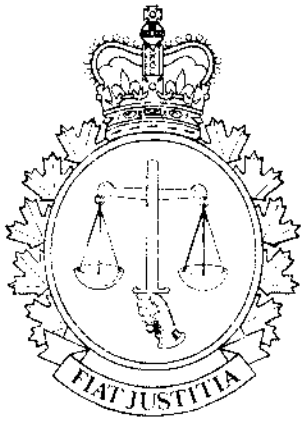

You and The Law of War

Canadian Forces Office of the Judge Advocate General

FOREWORD

In the past it might have been possible for any state to argue that while common sense dictated that it should educate the members of its armed forces in the laws applicable to armed conflict, the legal obligation to do so was somewhat nebulous and vague, and, as Professor L.C. Green puts it, rather in the nature of a pious hope. Now, however, the obligation is clearly laid down.

One of the international obligations Canada undertook on becoming a party to the four Geneva Conventions of 1949 for the Protection of War Victims, provides that Canada is bound to include the study of these Conventions in military programmes of instruction, and to give their contents the widest possible dissemination. This obligation is reinforced in the Protocols Additional to the Geneva Conventions of 12 August, 1949, signed by Canada in 1977.

This volume is the result of an informal programme of instruction the object of which was to help all members of the Canadian Forces know and understand the general rules applicable in warfare. It consists of twenty-five short articles on the general subject of the law of war (or as it is now referred to, the law of armed con-

flict), which were originally published as newspaper articles at the rate of one per month. For this reason, the wording used at times may seem inappropriate in the context of a single publication. It is hoped that this will not detract from the information contained herein.

The material contained on these pages conforms as closely as possible to Canadian law and policy on the subject of the law of armed conflict. Because of its general nature it may be useful as a guide for the preparation of local programmes of instruction, and for that purpose these articles may be used in any way and may be reproduced in whole or in part.

Suggestions for amendments should be forwarded to the Office of the Judge Advocate General, Attention: Director of Law/Training.

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THE LAW OF WHAT?

It has been said that artillery adds dignity to what would otherwise be a vulgar brawl! In the same vein, the laws applicable in war serve to distinguish the legitimate application of force by disciplined organized military forces from criminal attacks by armed rabble such as bandits or terrorists.

History shows that nations have never hesitated to defend or further their perceived national interests by resorting to war. As man's ingenuity invented newer weapons of warfare making it easier for him to kill his fellow man, nations became aware of a need to prevent unnecessary death, suffering and destruction of property on the battlefield. Newer concepts of warfare have also shown the need to attempt to limit such death, suffering and destruction in places other than the battlefield as well. This need is a reflection of military interests and of the moral values of civilized man held by most peoples of the world, and these have evolved into binding customs and formal written treaties which are collectively referred to as the law of war, or more recently the laws of armed conflict. These laws are legally binding upon virtually all governments and their forces including Canada.

Although the laws of armed conflict are certainly

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not new, they are either largely unknown or, at best, misunderstood. Take yourself, for example. How do you view these laws?

- As restrictions to accomplishing the mission and defeating the enemy?
- As a set of humanitarian principles applicable to some people, or to all people?
- As rules which, if violated, could make you liable to prosecution or cost you your career?
- As a problem for legal officers or diplomats only?

Do you believe that adherence to the laws of armed conflict only truly matters if there is a clear winner and loser in war? Should we abide by these laws when fighting guerillas who do not also abide by or respect them?

Since Canada has agreed to abide by and respect the laws applicable in armed conflict, violating those rules is the same as violating the laws of Canada. While all Canadians have an obligation to know and understand those rules and to abide by them, members of the Canadian Forces must be especially aware of them. This series of articles will assist today's serviceman and servicewoman to know and understand a few of the basic principles of the laws applicable in armed conflict, and the next article will give a brief historical review of their early development. This is a good time to mention that while the term "law of

war" is being increasingly replaced by "law of armed conflict", they are not exactly synonimous but will be used inter changeably in these articles.

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DEUTERONOMY WHO?

Although the Old Testament records the early law of war in the Book of Deuteronomy (Chapter 20, verses 10 to 20), modern law of war is generally thought to have originated from three sources: Roman Law, Canon Law of the Church, and the Knights' Law of Honour.

It was during the rule of the Roman Empire that the beginnings of a set of rules respecting occupation and the treatment of non-combatants were seen. The Romans made some concessions to the peoples they had conquered. Much of the Canon Law of armed conflict was originally developed by the Monks of Ireland during the so-called Dark Ages, when that unfortunate island was as plagued by violence as it is today. Beginning with the conference of Irish Bishops in 697 A.D., the medieval church imposed severe ecclesiastical penalties for killing non-combatants, especially women, children and students.

The Knights' Law of Honour was based on the idea that all nobles and knights, regardless of nationality, were bound together by the international order of knighthood. This prescribed the conditions under which war could lawfully be waged and forbade treachery and bad faith among knights. It also provided for the ransom of knights taken

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prisoner. Since this law of honour was international in character, a knight violating it could be tried and punished by any prince, including an enemy sovereign, who could gain custody of him.

Some scholars trace the origins of the modern war crimes trials to this medieval practice. At the same time, however, a more effective sanction was probably the rule that legal title to captured property (booty) could only be obtained if the fighting had been carried out in accordance with the then existing law of war. Despite all the talk of chivalry and honour, in the late Middle Ages war was chiefly a business proposition.

In 1474, however, Peter of Hagenbach was tried by representatives of the Hanseatic City States for crimes against civilians and merchants contrary to the "laws of God and of humanity". He was convicted and executed even though he had received orders from his prince to do what he had done. The tribunal said, in effect, that any sane person would have known the orders were criminal.

It is clear, therefore, that from very early times the violence of war was recognized and attempts were made to control this violence and protect persons caught up in war who have no control over events or means of protecting themselves. The invention of gun powder brought with it a

more immediate need for humanitarian considerations in the conduct of warfare.

1864 AND ALL THAT

In the last article we traced the early attempts to regulate violence in the conduct of warfare and to protect innocent victims of warfare. With the invention of gun powder came a realization that more detailed and binding rules were required.

Insofar as the humanitarian aspects of the conduct of warfare are concerned, one of the low points came with the introduction of gun powder. Because of a lack of medical skills and the extensive maiming of combatants, many of the wounded were given the "coup de grace" after battles out of motives of mercy. There was also a need for better rules concerning the treatment of enemy soldiers who had been captured. During the American Revolution, for example, the British regarded captured American soldiers as criminals and an estimated 12,000 died from the poor conditions in the prisons. The United States Civil War produced the first modern national comprehensive codification of the law of war when the Union Army published a General Order in 1863 called "Instructions for the Government of Armies of the United States in the Field". It contained rules pertaining to operations and for the treatment of the sick, wounded and prisoners, and other matters including rules for the treatment of civilians.

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On the European scene "fathers" of international law, men like the Italian jurist Gentili and Hugo van Groot, better known as Grotius, in their writings on state conduct, at a time when war was more usual than peace, were insisting that states were obliged to limit their military actions in the name of the law of God and of humanity in favour of the sick, wounded and non-combatants. Their views soon became accepted in state practice.

On the other hand, on 24 June 1859, the forces of Emperor Franz Josef of Austria and Napoleon III of France met in battle in the hills surrounding the town of Solferino in northern Italy. Upon conclusion of the daylong struggle the French had suffered 17,000 casualties, the Austrians, 22,000. Many on both sides were lost through neglect or abuse by the enemy. Although the Austrians lost the day, the number of casualties so depressed Napoleon that one week later he proposed an armistice, ending the two-month war over the unification of Italy.

Napoleon was not alone in his impressions of the battle of Solferino. Henri Dunant, a Swiss citizen, was so shaken by the carnage he had witnessed that he dedicated his life to alleviating unnecessary suffering in war. With four other prominent citizens of Geneva he established the International Committee for Aid to Wounded Soldiers, which subsequently became the International Committee of the Red Cross.

In 1864, the international committee prevailed upon the Swiss government to convene an international conference to address the issue of regulating violence in combat. From the resulting Geneva Convention of 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field has come a body of law referred to today as Internaional Law applicable in Armed Conflicts. It is now composed principally of the Hague Convention IV of 1907, and the four Geneva Conventions for the Protection of War Victims of 1949 together with Protocols to the Conventions which are not yet generally in force. These laws are not intended to inhibit the commander in the accomplishment of his military mission but to:

- Protect combatants and non-combatants from unnecessary suffering;
- Protect property of historic, religious, or humanitarian value from unnecessary destruction; and
- Facilitate the restoration of peace upon the conclusion of hostilities.

Summarizing then, the law of war is a broad term which includes the law, as it has developed, governing not only the use of force in armed conflict but the protection of innocent victims of armed conflict, civilians, sick and wounded, and military prisoners as well. Many of the customs have been reduced to writing and these writings, and those in the form of Conventions are based upon the practices and customs of armed foces over the centuries.

THE MODERN LAW OF WAR

The modern law of armed conflict consists of a body of law which has its sources in international conventions (agreements or treaties between states), international custom, general principles recognized by civilized nations and decisions of national and international courts. Essentially it is concerned with four basic questions:

- When may states resort to the use of force?
- How may hostilities be conducted?
- How are non-combatants to be protected?
- What are the rights and obligations of neutrals?

"The legality" of the use of force by one state against another is usually determined from an analysis of the United Nations Charter which not only recognizes in each nation the inherent right of self defence, but also prohibits the threat of or the use of force by one state against another for purposes other than self defence.

The law regulating the methods and means of combat is frequently referred to as the law of the Hague because, until recently, the great bulk of the international treaty law on this subject resulted from the Hague Conferences of 1899 and 1907. Needless to say, much of this law is now obsolete. A number of the basic principles resulting from the Hague Conventions do, however, have continuing relevance.

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The law regulating the protection of non-combatants or victims is normally referred to as the law of Geneva or as the humanitarian law of armed conflict. This law is contained in the various Geneva Conventions which were last completely revised in 1949. At that time four Conventions were drafted:

a. a convention for the protection of the wounded;
b. a convention for the protection of the wounded and shipwrecked at sea;
c. a convention for the protection of prisoners of war; and
d. a convention for the protection of civilians.

These Geneva Conventions comprise well over half of that part of the laws of armed conflict contained in international agreements.

For the last several years, the nations of the world have been meeting in Geneva in an effort to modernize the law regulating the methods and means of combat and the humanitarian law of war. These meetings have resulted in the drafting of two Additional Protocols to the Geneva Conventions of 1949; Protocol I is concerned with international armed conflict, and Protocol II is concerned with internal armed conflict. Canada signed these two Protocols on 12 December 1977 but has not yet ratified them. In many respects these Protocols merely reduce to writing what

international lawyers have understood to be the law for some time. In other respects, the Protocols do make new law. While they have not yet come into general force we will have to become familiar with their contents.

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WHY STUDY THE LAW OF WAR

Since in wartime important decisions are usually made by senior headquarters, it might seem sufficient for an officer or even the senior commander to be versed in the law of war, so that he may take it into consideration when making decisions. While it is true that the more senior a soldier becomes the more he must be informed on this subject, even the most junior soldier could well find himself in a position where he must make decisions which involve a knowledge of the law of war.

Perhaps the importance of knowledge in this field can best be demonstrated by an example. Imagine that a small reconnaissance patrol comes under fire in a village after having crossed the border into an enemy country and uses force to neutralize the resistance. This results in the surrender of a number of civilians who had fired upon the patrol. The patrol gathers briefly to talk over the situation. Someone mentions the word "partisans", following which the remark is made that "under the law of war, partisans can be shot". The patrol leader has a serious decisions to make. What is he to do with the enemy civilians? Is he free to do whatever he pleases with these captives? Certainly not, but the question is, "why not?".

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Well, in our imaginary case, the patrol crossed a border into the enemy country. This could well have been part of an invasion. Under the Geneva Conventions the civilian populace of a non-occupied territory may take up arms against an invading enemy if they have not had time to form themselves into regular armed forces, and if they carry their weapons openly and observe the laws and customs of war. If the attack was part of an invasion, then the civilians' participation in combat activities was justified, and they are not to be treated as partisans, but rather as prisoners of war. In any event, the Convention for the protection of prisoners of war provides that should any doubt arise as to the status of any captured persons, they are to be treated as prisoners of war until such time as their status has been determined by a competent tribunal.

Even war does not give complete license to kill. Instead there exist rules which simultaneously restrict and protect not only the warring states involved, but every soldier as well. These rules form part of what is known as the law of war, or the laws of armed conlfict. Just exactly what is involved, then, in this "law of war"? We all know that the red cross on a white backgound is the symbol of protection for the wounded; that an enemy who lays down his arms becomes a prisoner of war and is to be treated humanely; that civilians may not be attacked; and that certain

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means of warfare, particularly cruel and atrocious ones, are outlawed. These restrictions are all spelled out by the law of war to give credence to the notion of humanity even in warfare.

In light of this the following points arise:

- that decisions involving a knowledge of the law of war may have to be made even in small-scale military actions; and
- that even the individual soldier may find himself in a position where he is required to make decisions involving the law of war.

Apart from those reasons for studying the law of war, disobedience of the law of war brings dishonour on the soldier, his armed force and his country, not to mention the fact that it also makes him liable to be charged, tried, convicted and sentenced for the crime he has committed. What this all adds up to is that every officer or man must have a knowledge of the fundamental rules of the law of war.

CHIVALRY IS NOT DEAD

The experiences of the Second World War, together with evidence of what has happened in the various armed conflicts that have taken place since 1945 in Korea, Vietnam, Africa and elsewhere, suggest that in time of conflict human rights are among the earliest casualties. However, as stated in previous articles, since time immemorial attempts have been made to control the horrors of war and to maintain that even in such situations man must comply with certain overriding principles or concepts One of those basic concepts is known as the principle of chivalry.

In feudal times when the modern state system was beginning to develop, armed conflict was becoming a type of contest played according to rules. At that time, however, such rules as there were remained uncodified, but were generally accepted by knights as rules of chivalrous conduct to be observed among themselves. In fact, in both England and France there were courts of chivalry to ensure that the rules were observed. There was, in other words, something similar to a rule of law prevailing among the orders of knighthood.

The concept of chivalry in combat continued to develop throughout the ages. In 1690, for example, we find it laid

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down that "he who would dare in foreign countries to set ablaze or demolish hospitals or schools or baking ovens or to despoil a smithy or ploughs or farm implements in a township or hamlet shall be punished as a bloody villian!" Pretty strong language!

Modern technological and industrialized armed conflict had made war less a gentlemanly contest, so that the concept of chivalry is somewhat vague in present day circumstances. It lost its force with the passing of the aristocratic officer and his replacement by the business man in uniform. For a brief period in World War I it appeared that chivalrous conduct would form a basis for a new law of air warfare, but such expectations were not fulfilled. Today the concept of chivalry denotes that there must be a certain amount of "fairness" in warfare and a certain mutal respect between opposing forces. Many of the ideas of chivalry remain, emobodied in specific prohibitions reflected in the use of poison, against dishonorable or treacherous misconduct and against misuse of enemy flags and uniforms, flags of truce or special flags and markings provided for in the Geneva Conventions of 1949 are examples of such rules.

The ideas of chivalry are clearly evident in General MacArthur's confirmation of the death sentence of General

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Yamashita who had been the Commanding General of the Fourteenth Army Group of the Imperial Japanese Army in the Philippine Islands. He was convicted of unlawfully disregarding and failing to discharge his duty as Commander to control the acts of members of his command by permitting them to commit war crimes. General MacArthur said in part:

> "The soldier, be he friend or foe, is charged with the protection of the weak and unarmed. It is the very essence and reason for his being. When he violates this sacred trust he not only profanes his entire cult but threatens the very fabric of international society. The traditions of fighting men are long and honorable. They are based upon the noblest of human traits, sacrifice. This officer, of proven field merit entrusted with high command involving authority adequate to responsibility, has failed this irrevocable standard ... "

So, even today, the ideas of chivalry continue to apply and this concept makes armed conlfict less savage and more civilized for the individual soldier.

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BASIC RULES

Every soldier will encounter situations in combat which are unexpected and which will require immediate response. Such response must not only be immediate, but above all correct and in conformity with the law of war. While every member of the Canadian Forces must understand certain basic law of war rules, there is not intention to make every individual an expert in the subject.

Some of the more important basic rules referred to above, which express in simple form the overall humanitarian philosophy of the law of war and which offer a general summary of the kind of conduct which is imperative in combat, are as follows:

1. Fight only enemy combatants and attack only military objectives;
2. Employ methods of attack which will achieve your objective with the least amount of incidental civilian damage;
3. Do not attack enemy soldiers who surrender. Disarm them and treat them as prisoners of war;
4. Collect and care for the wounded or sick whether friend or foe;
5. Do not torture, kill or abuse prisoners of war;
6. Treat all civilians humanely;

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7. Respect civilian property - looting is prohibited;
8. Respect all cultural objects and place of worship;
9. Respect all persons and objects bearing the Red Cross, Red Crescent and Red Lion and Sun;
10. Do not alter your weapons or ammunition to increase suffering;
11. Disobedience of the law of war is a crime and not only dishonors your Country and you but renders you liable to punishment as a war criminal.

The knowledge of these rules must be such that the response to an unexpected situation will be as automatic to every member of the Canadian Forces as is a soldier's use of his weapon. The correct response should occur under all circumstances no matter how hostile the surroundings or how extreme the hardship. This response will ensure at least the minimum observance of the law of war and will result in proper behaviour, as expected by Canada from all her citizens.

While the Code of Service Discipline requires that every officer or man obey the lawful commands or orders of a superior officer, no one is justified in obeying a command or order that is manifestly unlawful. In other words, a subordinate who commits a crime pursuant to a command that is manifestly unlawful, if he is subsequently tried for that crime by a civil or military court will not plead

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successfully as a defence the fact that he was only following orders. A manifestly unlawful command or order is one that would appear to a person of ordinary sense and understanding to be clearly unlawful. For example, if we consider the basic rules set out above, any command or order to torture, kill or abuse prisoners of war would be manifestly unlawful as would be an order or command to fire on civilians who are peacefully working in their fields and not taking part in combat activities. A subordinate must not obey such commands or orders. This whole question of the lawfulness of commands or orders will be considered in more detail in another article.

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THE FIRST RULE

In all armed conflicts a distinction must be made between combatants and non-combatants. Put very simply, combatants are those who directly engage in an armed conflict, usually as members of the regular armed forces or, where recognized as such in international law, an organized resistance group. They are permitted to take part in hostilities, and may be made the legitimate object of attack. Non-combatants, on the other hand, are those who take no part in hostilities. These include civilians, medical personnel, chaplains and former combatants who are "hors de combat". This phrase refers to combatants who are not longer able to engage in hostitlties because of sickness, wounds or capture. It is illegal to make non-combatants the the object of direct attack although to an extent they share the risks and horrors of war. All of these "non-combatants" lose their protection if they themselves resort to the use of violence.

Similarly, a distinction must be made between military objectives and civilian objects. Destruction of property must be limited to that which will result in significant military advantage. Civilian objects, the destruction of which would not result in such a military advanatage, must not be attacked and must be spared as much as possible from

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incidental damage.

It was not always so. One of the earliest recorded examples of total warfare is to be found in the Book of Joshua, Chapter 6, which contains the following account of the fall of Jericho:

> "So all the people making a shout, and the trumpets sounding, when the voice and the sound thundered in the ears of the multitude, the walls forthwith fell down. And every man went up by the place that was over against him, and they took the city and killed all that were in it, man and woman, young and old. The oxen also and the sheep, and the asses, they slew with the edge of the sword ... they burned the city, and all things that were therein; except the gold and silver, and vessels of brass and iron ...."

That may have been all very well for Joshua, but the advent of the professional soldier, including the respectable mercenary, led to the growth of the distinction between combatants and non-combatants. With few exceptions warfare between the 16th and 19th centuries was generally of particular concern only to those actually engaged in combat. Indeed, right up until the latter half of the 19th century, some famous battles even had spectators, including ladies, who could

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enjoy their picnic hampers while witnessing the gory business in the valley below.

It is now generally recognized that the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy. If a person represents no threat to you, there is no military advantage to be gained from attacking him. There is also no military advantage to be gained from attacking civilian objects, buildings or property, which are not being used for military purposes or which have no military importance.

You may have noticed that this rule has a practical, as well as a humanitarian basis. In a conflict situation where conservation of resources is vital, we can scarcely afford striking at targets which have little or no military significance. To blast a whole village with artillery or aerial bombardment merely because there is a sniper in its tallest building, will quite likely be a waste of valuable ammunition, and will, with little doubt, destroy any possibility of gaining local support and goodwill. The words of the 18th century Swiss jurist Emerich de Vattel are still true today:

> "A general who protects unarmed inhabitants, who keeps his soldiers under strict discipline, and who protects the country is enabled to support his army without trouble and is spared many evils and dangers".

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THE ANVIL AND THE FLY

The title of this article, The Anvil and the Fly, is reminiscent of one of Aesop's fables. Perhaps the first line should be: "Once upon a time ....". The problem is that the fable would be very short: "Once upon a time an anvil fell upon a fly". But this is not a fable. The purpose of this article is to consider our second basic rule which is: Employ methods of attack which will achieve your objective with the least amount of incidental civilian damage.

Stated another way, the rule requires that attacks directed against legitimate military targets be carried out in such a manner so as to occasion as little harm as possible to the civilian population and damage to civilian objects. This does not mean that an attack against military objectives is prohibited if incidental injury or damage to civilians will occur. The law of war has long recognized that civilian casualties and damage to civilian objects, although regrettable, do occur in armed conflict. But the law requires that such incidental injury to civilians or damage to civilian objects must not be excessive when compared to the concrete and direct military advantage expected. A careful balancing of interests is required. The second rule is meant to achieve this balance between

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the needs of war and the humanitarian considerations expressed in the law of war.

An example may serve to illustrate this rule. The last article contained the following statement: "To blast a whole village with artillery or aerial bombardment merely because there is a sniper in its tallest building, will quite likely be a waste of valuable ammunition ...". Such action will quite likely also be contrary to the second basic rule. Those who plan or decide upon the attack against this sniper must, in their choice of weapons or methods of attack, take all feasible precautions to avoid or minimize incidental injury to local civilians or damage to civilian objects. If the desired military result can be achieved in more than one way, then the method used must be the one which will cause the least amount of incidental civilian damage.

Again consider our sniper. If it is ascertained that there is indeed only one sniper with a rifle, then the likely course of action would be to neutralize him with fire and movement using a section or at the most a platoon.

Traditional military doctrines support this view. We talk in terms of economy of effort, concentration of force, accuracy of targeting, and conservation of resources. While considerations of humanity are all important, it really can be reduced to the practical - should a fifty

pound anvil be used to kill a house fly? Of course not. It is not only law but common sense to hold the amount of destruction that you create to only the amount necessary for the accomplishment of your mission. Do not destroy an entire village if you receive sniper fire from a single building.

Perhaps this article is like one of Aesop's fables after all. They contain many concepts helpful to us in our every day lives. Observance of the rule examined in this article will help to ensure that you always conduct yourself as a disciplined member of the military forces and in accordance with the laws which govern the conduct of armed conflict.

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PRISONERS OF WAR

While the first two rules we considered dealt with the protection of non-combatants, civilians and civilian objects, the third rule is more concerned with our conduct towards enemy combatants, and more specifically those who surrender or wish to do so. This rule stated simply is: "Do not attack enemy soldiers, airmen or sailors who surrender. Disarm them and treat them as prisoners of war."

As we have learned, combatants are those persons who directly engage in an armed conflict. They may be members of the armed forces or of an organized resistance group. There may arise situations in which it is difficult to determine whether those who have been detained or captured are enemy combatants, partisans, saboteurs, spys or indeed innocent civilians. In such cases no attempt should be made to determine their status. They should be escorted to the rear as if they were prisoners of war. Thus, in all cases treat captives as prisoners of war.

How does this rule affect you? Well, for one thing, it is highly improper, to say nothing of illegal, to attack the enemy when he clearly indicates that he wishes to cease fighting. He may wave a white flag. throw down his arms, or indicate his intention in some other way, but once you

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are satisfied that his intention is clearly to surrender, let him know by speech or signs that you want him to come forward - UNARMED. Make certain you emphasize that last part. Pursuing your attack on an enemy position when he is trying to surrender will undoubtedly give him no incentive to do so, and might well merely serve to change his mind and make him more determined to defend himself - costing you valuable time, ammunition, and perhaps lives. Give your enemy the opportunity to surrender if he wants to, and remember that it is an offence to fire upon an enemy who has thrown down his weapons and offers to surrender.

Again, a situation may arise in which enemy personnel who indicate a wish to surrender are also destroying equipment or inteligence information. Can you legally fire upon those engaged in such destruction? In a word - yes. These persons have not in fact surrendered, but are still engaged in a form of combat on behalf of the enemy.

When you have taken a captive you must treat him humanely. While the Geneva Convention Relative to the Treatment of Prisoners of War provides that prisoners of war are in the hands of the enemy government and not of the individuals or military units who have captured them, thereby making that state ultimately responsible for their treatment, the fact remains that when a person surrenders to you, or you force him to capitulate, he is under your immediate con-

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trol. You must treat such persons as you would expect to be treated if captured. While this may seem like a motherhood statement, once a captive is under your control it is your responsibility to protect him from reprisals by your mates, his mates or angered civilians. Aside from this, you must be ever mindful that your captive, like you, has an obligation to take advantage of any reasonable opportunity to escape. So, while protecting him from harm, you must also ensure that he does not escape or cause harm to others. Remember, he represents a possible source of valuable information. Moreover, other enemy personnel may more readily surrender if they know that you treat captives in a firm yet humane way; and don't worry, they will know!

We will consider in more detail in a future article other aspects of treatment of prisoners of war, including what information they are required by law to reveal. In the meantime, this is a good place to remind you that general information about the Geneva Convention Relative to the Treatment of Prisoners of War is contained in Canadian Forces Publication (CFP) 318(4), Unit Guide to the Geneva Conventions. A copy of this CFP should be available at your unit, and, while you are probably already familiar with its contents, you might just want to refresh your memory.

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COLLECTION AND CARE OF THE WOUNDED

Since man first picked up a club to defend himself or destroy his neighbour, casualties have been the inevitable result of conflict. Prehistoric man had no obligation to his fallen friend or foe and apart from disposing of the decaying remains around his cave entrance he pretty well disregarded them. As late as the Napoleonic Wars it was not uncommon for the victor to dispatch the wounded with an "honourable" coup de grâce. However, we have come a long way since then and modern man has decreed that a wounded or sick combatant will be treated with respect and in a humane manner without regard to colour, race, sex or cut of uniform. Thus the fourth rule in our series: "collect and care for the wounded, sick and shipwrecked - whether friend or foe". Let us examine the two main parts of this basic rule.

All possible measures must be taken at all times without delay to search for and collect the wounded and sick regardless of uniform. Common sense would say that the end of each action would be an opportune time to do this, however, in a protracted engagement the commander should also consider negotiating an armistice for the specific purpose of collecting the fallen. Should an opportunity present itself the commander can display a white flag and

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make his intention known that he wishes to talk. Remember that a white flag is not always a sign of surrender, as it is also used to show a desire to talk or negotiate. Such negotiations could also include, when circumstances permit, an agreement fo facilitate the exchange of wounded and the safe passage of medical transport into and out of the area.

Few battles in history have been fought at the convenience or the exclusion of the civilian population and while the civilian population must be protected, they may be asked to cooperate and assist on a voluntary basis in the collection and care of the dead, wounded, and sick.

Sea engagements present perhaps the most difficult scenario with respect to the search for and collection of wounded and shipwrecked. While the same obligations exist as in a land engagement, the captain of a ship has a wider discretion which of necessity reflects the reality of the area, the environment, and the size and condition of his ship. If he cannot provide rescue and transport for all, he should do what he can to alleviate their situation while they await rescue.

While one can see the importance of the timely collection of the wounded, of equal importance is the timely

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application of modern medical care. Of paramount consideration is that priority of care is dictated solely by individual medical requirement and urgent medical reasons - again without discrimination between friend or foe. As medical personnel are under an obligation to provide adequate and humane care without delay, it is not permitted to subject the wounded to acts of aggression such as torture, pillage, biological or unorthodox medical experiments, or to leave enemy sick and wounded without adequate care as a means of extracting information.

While the law of war does not define the terms "sick" or "wounded", it is rather obvious that this is a matter of common sense and observations made in good faith. Equally a matter of common sense is the fact that the enemy wounded, aside from their physical condition of infirmity, are also prisoners of war and are to be accorded all the protection due a PW. As a practical matter PWs should be guarded to prevent possible acts of violence or sabotage on their part. After all, a PW may be feigning incapacity to gain a military advantage - which can amount to a violation of the law of war - or he may have been taken from the battlefield unconscious and his reaction upon recovery may not always be that of a resigned - to-surrender individual.

In any future conflict, medical authorities and

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commanders may well have to prepare themselves to receive female casualties from both sides involved in the conflict. Accordingly, when practicable, in addition to adequate medical care, women are to be treated with all consideration due to their sex.

Having stated the obligation of military commanders in respect of the collection and care of the wounded it must also be realized that at times a commander may find it necessary for imperative military reaons to abandon his sick and wounded. While he will be reluctant to make such a decision, once made, he should leave with them adequate medical personnel and/or medical equipment. The decision as to what assistance, facilities or resources to leave behind should relfect the nature of the injuries and the prosepcts of medical relief by either friend or foe.

In review then, it is the duty of belligerents to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, and to ensure their adequate protection and care. There is also an obligation to search for and collect the dead, to prevent their being despoiled or violated, and to decently dispose of them. Remember that this rule is for YOUR protection. Its aim is to eliminate unnecessary suffering in times of war.

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TREATMENT OF PRISONERS OF WAR

Rule three of our basic rules dealt with our conduct towards enemy combatants, and more specifically those who surrender or wish to do so. In this article, we will examine our duties in handling enemy prisoners from the time of their capture until they are handed over to an appropriate collection point or camp. These duties are the subject of our fifth rule which, stated simply, is: "Do not torture, kill or abuse prisoners of war".

The Geneva Convention Relative to the Treatment of Prisoners of War sets out what is required, permitted, and forbidden in the treatment of prisoners. If you become a prisoner of war, a knowledge of the rights guaranteed and duties expected under this Convention could affect your mental and physical wellbeing or your very survival.

As was explained in a previous article, you must treat as prisoners of war all captured or detained enemy personnel who commit acts of violence against you. Even in cases where the status of such a person is in doubt, i.e., a civilian partisan fighter, he must be treated as a prisoner of war until his actual status has been properly determined. Remember that the Convention stipulates that prisoners of war are in the hands of your government and not of the individuals or units who have captured them and that the determination of the status of all captives

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and detainees is not made by you but by specifically designated tribunals at higher headquarters.

Basically, prisoners of war must at all times be humanely treated. All prisoners of war must be treated alike without any adverse distinction based on race, nationality, political opinions, religious belief, or other similar criteria. In certain circumstances, distinctive treatment may be given based on considerations of rank, sex, state of health, age, or professional qualifications. All prisoners of war must be protected against acts of violence, intimidation, insults and public curiosity. They are entitled to respect for their persons and their honour in all circumstances. Women prisoners must be treated with all the regard due to their sex, and as a minimum, at least as well as male prisoners. The principle that war captivity must not be regarded as imprisonment for revenge or punishment, but as a form of protective custody to prevent a prisoner of war from further participation in the war, is strongly embodied in the Convention. No reprisals or acts of retaliation may be taken against prisoners of war. Although we all recognize that full compliance with this Convention is not always easy for the combat soldier, especially in the heat and passion of battle where some of his closest friends may have been killed, proper treatment of captured or detained enemy personnel is a requirement of international law and soldierly conduct. Murder, mutilation or torture

of prisoners of war are serious punishable crimes under the law.

A prisoner of war must be disarmed, thoroughly searched and carefully guarded. Anyone captured may be questioned for military information of immediate value to your mission, however, a prisoner of war is required only to give his surname, first names and rank, service number and date of birth. If he refuses to give any of the above required information, he may render himself liable to a restriction of the privileges accorded to his rank or status. A prisoner of war must show his identity card upon demand; however, it must not be taken away from him. No physical or mental torture, nor coercion may be inflicted on prisoners of war to secure from them any inforamtion other than that which the convention requires him to give.

When searching a prisoner of war remember that he can keep all his personal effects. Of course, this does not include arms, military equipment, or military documents. The prisoner, however, may keep articles such as gas mask and metal helmet issued for his personal protection. He can keep clothing, insignia of rank or nationality, decorations, and articles of sentimental value. Only officers may order that money or valuables be taken from

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prisoners. In all such cases, proper receipts must be given.

You are required by law to safeguard captives or detainees from dangerous combat activites. This means that you may have them dig foxholes or build bunkers only for their own protection. They are not required to work in support of the war effort or under conditions which are hazardous to their health. For example, you must not use captives or detainees as a shield or screen for an attack on, or defense against enemy forces, or use them as pack anaimals for your ammo or heavy gear, or as human mine detectors!

Prisoners of war must be evacuated to a collecting point as soon as possible after capture. Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be kept back temporarily in a danger zone. They must not be exposed to danger unnecessarily. The method of evacuation must be humane and similar to that available for our own troops. Sufficient food, drinkable water, necessary clothing and medical attention must be provided. You must treat and evacuate wounded or sick prisoners in the same manner as our own casualties.

By now, some of you may well be thinking, "Surely

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all this business of the humanitarian treatment of prisoners of war is wishful thinking and of concern only to lawyers". (That may not be your exact thoughts, but we don't want to offend anyone by publishing that kind of language!) Rest assured that you will change your mind if you are ever a prisoner of war and your captor follows the rules. You will probably change your mind even more quickly if he doesn't!

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TREAT ALL CIVILIANS HUMANELY

In our last article, we examined the rule relating to the treatment of prisoners of war. The rule was simple: treat prisoners of war humanely. In this article, we will examine the rule pertaining to the treatment of civilians. The rule is again simple: treat all civilians humanely. Most of the law of war pertaining to the protection of civilians is contained in the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 1949. For the purposes of this article, we will define a civilian as a person who does not belong to the armed forces and who takes no part in the hostilities.

All civilians in a country involved in war have rights. However different or unusual a foreign land or country may seem to be, the civilians are in all circumstances entitled to respect for thier persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They must at all times be humanely treated and protected from acts of violence, threats, insults and public curiosity. Women in particular must be especially protected against rape, enforced prostitution,or any form of indecent assault. All civilians, subject to considerations based on sex, health or age, must be

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treated with the same consideration without any adverse distinction based in particular on race, religion or political opinion.

In addition to the general rules referred to above, CFP 318(4), Unit Guide to the Geneva Conventions, contains a list of measures concerning civilians which are specifically prohibited. It will do no harm to repeat some of those measures here. They are as follows:

- using the presence of a civilian or a group of civilians in an effort to make certain points or areas immune from an attack;
- using physical or moral coercion against civilians, in particular in an attempt to obtain information from them or from third parties;
- causing physical suffering to or the extremination of civilians, i.e.: murder, torture, corporal punishment, mutilation, or any other brutal measure;
- punishing a civilian for an offence he or she has not personally committed;
- undertaking reprisals against civilians or their property;
- taking hostages, collective penalties and all measures of intimidation or of terrorism;
- detaining civilians in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons make it

necessary;

- total or partial evacuation of civilians from a given area unless the security of the population (i.e.: protection from anticipated combat operations) or imperative military reasons (i.e.: clearing a combat zone, combat preparations, maintenance of secrecy etc.) make it necessary. In carrying out the evacuation, the needs of the evacuated must be supplied to the greatest practicable extent. Proper accommodation must be provided and members of the same family must not be separated. Finally, persons thus evacuated must be transferred back to their homes as soon as the hostilities in the area have ceased;
- compelling civilians in an occupied area to serve in the armed forces or auxiliary forces of the occupying power;
- compelling civilians to work unless they are over 18 years of age, however they cannot be compelled to do any work which would oblige them to take part in military operations and cannot be forced to work unless they are paid a fair wage;
- sentencing a civilian to a punishment of any sort without a regular trial by a competent and lawful court; and

- attacking civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases. These hospitals must at all times be respected and protected.

Civilians who are wounded, sick or infirm or are expectant mothers must be the object of particular protection and respect. Finally, so far as military considerations permit, you must facilitate the steps taken to search for killed and wounded civilians, to assist shipwrecked civilians and other civilians exposed to grave danger, and protect them against pillage and ill-treatment.

The above list is quite long, but can be reduced to the simple statement made at the beginning of this article: treat civilians humanely. Do nothing to them which you would not wish to be done by enemy soldiers to your own family and friends.

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LOOTING IS PROHIBITED

In our last article, which examined the proper treatment of civilians during time of war, reference was made to a list contained in CFP 318(4) which specifically prohibits certain measures concerning civilians. Two of the items on that list deal with civilian property. They prohibit:

- any destruction of real or personal property (without regard to whom it belongs) which is not made absolutely necessary by military operations (remember the Anvil and the Fly); and
- requisitioning of supplies in occupied territory without consideration for the needs of the civilian population, or which is out of proportion to the resources of an area.

This article deals with a more basic prohibition respecting property: DO NOT STEAL.

While pillage or plunder may have been acceptable during the Thirty Years War, anyone who today acts in time of war as if it was still 1630 could be the subject of very modern disciplinary or criminal proceedings. Stealing is a crime, both under the Code of Service Discipline (see section 104 of the National Defence Act (NDA), Article

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103.46 in Volume II, QR&O), and under the Criminal Code of Canada. The fact that a war is being fought, and the thief just happens to be passing through or is in occupation of a foreign country, does not make the unauthorized taking of another's property any different from plain old garden variety stealing. You may call it looting, or plundering or the ever popular scrounging, but any person convicted of stealing is liable under section 104 of the NDA to imprisonment for a term not exceeding seven years or to less punishment.

Since we have referred to section 104 of the NDA, and while you still have the book open, let's look at section 67 of the NDA, article 103.10 of QR&O, which has even more direct application to this topic. That section reads in part as follows:

"67 Every person who

(d) without orders from his superior officer, improperly destroys or damages any property;

(e) breaks into any house or other place in search of plunder;

(f) commits any offence against the property or person of any inhabitant or resident of a country in which he is serving;

(g) steals from, or with intent to steal searches, the person of any person killed or wounded, in the course of warlike operations;

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(h) steals any money or property that has been left exposed or unprotected in consequence of warlike operations; or

(i) takes otherwise than for the public service any money or property abandoned by the enemy;

if guilty of an offence and on conviction, if he committed any such offence on active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to dismissal with disgrace from Her Majesty's service or to less punishment".

There is no question that section 67 is very wide and certainly covers the subject of looting. It is not enough, however, to merely refrain from committing such acts. Regulations require that an officer or man report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the Code of Service Discipline. There is an even more immediate duty on commanders and leaders of every rank to prevent offences from being committed.

In addition to everything else, the plunder of public or private property is a violation of the laws or customs of war amounting to a war crime. As a result, any soldier who is captured and who is suspected of looting or plundering, can be charged with a war crime, and tried by his cap-

tors. It should be noted that the accepted punishment in international law for anyone convicted of the commission of a war crime is death. The court may, however, be more lenient.

On the more practical side, stealing private property may well make civilians more likely to fight or to support the enemy forces. We could find ourselves fighting both the enemy armed forces and civilians. Why ask for that kind of problem? So, when searching dwellings or shops in enemy towns or villages, or in any other circumstances, do not take non-military property. Any military property you do take must be turned over to your superior.

It has been many years since any kind of war was fought on Canadian soil. Even taking into account such fighting as has taken place in this country, it is true that our land and people have never known the devastation and destruction of war which accompanies modern conflicting armies. It may be difficult to understand, therefore, the sorrow, rage and anguish of seeing personal property, family treasures destroyed or taken away. We can all understand, however, one simple rule enforce by the Code of Service Discipline: Respect civilian property - LOOTING IS PROHIBITED!

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WHAT ABOUT MONASTERIES?

Basic rule number eight in the series is quite straightforward: Respect all cultural property and places of worship. As a general rule certain types of property may not be attacked, and as much care as possible must be taken to ensure that buildings, or their contents, dedicated to cultural, humanitarian or religious purposes, are not damaged or destroyed.

The term "cultural property" really includes places of worship including monasteries, because in the general term is included all movable or immovable property of great importance to the cultural heritage of every people such as buildings devoted to religion, art, or charitable purposes; momuments of architecture, art or history, whether religious or secular; archaeological sites; works of art; and similar objects. The term also covers buildings in which such objects are collected and sites intended to shelter such property during time of war.

Imagine if you will a church standing largely undamaged in an area where heavy fighting has obviously occurred. This is clearly a place of worship. Imagine also that there is an emblem on the wall of the church

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composed of a shield consisting of a blue square, a blue triangle and two white triangles. This is the symbol of the Cultural Property Convention of 1954. While Canada and most English speaking nations are not parties to the Convention, most continental European countries are, and since we may be fighting on the territory of one of those countries, we should all be aware of and understand the basic principles of that Convention. Furthermore, even though Canada is not a party to this Convention, any deliberate damage to or destruction of cultural property, especially any such property which is held to constitute part of the heritage of mankind, might well be considered by many nations to be a war crime thereby rendering the persons responsible for such damage or destruction liable to very severe penalties.

Property displaying a symbol composed of a single emblem, such as the church in the poster, is given general protection from attack or use for military purposes. This protection can only be dispensed with in cases of imperative military necessity by the military commander in immediate command of the area concerned. Specially protected property bears a symbol composed of a grouping of three such emblems. Property so identified is also registered in an international register of cultural property

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under special protection. This protection can be withdrawn in cases of unavoidable military necessity by an officer commanding a force of division size or larger. Even if property is not identified with the symbol, if it is obviously cultural property, or known to be so, such as a museum, churches, etc. it is to be protected from damage or destruction to the same extent as if it was marked with the appropriate symbol.

The protection afforded to cultural property, whether identified with a symbol or not, is based on such property not being used for military purposes. When used by the enemy for military purposes, such property may be attacked if it is, in the circumstance, a valid military objective. Lawful military objectives located near protected cultural property are not immune from attack because of such location, but such precautions as are possible must be taken to spare the cultural property. Also, whenever possible, a demand must first be made to terminate the misuse of the protected building or object within a reasonable time.

Up to now, we have considered the protection that must be given to cultural property. There is another side to this, however, and that is our obligations in respect of our own cultural property or in respect of such property

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located in territory we have captured and occupied.

While there is no legal requirement that such property be marked with the emblem or symbol, this is the only means whereby the protection due to cultural property can be facilitated. We must also avoid locating military objectives in or near such property or making any military use of it whatsoever. This is so unless the protection has been dispensed with by the appropriate military commander. If we fail to properly identify cultural property, or if we use it for military purposes, it looses its protection from attack and is liable to be damaged or destroyed.

In summary then, in addition to the general international law of war rules protecting civilians and civilian property, as were examined in the previous two articles, specific protection is applicable to so-called cultural property. This is so whether such property is identified with a symbol or not. As a general rule, all cultural property and places of worship must be respected. As has been stated in other articles, it is not only a rule of law but of common sense to hold the amount of destruction created to only the amount necessary for the accomplishment of the mission. This rule conserves supplies and preserves facilities for future use.

DON'T SHOOT AT THE RED CROSS!

Before 1863, ambulances and medical establishments on battlefields were sometimes identified by a flag of a single colour which varied according to the occasion as determined by the State concerned. The sign of the Red Cross on a white backgound is the reverse of the national flag of Switzerland which is a white cross on a red background. It commemorates the fact that the International Red Cross was formed in Switzerland in 1863. Articles 38 and 39 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick provide that the "emblem of the red cross on a white ground ... is retained as the emblem and distinctive sign of the Medical Service of armed forces", and that "under the direction of the competent military authority, the emblem shall be displayed on the flags, armlets and all equipment employed in the Medical Service."

Not all the States have, however, chosen the Red Cross emblem as the emblem of the medical service of their armed forces. Accordingly, this Geneva Convention also recognizes two other emblems to identify the medical service of armed forces: the Red Crescent on a white background (used by Iran). You should also know that Israel uses the emblem of the Red Shield of David on a white back-

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ground to identify its medical service, and although this emblem is not officially recognized by the text of the Convention, it is recognized in practice by many countries of the world. Now that you are aware of the various emblems used by the medical services of the armed forces of the world, this leads us to rule number nine in the series: "Respect all persons and objects bearing the Red Cross, the Red Crescent, or the Red Lion and Sun".

These emblems are used, both on and off the battlefield, to identify and to afford protection to specified categories of personnel, establishments, units, material and stores essential to the well-being of the sick and wounded, both military and civilian, and to the prevention of disease. Personnel, establishments, etc. displaying such a distinctive emblem must not be attacked. In combat, the purpose of these emblems is to protect those who have become casualties and to identify and protect those personnel who are caring for them.

In an armed conflict, the following personnel are entitled to wear, on their left arm, an armlet, issued and stamped by the military, bearing the distinctive emblem, and are entitled to protection since they are non-combatants:

- permanent dental and medical personnel and chaplains of armed forces and of relief societies

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(such as the Red Cross), including staff exclusively engaged in the administration of medical and dental units and establishments (i.e.: cooks);

- auxiliary military medical personnel, while on medical cuty (i.e.: trained auxiliary stretcher-bearers);
- medical personnel of a recognized society of a neutral country assisting one of the belligerents;
- medical and religious personnel and crews of hospital ships, and medical and religious personnel of the Navy and Merchant Marine; and
- personnel regularly and solely employed in the operation and adminstration of civilian hospitals and its part-time civilian workers while they are engaged in their hospital duties (for this last category, the armlet is issued by the State).

In addition to persons,the following non-exhaustive list of objects, buildings, etc. bearing the distinctive emblem, must also be protected and (except as otherwise provided in the Conventions and Protocols thereto) not attacked:

- medical equipment, mobile medical units (i.e.: field hospitals and ambulances) and fixed medical establishments (i.e.: permanent buildings used as hospitals or stores) of the armed forces and of aid societies;

- medical convoys and transport;
- hospital ships used by the military and relief societies;
- medical aircrafts; and
- civilian hospitals.

It must be remembered that, if mobile medical units or fixed establishments bearing the distinctive emblem are used to commit a hostile act, they forfeit the protection of the emblem. They must, however, be given a warning and a reasonable time limit before they are attacked, if such warning is unheeded. The fact that the personnel of the unit or establishment are armed, or use arms when fired upon in their own defence or that of the wounded and sick in their charge, does not deprive them of protection.

It is a serious breach of the rules of war when soldiers use these emblems to protect or hide military activities or for the purpose of deception.

Finally, remember that your own life may depend on the proper use of the Red Cross symbol, or its equivalent.

ONLY DUMMIES USE DUM-DUMS!

The aim of any armed conflict is to defeat the enemy. Since one of the purposes of the law of war is to protect both combatants and non-combatants from unnecessary suffering, by international conventions and declarations and by the customary rules of warfare, it has restricted the means of waging war. For example, Art. 22 of the 1899 Hague Regulations Respecting the Laws and Customs of War on Land provides: "The rights of belligerents to adopt means of injuring the enemy is not unlimited". Furthermore Art. 23(e) of the same Regulations provides "In addition to the prohibitions provided by special Conventions, it is especially forbidden to employ arms, projectiles, or material calculated to cause unnecessary suffering". This leads us to rule number ten in this series: "Do not alter your weapons or ammunition to increase suffering".

While it is true that all weapons and ammunition that you will use during a war cause suffering, they are not unlawful in the sense that they do not cause unnecessary suffering in the light of the practice of States and international conventions. Furthermore, you have a right to assume that weapons issued to you through normal military channels are not unlawful.

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The Hague Declaration of 1899 Concerning Expanding Bullets recognizes the customary rule forbidding the use of weapons causing unnecessary suffering. It provides in part:

> "The Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions".

This prohibited bullet is called the "dum-dum" bullet and is named after the British Arsenal in India where such bullets were made. These bullets flatten on impact with the body causing extensive wounding by inflicting lacerations.

The use of dum-dum bullets, which can easily be made by soldiers by nicking or scoring the surface of the nose of the bullet, is strictly prohibited and although it is viewed by certain persons as a "trick of the trade" such action would nevertheless constitute a war crime. The law of war forbids you to alter your weapons or ammunition in such a way as to cause unnecessary suffering. Moreover, changing or modifying your weapons or ammunition can render them dangerous or ineffective when you use them.

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In addition, usage or international conventions or declarations have prohibited the following:

- notching bayonets;
- using lances with barbed heads;
- thinning or filing the metal jacket or bullets (causing the bullet to fragment);
- smearing bullets with a substance likely to tend unnecessarily to inflame or aggravate a wound;
- employing projectiles filled with broken glass or with materials that would be difficult to trace medically;
- employing any projectile of a weight below 400 grammes (about 14.1 ounces), which is either explosive or charged with fulminating or inflammable substance (this prohibition which was adopted in 1868 is concerned with projectiles i.e.: exploding bullets directed against individual members of the armed forces. The restiction does not apply to projectiles dropped or discharged by aircraft, and practice during the two world wars shows that it does not forbid the use of explosive or incendiary bullets in air warfare).
- using poison or poisoned weapons;
- using asphyxiating, poisonous or other gases, and bacteriologicals methods of warfare; and
- employing mines or explosives as booby traps attached to objects or persons protected under inter-

national law i.e.: dead bodies, medical establishments.

This non-exhaustive list of prohibitions is based on the three basic principles for the conduct of hostilities: military necessity, humanity and chivalry.

In summary we have seen that the law of war has prohibited the use of certain weapons and that the means of injuring the enemy are not unlimited. The use of an unlawful weapon would constitute a war crime.

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A REGRETTABLE INCIDENT OCCURRED YESTERDAY

The other side commits atrocities, we merely incur regrettable incidents, right? Wrong! As a matter of Canadian law, national policy, and professional pride, all of us in the forces are obliged to obey the Law of War. Rule 11 states: "Disobedience of the Law of War is a crime and not only dishonours your Country and you but renders you liable to punishment as a war criminal". The current UK Law of War Manual, which we have been using unofficially until our own manual is available, states: "All war crimes are punishable by death, but a more lenient penalty may be pronounced". This may sound a little drastic but it does catch your attention. War does not give you a license to kill. The old days of looting and pillaging are gone forever.

In combat you must respond as part of a disciplined military force. General George Patton emphasized this in a speech in 1944 to his subordinates when he said: "There is only one sort of discipline - - - perfect discipline. If you do not enforce and maintain discipline, you are potential murderers". The Law of War is one basis on which discipline rests in wartime.

We are all aware of the Nuremberg trials held after World War II in Germany and of similar trials held in the

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Far East. The Canadian Forces also held some trials during that period. Four trials involving a total of seven German defendants were held in Aurich, Germany. All of the defendants were charged with the killing or attempted killing of Canadian personnel held as prisoners of war. As a result of the trials, four of the defendants were shot and three were sentenced to varying terms of imprisonment. The best known defendant was Kurt Meyer, the Commander of 25 SS Panzer Grenadier Regiment in Normandy immediately after D-Day. He was convicted of inciting his troops to deny quarters to Canadian troops and of being responsible for the killing of eighteen Canadian prisoners of war. Initially he was sentenced to death but his sentence was reduced and he was eventually released after nine years imprisonment. In addition to trials held by the Canadian Forces, Canadian personnel also participated in the Tokyo trial of major war criminals and in a number of British trials of Japanese charged with mistreating prisoners of war, including Canadians captured at Hong Kong.

Fine, you say, we are prepared to try the enemy for committing war crimes but what about our own people? The records on this point are hard to find and difficult to decipher. It is difficult to say for sure whether or not we have tried Canadian personnel for war crimes. One

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reason for this is that we would not charge our own people with committing a war crime but with a related crime under Canadain law. For example, if a Canadian soldier killed a prisoner of war, he would be charged with murder, not with committing a war crime. In one past World War II case, "the Kamloops Kid", a Japanese Canadian, was sentenced to death by a British military court for committing war crimes against prisoners of war, including Canadians. Before he was shot he was able to prove he was born in Canada. British authorities released him from custody because they considered he should not have been tried by a British military court for war crimes because of his Canadian birth. He was then tried and ~~hung~~ hanged for treason by a British civil court. We can say that no Canadian soldier has ever been executed for acts which could be classified as war crimes. Also, since the British were trying one of their own doctors for mistreating German prisoners of war while the Nuremberg trials were being held, we presume Canadian pesonnel would have been tried if they had committed war crimes and sufficient evidence was available to justify a charge.

We have been a little short on war experience since Korea. While this is indeed fortunate, we should, however, benefit from the lessons learned by our neighbours to the

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south as a result of their experience in Vietnam. A small number of war crime incidents, particularly ~~that~~ the slaughter at My Lai, had an enormous impact in turning American public opinion against the war and in antagonizing the local population. The US forces did make a serious attempt to enforce the Law of War by trying their own personnnel for acts which could be classified as war crimes. The US personnel tried were charged with offences against their own disciplinary code instead of with committing war crimes. Because of our similar environment and values, we expect that, if the Canadian Forces went to war a serious effort would be made to enforce the Law of War when our own personnel commit offences, and that offenders would be charged with offences against the Code of Service Discipline, not with committing war crimes. One other lesson learned by the US forces is that prevention is better that cure. For that reason, they have developed a comprehensive Law of War training programme. For the same reason, we have prepared this series on You and the Law of War.

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SUPERIOR ORDERS - OR "SGT, TAKE CARE OF THOSE PRISONERS!

In becoming a member of the Canadian Forces, a Canadian citizen becomes liable to a variety of obligations which are not borne by civilians. One such obligation, and the one which clearly sets a member of a military force apart from his civilian counterparts, is the obligation to obey lawful commands of a superior officer.

The reasons for the obligation are clear. The very nature of a military force requires such obedience. The obligation is stated in a positive way in Queen's Regulations and Orders (QR&O) Article 19.015 which reads: "Every officer and man shall obey lawful commands and orders of a superior officer". In a somewhat negative manner, section 73 of the National Defence Act (NDA) provides that: "Every person who disobeys a lawful command of a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or less punishment". The answer to the question of what is a lawful command can be vital in combat because, if a command is unlawful and is obeyed, the person who obeys it could well find himself charged with a criminal offence or a war crime. On the other hand, if he refuses to obey an order because he thinks it is unlawful and it turns out to be lawful, he also may be charged ... this time with a contravention of Section 73 of the NDA.

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It really seems to be the old problem of being caught between a rock and a hard place. But perhaps there are some bright spots.

First of all, the only kind of command which must be obeyed is a lawful one. Our regulations provide that a command, in order to be lawful, must be one relating to military duty. A superior officer has no right to take advantage of his military rank to give a command which does not relate to military duty or usage or which has for its sole object the attainment of some private end.

What does one do if he is given an order which he thinks is unlawful? Well, generally speaking, the orders given by superior officers will be lawful, and there will be no legal reason to question them. But, in the very few cases where this may not be the case, notes (B) and (C) to QR&O Article 19.015 may be helpful. They are important enough to quote in full here:

> "(B) Usually there will be no doubt as to whether a command or order is lawful or unlawful. In a situation, however, where the subordinate does not know the law or is uncertain of it he shall, even though he doubts the lawfulness of the command, obey unless the command is manifestly un lawful.

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(C) An officer or man is not justified in obeying a command or order that is manifestly unlawful. In other words, if a subordinate commits a crime in complying with a command that is manifestly unlawful he is liable to be punished for the crime by a civil or military court. A manifestly unlawful command or order is one that would appear to a person of ordinary sense and understanding to be clearly illegal; for example, a command by an officer or man to shoot another officer or man for only having used disrespectful words; or a command to shoot an unarmed child."

What we can conclude from all this is that if it is obvious that an order is unlawful, then it should not be obeyed. Manifestly unlawful orders are extremely rare. An order to torture or kill prisoners of war or innocent civilians or to loot civilian property would be manifestly unlawful. This kind of order should never be obeyed and it should never be assumed that it will provide a defence if a charge results from its obedience. After World War II, many persons who were charged and tried for committing vari-

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ous war crimes argued that they should be acquitted because they were only following orders. A forest of trees has been sacrificed to allow legal scholars to argue the meaning of the so-called defence of superior orders. The simple conclusion is that practically speaking there is no such defence.

Sometimes an order will be unclear. For example, pointing to a group of enemy soldiers who have just been captured, a superior officer may say: "Sgt, take care of those". Does he mean that the Sgt should take whatever action is necessary to have the prisoners searched and sent to the rear area holding facility? Or does he want the Sgt to kill them? If such an unclear order is received, and especially if one of the possible meanings of the order appears to be unlawful, then clarification should be sought immediately. Blind obedience, in such cases, is not what is required. In cases of unclear orders, blind obedience could lead to unfortuante and perhaps unforeseen results. In our example, both the Sgt and the superior who meant to convey nothing in any way illegal, could very well find themselves the subject of serious charges, simply because an unclear order was not clarified or question.

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"FIGHTING IN THE AIR"

The concept of military aviation is almost as old as human interest in flying. Drawings of the Persian King Keykavus show him clutching a bow and arrows as he travels through the air on a throne to which four eagles are harnessed. Fighting in or from the air only became a reality, however, with the perfection of the airship and airplane. Wilbur and Orville Wright, who started it all on 17 December, 1903, believed their aircraft would be useful for military reconnaissance. By 1914, fighter, bomber, reconnaissance and carrier-based aircraft all were evolving, and there has been no looking back since.

During periods of armed conflict military aircraft may be used for such activities as close air support, counter-air operations, air interdiction, reconnaissance, airlift of personnel, supplies or airborne troops, or strategic strike operation. Attacks against targets at sea may occur in support of naval attacks, in defence of vital shipping lanes, or to enforce or defend against a blockade. Because these operations ar conducted in a unique environment, with little direct personal contact with the enemy, there are unique problems.

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The law applicable to aerial warfare is not to be found in comprehensive international conventions. However, a number of international conventions and agreements do contain provisions which may be directly or analogously applied to aerial warfare. These include, of course, the four Geneva Conventions of 1949, and certain of the Hague Regulations and Conventions of 18 October 1907. In 1923, a draft of a convention on aerial warfare was prepared, the so-called Hague Regulations on Aerial Warfare. This draft has never been adopted by states however, thus it is not in force as an international agreement. Since most of its provisions are now considered by many as customary law, the Regulations are nevertheless generally accepted as authoritative.

It is generally agreed that the basic principles of the law of war are applicable to conflict in all theatres, land, sea, and air. Therefore, the basic rules for aerial warfare, like those for land and sea warfare, are that the intentional killing or injuring of non-combatants, or the damage or destruction of civilian or protected objects or buildings is illegal (targets must be military targets), and any attack on a military objective must be conducted in such a way that death or injury to civilian populations or other protected property is not excessive in relation to the concrete and direct military advantage anticipated.

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Attacks against aircraft may be made by any method or weapon the use of which is not contrary to international law. These include air to air and ground to air missiles, as well as explosive or incendiary projectiles, even though the use of these weapons may be restricted in land combat when used against individual personnel. Equally, ramming techniques as between aircraft, or suicide attacks against targets on land or at sea, are not forbidden as long as the target is a legitimate military target.

Only military aircraft may take an active part in the hostilities. All such aircraft must be clearly marked with a national insignia which identifies them as military aircraft so that their crews may be entitled to be treated as lawful combatants. It is unlawful to use false or enemy markings during combat. While captured enemy aircraft may be used, their identification marks must be changed.

Military aircrews flying in combat are not required by international law to wear either a uniform or any national insignia. Since the aircraft is the entity of combat, its markings fully inform the enemy of the combatant status of his occupants while they are in the aircraft. Military crew members, however, should wear regular flying suits of their national force and be in possession of a card identifying them as members of a military force for

for their own protection if forced down. (A civilian would not become a lawful combatant merely because he was flying in military aircraft).

If an enemy aircraft has been disabled in combat, the attack need not be broken off even though its purpose has been achieved. While, as discussed in a previous article, the law of war clearly forbids the killing or wounding or an enemy who, in good faith, surrenders, or who is "hors de combat", in the past in air combat surrenders have not been generally offered, or if offered, a difficulty has been experienced in finding a way to enforce the surrender. (Remember the surrender sequence from the film "the Blue Max"?) It's all a question of communications, and disabled aircraft are frequently pursued to destruction because of an impossibility to verify its true status. In any event, if an aircraft in distress is clearly out of the conflict, then the attack should be broken off to permit possible evacuation of crew and passengers.

This leads us to a rule which some of our airborne colleagues don't like at all. Aircrew descending by parachute from a disabled aircraft must not be attacked. They can be captured upon landing, or attacked at that time if they are resisting capture or are engaging in a hostile act. But while hanging under the silk, the law of war pro-

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tects them from the attack. In the past this protection was based on the concept of chivalry, but it is now set forth in Protocol I Additional to the Geneva Conventions of 1949. (We hasten to add that this Protocol is not yet in force for Canada.) However, this immunity from attack does not apply to paratroops and other airborne troops who may be attacked even during their descent!

Under the present Geneva Conventions of 1949, medical evacuations by aircraft are protected. The overall protection afforded by international law in this respect has been further developed in Protocol I and because it is of particular importance, our next two articles will be devoted exclusively to this topic.

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AIR AMBULANCES

J.M. Spaight, in his book "Air Power and War Rights", reports that when the Serbian army was retreating before the Austrians in November, 1915, the French aircraft which were serving with the Serbians were used as ambulances to convey the most seriously ill from Prizrene to Scutari in Albania, a distance of 180 kilometres. Five invalids were thus conveyed by air. One man who started the journey dangerously ill with pneumonia arrived at Scutari completely curred, causing one witness to observe: "Perhaps some day the aeroplane will become the approved remedy for pneumonia!"

While this prediction may not have quite come to pass, there is little doubt that the aircraft, and particularly the helicopter, has become of major importance to medical evacuation. Whereas in the Korean war some 8,000 American servicemen were evacuated by air, this figure rose to 950,000 in Vietnam. Fifteen percent of casualties were evacuated by helicopter in Korea compared with virtually 100 percent in Vietnam. While figures are not known, there is no doubt that air evacuation was also extensively employed in World War II. It is important, therefore, to be aware of the special rules which apply to this type of medical transport.

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The first Geneva Convention of 1949 extends certain protection to so-called medical aircraft. These are defined as aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment. They must be clearly marked with the distinctive emblem of the red cross, or one of the other approved emblems, and with any other markings or means of identification that may be agreed upon between the belligerents. When so marked, they are protected from attack provided they fly on routes and at altitudes and times specifically agreed upon by the belligerents. This stipulation is an attempt to reduce the possibility of mistaken attack as, because of the speed of aircraft, identification by markings alone is often impossible.

Under the Geneva Convention, unless there is agreement to the contrary, medical aircraft must not fly over enemy-occupied territory. This is due to the fact that aircraft are very useful for collecting intelligence. In cases where permission to fly over enemy territory is obtained, a medical aircraft must obey every summons to land but must be permitted to continue on its way when examination reveals that it is being used for medical purposes only. In these circumstances if the aircraft ignores a summons to land it may be attacked. The crew of an aircraft which is forced down, or which upon examina-

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tion after landing is found to be engaged on other than medical duties, become prisoners of war. This does not apply to medical personnel, who, as we learned in a previous article, may be retained only if needed.

Generally speaking, a medical aircraft may be attacked if at the time it represents an immediate military threat and no other methods of control are available. This could occur when such an aircraft is being used to commit hostile acts such as approaching enemy territory or a combat zone without permission, or initiating an attack.

It is not necessary that the aircraft used as medical aircraft should have been specially built and equipped for medical purposes. There is no objection to converting ordinary aircraft into medical aircraft or to using former medical aircraft for other purposes, provided the distinctive markings are removed.

In some of our previous articles we have mentioned the Protocols Additional to the Geneva Conventions of 1949. Certain parts of Protocol I propose significant changes to the rules now applicable to medical aircraft. While that treaty is not yet binding on Canada, it would be appropriate to know what those possible changes might be.

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MEDICAL AIRCRAFT - PROPOSED NEW RULES

On 12 December 1977 a re-examination of the law applicable to armed conflict was concluded with the opening for signature by States of two treaties relative to that law. Those treaties are titled: "Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts" (Protocol I); and "Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts" (Protocol II).

Canada signed those two Treaties on 12 December 1977 but has not yet ratified them. This means that for Canada they are not yet binding. However, as mentioned in our previous article, certain parts of Protocol I propose significant changes to the rules now applicable to medical aircraft and, bearing in mind that these changes are not now in effect, we will examine them in a very broad way from the point of view of how the present rules might be changed in future.

The protection provided to medical aircraft by the 1949 Geneva Convention Respecting Wounded and Sick in Armed Forces in the Field, has been greatly expanded upon in the Protocol. On the face of it, the present rules only

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provide for protection of medical aircraft from attack when such aircraft are flying at heights, times and on routes specifically agreed upon between the parties concerned. On the other hand,the Protocol provides for protection in areas not controlled by the enemy, in contact or similar zones, and in areas controlled by the enemy. No agreement is necessary when operating in one's own zone, although parties are reminded of the importance of notifying the enemy of flights, particularly when the aircraft are operating within range of surface-to-air weapons systems. In the contact zone the practical importance of prior agreement is recognized. However, even without prior agreement, the obligation to respect a medical aircraft is maintained once its nature has been recognized. Prior agreement for operations in an area controlled by the enemy remains mandatory but even in the absence of such agreement every effort must be made to require the aircraft to land. Only if it does not land can it be fired upon.

The Protocol also contains provisions concerning the actual operation of medical aircraft. In this connection it is important to note that, while the aircraft must be exclusively employed on medical purposes in order to gain protection, this does not mean that like a hospital ship, it must be dedicated to such tasks for the duration of the conflict. The effect of this is that

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while an aircraft could be employed for combat purposes or supply purposes when entering the contact zone, its operational or combat nature could be changed and the aircraft used for medical purposes on its return to rear areas. In theory this makes sense, but there may well be problems in practice, particularly if one side only is blessed with a helicopter lift capability.

Owing to the technical difficulty of distinguishing between aircraft being used for humanitarian purposes and those with hostile intent, it has long been proposed to develop rules which would allow the former to operate more widely while retaining the protection afforded to it. In an attempt to achieve this objective, Annex 1 to the Protocol contains detailed provisions regarding the identification of medical aircraft by means of special radio and radar codes and the use of flashing lights.

"WAR AT SEA"

The purpose of war is the same in the case of conflict on land or at sea - namely, the overpowering of the enemy. There are, however, many differences between land and sea warfare, which, in the opinion of some, make the difficulties of a naval commander in many respects greater than those of his colleague on land.

The law of naval or maritime warfare is based on the customary rules of armed conflict with regard to unnecessary suffering, indiscriminate attack, respect for non-combatants or person "hors de combat", supplemented by such rules as are necessary because of the unique environment in which the conflict is being waged.

As in land warfare, so in naval warfare, not every practice capable of injuring the enemy is lawful. There are restrictions to naval conflict contained in various international conventions and agreements such as the Geneva Convention relates to the protection of the wounded, sick and shipwrecked members of armed forces at sea. There are also a number of Hague Conventions, all dated 18 October 1907, which apply specifically to naval warfare and which naval planners must consider when preparing operational plans and drafting Rules

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of Engagement: Convention VI relates to the status of enemy merchant ships at the outbreak of hostilities; Convention VII relates to the conversion of merchant ships into warships; Convention VIII deals with the laying of automatic submarine contact mines; Convention IX restricts bombardment by naval forces in time of war to military targets only and prohibits indiscriminate attacks or attacks on cultural objects, hospitals and undefended towns; and Convention X lays down certain restrictions with regard to the right of capture in naval war.

It is therefore extremely difficult to give useful short summary of the law concerning the conduct of sea warfare at the present time. While a coherent and reasonably comprehensive body of law had been developed for sea warfare prior to the First World War, to be honest, the development of new weapons platforms such as aircraft and submarines, together with the tendency during the two world wars towards unrestricted warfare at sea, leaves one wondering how much of the old law still applies. When the "law" is disregarded on a continuing basis we might conclude that the practice of states has created new law rather than that all states are lawbreakers. Some "law" is, however, still in effect and it is that law we will discuss here.

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War at sea is different from war on land for many reasons. Two of these are particularly significant where the law of war is concerned.First, the oceans of the world are common highways travelled by neutral shipping as well as by warships and merchant ships of the belligerent powers. The commanding officers of warships must be particularly sensitive to neutral rights so that neutral states are not offended. More than one war has been commenced by states previously neutral in order to protect their rights. Second, commanding officers of warships have more control over the use of weapons by their crews and, therefore, a greater opportunity to ensure compliance with the law of war than, for example, the commanding officers of infantry battalions. If the survivors of a sunken ship are machine gunned by a warship it is probable that it was done on the basis of orders from the commanding officer, or at least with his knowledge and consent.

Generally speaking, the lawfulness of shooting at people at sea is determined by the nature of the container they are in - warship, merchant ship, hospital ship, belligerent ship, neutral ship. When people are outside of their containers - in the water or in lifeboats, they are not lawful targets. The lawfulness of shooting is also affected by where it occurs. You cannot shoot at ships in neutral waters. Indeed, if you are in neutral waters, you are not allowed to shoot at anyone.

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Enemy warships and military aircraft, including auxiliary vessels, may be attacked and destroyed or captured outside of neutral jurisdiction. Traditionally enemy merchant vessels and aircraft may be captured outside neutral jurisdiction, and may be destroyed after capture if such is required by military necessity, but only if all possible measures have been taken to provide for the safety of passengers and crew (this may prove to be an example of where state practice as in World War II, has altered the traditional law). Under certain circumstances, which will be discussed in the next "You and the Law of War" article, which will be concerned with submarine warfare, enemy merchant vessels may be attacked and destroyed. Depending on the circumstances, neutral merchant ships may be subjected to the same treatment as enemy merchant ships. This topic will also be discussed in the submarine warfare article.

The following enemy vessels may not be attacked in any way: small vessels engaged in coastal fishing or local trade; vessels engaged in religious or philanthropic missions or in scientific expeditions with no military application; hospital ships and medical transports; vessels engaged in the exchange of prisoners, (normally referred to as cartel ships); vessels given a safe conduct by the belligerents; and other vessels exempted by particular directives.

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In World War II, attacks on hospital ships were relatively rare. Operational problems occasionally made compliance with other exemptions difficult. For example, in 1945 the United States and Japan made an agreement whereby the Japanese merchant vessel, Awa Maru, was to carry U.S. relief supplies to Allied nationals held by Japan in China. The Awa Maru was torpedoed and sunk by a U.S. submarine on its homeward voyage. The Commanding Officer of the submarine was unaware that the ship had been granted a safe conduct. He was subsequently convicted by a United States Navy general court martial for negligence in carrying out orders.

While vessels are afloat and operational, their crews and passengers are treated as the vessel is treated. When a vessel is captured or sunk, crew and passengers are treated as prisoners of war or as survivors of a disaster, depending on their classificaiton. It cannot be too clearly emphasized that when a ship has clearly indicated its intention to surrender or when survivors are in the water, neither the ship nor the survivors are legitimate targets.

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"THE RULES OF SUBMARINE WARFARE"

For centuries man has attempted to descend into the depths for many varied reasons ranging from scientific observation and salvage to the launching of attacks on enemy ships during war. Herodotus, Aristotle, and Pliny the Elder all mention in their writings attempts to build diving bells or other such devices. Among Leonardo da Vinci's many inventions was a device for underwater exploration. But it was William Bourn, a British writer on naval subjects, who in 1578 first published a serious discussion of a "submarine". He conceived of a completely enclosed boat consisting of a wooden frame covered with waterproof leather which could be submerged by reducing its volume through the use of hand operated vises. Since sails do not work very well underwater, the "submarine" was designed to be rowed both while on the water and submerged. He never got around to building this craft - probably just as well for William Bourne!

Like the aircraft, the submarine has come a very long way in its development. By the 1960s the nuclear-powered submarine, capable of remaining underwater for months at a time and of firing long-range nuclear missiles without surfacing, had come to be regarded by most military strategists as the most important of all strategic weapons.

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However, in order to begin our examination of the rules applicable to submarine warfare, it is necessary to go back in time a bit.

Submarines were used extensively for the first time during the First World War and demonstrated particular effectiveness as commerce destroyers. Following the war a number of treaties designed to regulate the conduct of submarine warfare were signed. Prior to World War II most major states were party to the rules of submarine warfare set out in the London Protocol of 1936. These rules required submarines to conform to the rules applicable to surface ships where merchant ships were concerned. In particular, submarines were forbidden to sink merchant vessels unless the merchant crews were first removed to a place of safety. Notwithstanding the London Rules, all of the naval participants in World War II with the means to do so, except the Japanese, engaged to varying degrees in unrestricted submarine warfare. Indeed a number of military writers in the postwar period commented on the Japanese failure to use their large submarine fleet for commerce destruction as if it was due to a lack of military imagination rather than to mere compliance with the law. Although the London Protocol is still "on the books", it is unlikely the Rules would be considered to be in force in future major wars if compliance would hinder the accomplishment of major

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objectives. The rules do not work in such cases because they are too one-sided, favouring major naval powers and those with strong mercantile interests at the expense of weaker naval powers who, at least in the past, considered the submarine to be a potential warwinning weapon.

In both World Wars, Germany eventually declared that certain large areas of the sea were 'war zones' or 'operational zones' and attempted to exclude all shipping from these areas by threatening to sink any ship found within the areas on sight and without prior warning. In many respects, the war zone concept was an equivalent, for a power possessing submarine strength, of blockade and contraband operations for a power possessing surface naval strength. Both types of measures were aimed primarily at cutting off the seaborne trade of the enemy. Blockade and contraband operations, however, resulted in very little direct loss of life. The same could not be said for unrestricted submarine warfare.

At the end of the Second World War, the German Admiral Doenitz was tried at Nuremberg on a number of charges of committing war crimes. The court found him not guilty of a charge of waging unrestricted submarine warfare against Allied shipping, basically because Allied merchant ships were incorporated into the Allied war effort. Although the

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court found Doenitz guilty of committing a war crime for establishing war zones and ordering submarines to sink at sight neutral ships found within the zones, Doenitz was not given a sentence for the offence because both Great Britain and the United States had also waged unrestricted submarine warfare at various times during the war.

At the present time, it is our view that enemy merchant vessels may be attacked anywhere outside neutral waters and destroyed in any of the following circumstances:

a. actively resisting visit and search or capture;
b. refusing to stop upon being duly summoned;
c. sailing under convoy of enemy warships or military aircraft;
d. if armed, and there is reason to believe that such armament has been used, or is intended for use, offensively against an enemy;
e. if incorporated into, or assisting in any way, the intelligence system of an enemy's armed forces; or
f. if acting in any capacity as a naval or military auxiliary to an enemy's armed forces.

Neutral merchant vessels sailing in convoys escorted by armed enemy vessels may also be attacked and destroyed.

Having said all this, it must be remembered that submarines have not been used as commerce destroyers except

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during the two World Wars. Presumably belligerent states engaged in limited wars are more inclined to respect neutral rights and world public opinion than those engaged in the near total World Wars. In future wars decisions concerning whether or not submarines will be used for commerce destruction will probably be made initially at the political level.

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"FINAL THOUGHTS"

We have attempted to describe the origins, developments, nature and effect of the law of war and to foster an interest in it. The law of war exists now, as it has always done, to moderate the violence involved in, and limit the suffering caused by war. But it is of no use whatsoever unless the members of an armed force involved in a armed conflict are aware of, and observe the rules formulated by that law. We have tried to make you aware of those rules; it is your duty to observe them.

Historically few people in or out of the armed forces were very deeply interested in the law of war. Even though, as was pointed out previously, Canada is required by international law to instruct the members of its armed forces in the law of war, perhaps we so-called experts have been remiss in our efforts in that regard. In this connection, Col. P.J. Cameron of the Australian Army Legal Corps quotes as follows from the book, "War Rights on Land", written by Dr. J.M. Spaight and published in 1911:

> "War law has never been presented to officers in an attractive form, as it might have been if the writers had insisted on the historical, human and practical side rather than on

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> the legal and theoretical one. But the difficulty of the subject, and the necessity of a careful study of it, have not been brought home to officers: they underestimate its importance and its complexity."

That all indeed may be true, but where does it leave us? Well, going back to basics, as it were, there is absolutely no doubt that every individual serviceman and servicewoman must know what the law requires of them during armed conflict, what benefits it confers on them and that they must scrupulously obey its dictates. And for those of you who think there is no law of war, that it is fanciful and perhaps redundant to speak of a "law of war", let us go back to the good Dr. Spaight as quoted by Col. Cameron:

> "Any nation can at any time throw war laws to the winds. But no nation does. The logical supplement to the golden rule which warns us that as we do, so shall we be done by, is the chief motive for compliance ... War laws are often broken - are not municipal laws broken too? - but no modern nation is bold enough or strong enough to disregard them wholly. To do so would be to extend to every latitude in war time the

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doctrine of the old buccaneers that there was neither God nor treaty within thirty degrees of the Line ..."

So that, then is the so called "bottom line". Canada is bound by certain international obligations, such as those found in the Geneva Conventions of 1949 which spell out the rules governing the conduct of the members of its armed forces during war. There is no doubt that Canada will continue to be bound by those obligations. Your membership in the military profession requires that you have, apart from the range of skills necessary to the sailor, soldier, or airman, an awareness of and respect for the law. This is an essential ingredient of your professional knowledge. For example, you belong to a trained force which ultimately operates on the basis of discipline. Therefore, you need to be aware of the contents of the Code of Service Discipline. That is a part of our law which directly concerns you. Going one step further, members of the military profession must be ready to fight wars. Indeed, the ability to fight wars, to protect or promote our nation's interests and to defend it's citizens, is the essence of the military profession. Therefore, you need to know the law of war. It was for this reason that these articles were written and published.