraft with neutral marks 8-16
 civil defence emblem 4-9
 civil defence organizations 11-11
 Civil defence organizations 4-8
 civil defence personnel 11-12
 Civil defence tasks 4-9
 civil defence units 9-4
 civilian casualties 4-3
 Civilian crewmembers 7-6
 civilian hospitals 11-3
 Civilian hospitals 12-4
 civilian members of military aircraft crews 3-4
 civilian objects 4-11
 civilian passengers 8-15
 Civilian Persons in time of War 11-1
 civilian population 6-6
 civilians 7-6
 Civilians 3-4
 Civilians detained 4-15
 clandestinely behind enemy 6-4
 clearing mines laid in violation 8-11
 cloth for uniforms 12-11
 clothing 5-6, 8-20, 11-7
 Clothing or articles used for feeding 10-5
Code of Service Discipline 16-8
 collateral casualties 7-10, 8-9
 collateral civilian damage 4-4, 7-1, 8-7
 collective punishments 11-10
 colour 17-3
 combat between ground forces 5-7

EEZ	8-6	flying a neutral flag	8-15
effective contribution to military action	4-6	flying the flag of an enemy state	8-15
effective contribution to the enemy's military action	8-19	food or drink	5-6
electric power in regular	4-11	foodstuff.....	11-4
electrical generating stations.....	4-11	foodstuffs.....	12-11
emblems or uniforms.....	6-2	forbidden to move parts of its own population	12-5
emergency assistance	4-9	fragments undetectable.....	5-3
emergency disposal of the dead	4-9	France	3-2
emergency repair of indispensable public utilities	4-9	free passage of all consignments of.....	12-4
Enemy character	8-16	free-floating mines.....	8-10
Enemy merchant vessels	8-9	French government	3-2
enemy property	6-7	fundamental protections	11-11
Enemy public immovable property.....	12-10		
enforce reasonable control measures.....	8-17	G	
engaging in a hostile act	4-8	Gas Protocol.....	1-3
ENMOD	7-4	gender	17-3
ENMOD Convention.....	6-7	Geneva Convention.....	9-1
enslavement.....	16-1	<i>Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949</i> (GIII). 10-1	
environmental modification techniques.....	6-7	geneva conventions	
espionage.....	3-6	against torture.....	12-8
essential foodstuffs	6-6, 8-20	Geneva Conventions	1-1, 17-2
establish reasonable measures	8-17	<i>Geneva Conventions Act</i>	16-4
evacuation	4-9	Geneva Conventions of 1949.....	1-3
examination of the bodies	9-8	genocide.....	1-3, 16-1
examination papers.....	10-7	GI.....	9-1
Examples of incendiary weapons.....	5-5	GI, GII, and GIII	11-1
examples of such groups	3-2	GIII.....	1-4, 10-1, 14-2
exceptional circumstances	10-7	GIV	11-1
exempt from attack.....	8-8	GIV legislative powers.....	12-7
expectant mothers.....	4-16	GIV provisions	12-2
exploitation	8-6	give their parole.....	10-6
exploration.....	8-6	goods diverted to other purposes.....	8-20
expresses an intention to surrender.....	4-7	Goods on board neutral merchant vessels	8-19
extermination.....	16-1	GRAVE BREACHES	
		Dangerous Forces.....	16-4
F		Declaring no quarter.....	16-5
fake radio signals	7-2	Improperly using a flag of truce.....	16-5
false flag	8-14	Indiscriminate Attack	16-4
false military exercise.....	8-14	Perfidious use of the Distinctive Emblem.....	16-4
family rights	11-5	Poison.....	16-4
feeding.....	5-6, 11-7	grenades	5-5
feigning an intent to negotiate.....	8-15		
feigning attacks	6-1	H	
feigning civilian, non-combatant status	8-15	Hague Conventions.....	16-2
feigning distress or surrender.....	8-15	Hague Rules.....	12-5, 14-2
feigning incapacitation by wounds	8-15	hamper the movement of combatants.....	8-8
feigning protected status by the use of signs..	8-15	health.....	5-6
fighting.....	4-16	held in camera in the interests of the security	12-8
fire-fighting.....	4-9	High Contracting Parties	1-2
first aid and religious assistance	4-9	historic monuments	4-10
FLAGS.....	8-14	honour	11-5
flags or military emblems	6-3	<i>hors de combat</i>	3-3, 4-7, 6-3
flame-throwers.....	5-5	HORS DE COMBAT.....	16-4
flying a false flag	8-14	hospital administrators	9-4
		Hospital and safety zones	11-2

hospital ship	7-10	Law of Peace	1-1
hospital ship that persists, after a warning	8-8	International Trade in Arms and Ammunition	1-3
hospital ships	9-2	international treaty	8-20
Hospital ships do not rank as warships	9-6	Internees	11-8
Hospital zones	4-16	INTERNEES	
hospitals	4-13	Internment Camps	11-8
hostile act	3-3, 7-3	internment	12-6
Hostile Actions	8-2	interpreters	10-8
hostile actions by naval forces	8-2	intimidation	10-4
hostilities	1-1, 6-5, 10-2	investigation	16-10
hostilities in or across neutrals	13-1	investigation and prosecution	16-10
house	4-6	irrigation works	4-12
Hospital			
Ships	7-9	J	
humanitarian function	4-13	journalists	4-10
humanitarian missions	8-15	Journalists	3-4
Humanitarian Principle	2-2		
humanitarian tasks	11-11	K	
HUMANITY	2-1	kinds of plant	4-13
hygiene	5-6	<i>Kriegsraison</i>	2-1
I			
ICJ	5-8	L	
ICRC	10-1, 11-5, 12-9, 15-1, 15-5, 17-2	language	17-3
identity cards	4-10	language of the PWs	10-6
IFOR	7-2	Laser weapons	5-4
illuminants	5-5	launching and recovery of aircraft	8-5
immediate area of naval operations	7-8	Law of Geneva	1-1
immunity from attack	7-6	Law of the Hague	2-2
imprisonment	12-8, 16-1	laws and jurisdiction	12-3
in distress	4-8	laying mines	7-7
inadequately provided with food	8-12	laying of mines	8-3
incapacitated by wounds or sickness	4-7	leave medical personnel	9-4
incendiary weapons	5-5	legal considerations	12-1
indiscriminate attacks	7-7	legal obligation to remain permanently neutral	13-1
individual civilians	7-6	legal proceedings	12-12
Inducements	7-4	Legal weapons	5-5
inflict damage to a warship	7-7	legislative powers	12-7
Inhuman or Degrading Treatment	12-8	legitimate government	12-1
inhumane acts	16-2	legitimate rights and duties	8-2
innocent passage through its territorial sea	8-3	legitimate sovereign in office	12-7
installations	4-11	legitimate target	4-4
installations and supplies	4-12	legitimate targets	4-3, 4-4
institutions dedicated to religion	12-12	letters "IC"	4-15
intelligence system	7-9	<i>levée en masse</i>	3-3, 10-2
intention to surrender	4-7, 6-3, 7-4	liberated territory	12-10
interference with the exploration	8-6	liberty	10-4
internal waters	8-2	liquor and tobacco	12-11
International Court of Justice	5-8	livestock	4-12
International Criminal Court	16-7	LOAC	1-1, 5-5, 6-1, 11-13, 16-1
INTERNATIONAL CRIMINAL TRIBUNALS	16-8	local inhabitants	9-2
INTERNATIONAL FACT FINDING COMMISSION		locality	4-17
.....	15-4	London Protocol Of 1936	8-7
International Law	5-8, 8-4, 16-8	long period of captivity	10-8
INTERNATIONAL LAW		loses its protection as a civilian object	4-6
Law of Armed Conflict	1-1		

M

maintaining order	11-12
maintenance of order in distressed areas	4-9
making use of the enemy's signals	6-2
management of blackout measures	4-9
management of shelters	4-9
mandatory use of the distinctive emblem	9-5
MARITIME	
Coastal Rescue Operations	8-8
Fishing Vessels	8-8
<i>Martens Clause</i>	1-2, 2-2
MARTENS CLAUSE COROLLARY	1-2
material compensation	3-5
material for armed forces	4-2
<i>materiel</i> and shelters	4-15
means of shelter	8-20
MEDICAL	
Cremation	9-8
medical aircraft	13-2
medical aircraft	9-5
Medical aircraft	9-5
MEDICAL AND RELIGIOUS PERSONNEL	
Identity Card	1
medical depots	4-13
medical duties	3-4, 10-2
medical ethics	9-4
medical personnel	6-5
medical services	4-9
medical supplies for the civilian population	8-13
Medical Transports and Aircraft	13-2
member of the CF accused of committing a war crime	16-7
Members of the armed forces	11-13
mental torture	10-4
mercenaries	4-3
mercenary	3-5
MERCHANT VESSELS	
Neutral	8-16
merchant vessels attacking other merchant vessels	8-9
methods or means of warfare	1-2
military advantage to the enemy	8-20
military aircraft	4-2
military buildings	11-13
military deployment	3-3
military installations	4-17
military necessity	16-6
MILITARY NECESSITY	2-1
military objective	4-2
MILITARY OBJECTIVES	8-9
military operations	4-17, 7-5
military pattern weapons	5-2
military requirements	8-13
militias	3-2
mine detectors	5-7

mines	5-5
MINES	
Anti-tank mine	5-6
Claymore Mine	5-3
minesweeping	7-7
ministers of all religions	6-5
minors	12-9
missiles	6-5
mobile medical units	4-13
mobile military equipment	4-16
mortars	6-5
mothers of children under the age of seven	4-16
movable property	6-7
Mr. Justice Cory	16-7
municipalities	12-12
munitions designed to combine penetration	5-5
murder	11-10, 16-1
musical instruments	10-7
mutilation	11-10

N

national or occupying authorities	11-3
NATO	7-2
natural environment	4-13, 6-7
natural processes	7-4
naval fire	6-5
negotiate under a flag of truce	7-3
neutral airspace	7-1, 13-3
Neutral diplomats	10-1
neutral jurisdiction	7-7
neutral state	8-3
neutral states	7-1
neutral warship	8-16
neutral warship or military aircraft	13-4
neutral warships	9-2
neutral waters or territory	8-2
neutralization	4-1
neutralized zones	11-2
Neutrals	13-1
non-combatant status	7-3
non-combatants	9-3, 9-4
non-defended locality shall mark	4-17
non-international armed conflicts	17-2
NON-INTERNATIONAL ARMED CONFLICTS	
Definition	13
nuclear electrical generating stations	4-11

O

obedience from the population	12-2
objectives	4-4
objects indispensable to the survival of the civilian population	4-12
objects may be seized	12-11
objects of a religious nature	5-6
occupant to annex the occupied territory	12-2
occupants	7-2, 9-6

vicinity of legitimate targets 4-5
 violate any express or tacit agreement 7-2
 violation of neutrality 13-2
 violations of International Law 16-1
 violations of the laws 16-1
 violations of the LOAC 16-10
 violence 10-4, 12-6
 visit and search 8-19
 visit and search of neutral merchant vessels 7-7
 voluntary aid societies 9-4
 volunteer corps 3-2
 voyage 7-8

W

war crime 14-2
WAR CRIMES
 Fire Intentionally Upon the White Flag 14-1
 Genocide 16-5
 Indiscriminate Attack 16-4
 Looting 16-5
 Maltreatment of dead 16-5
 Perfidious use of the Distinctive Emblem 16-4
 Poison 16-4
 Rape 16-1
 war status upon capture 3-3
 war zones 8-13
 warning 4-9
 warning signs 5-7
WARSHIPS AUXILIARY VESSELS 8-14
 watchwords 6-2
 water source 5-3
 waters subject to the right of ASL passage 8-11
 wealth 17-3
 weapons 4-2, 5-1

Dum-dum bullets 5-1
WEAPONS 5-1
 Superfluous Injury 5-1
 Unnecessary Suffering 5-1
 Weapons that are indiscriminate 5-2
 Weapons that cause injury by the use of
 fragments 5-3
 wear their badges of rank and nationality 10-6
 white flag 4-7
WHITE FLAG 14-1
 white flag carried by a parlementaire 14-1
 wilful act or omission 9-3
 wireless on a frequency easily intercepted 6-2
with intent to betray 6-2
 women 11-11, 12-5
WOMEN 11-5
 Rape 16-1
 World War II 3-2
 wounded 4-15
 wounded and sick 4-14, 17-4
 wounded and sick civilians 11-3
 wounded, sick or shipwrecked 9-7

X

X-ray 5-3

Z

zone of operations 14-3
ZONES
 Exclusion zones 8-13
 Operational zones 8-13
 Safe passage 8-13
 zones and localities 9-7