

## THREE STUDIES

The Military Law and Law of War Review,<sup>1</sup> (vol. XV-1-2) contains three studies which for various reasons might be of interest to readers of International Review of the Red Cross. With the kind permission of The Military Law and Law of War Review we give below a summary of the three studies.

### THE LAW OF WAR AND THE ROLE OF THE NONLAWYER OFFICER IN ITS INSTRUCTION

by Dr. Walter L. Williams, Jr.

Achieving international peace and security is the continuing, primary challenge for humanity. Unfortunately, we may expect in the foreseeable future new and various forms of armed conflicts to which the law of war will be applicable. Thus, national military establishments must continue their responsible, effective participation in the development of the law of war.

The purpose of this article is to encourage transnational research and discussion concerning two subjects intimately related to the participation of military establishments in the development and maintenance of the law of war:

- I. The role of the nonlawyer officer;
- II. The methods by which that law can most effectively be taught in the different Military Services.

#### I.

The writer proposes first to apply a framework for inquiry into the multifaceted role of nonlawyer military officers in the field of the law of war. He begins by considering their various *functions in the decision*

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<sup>1</sup> Palais de Justice, Brussels, 1976.

*process* by which the law of war is established and applied. He then considers the roles played by nonlawyer officers in the *sanctioning process* by which military personnel are induced to observe the law of war.

*The conclusion of this first part* is that discussion of the vital role played by nonlawyer officers shows that it is the Officer Corps that determine for the State whether the law of war effectively regulates the conduct of its military personnel. General questions suggested for future research and discussion include:

1. To what extent are officers in the various national military establishments now performing the roles discussed above?
2. What actions have the various national military establishments taken to require and assist performance by officers of those roles?
3. How institutionalized are these actions, e.g. what is the status of formal training, of regulations, of structures of consultation among lawyers and nonlawyer officers and what other means are available to help both categories of officers in the performance of their functions relating to this field?
4. What actions could be advocated to improve the performance by officers of the roles required of them?

## II.

In the second part of his article, the writer examines how the law of war can most effectively be taught within the military establishment. Provisions of the principal multilateral agreements on the law of war require the parties to those agreements to provide instruction thereof to military personnel. The ultimate goal of education about the law of war is adherence to that law under combat conditions: to construct, as concerns the law of war, an effective "law-abiding habit" in the extremely difficult conditions of armed conflict. This requires adequate knowledge of the law of war and moral self-discipline to ensure its observance. The writer analyses methodology in instruction on the law of war by referring to United States Military Services practice and by quoting from articles published in 1973 in the "Military Law and Law of War Review" and from papers read at the 1972 San Remo Seminar on the Teaching of Humanitarian Law in Military Institutions.

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## AREA BOMBING AND INTERNATIONAL LAW

*by Esbjörn Rosenblad*

What are the legal limits, if any, to aerial warfare? How is the practice of target area bombing to be judged under the law of war?

By referring to the current definitions of certain terms (Ch. I), the writer considers the problems raised by the practice of area bombing (Ch. II). He outlines what occurred in this respect during the three great military confrontations of recent times, namely the Second World War, the Korean conflict and the Viet Nam conflict.

In Chapter III mention is made of some fundamental principles of international humanitarian law and of the as yet rudimentary rules of law established by treaties concluded in 1907 and 1949; the efforts made by jurists to codify the law of war are also referred to.

In the same chapter, the writer comments on a number of court cases and on the Nuremberg trials and refers to the principles of international law derived therefrom. The opinions of lawyers on those cases are considered. This study shows that the practice of States does not always correspond to the rules laid down by treaty. The treaties concluded at the beginning of the twentieth century have become somewhat out of date as a result of the rapid development of weapons technology.

The writer refers to the various discussions at the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (Ch. IV).

In Chapter V, he states that three main conclusions are reached:

1. The fundamental principles of international humanitarian law are still in force. The principle that belligerents must distinguish between, on the one hand, combatants and military objectives and, on the other hand, civilians and civilian objects, is still legally valid. But this distinction is becoming dangerously threatened by practices contrary to the law of war, terror attacks and indiscriminate or target area bombings.
2. Committee III of the Diplomatic Conference was very much aware of the importance of reaffirming and developing the law of war and it adopted a definition of the term "military objectives". It has also laid down specific rules on the protection of civilians and civilian objects and on precautions in attack. The Committee adopted a prohibition of terror attacks and target area bombing.
3. Military necessity is no justification for breaches of these rules of law.

Time and again, target area bombing has proved to be a waste of military effort. It has all the hallmarks of terror attacks and indiscriminate bombardment, and in these respects it violates the fundamental principles of international humanitarian law.

For the first time in history, the entire population of the globe is in danger of being wiped out.

The practice of target area bombing and the use of all contemporary weapons, whether they be conventional, atomic, biological or chemical, augur ill for the future of mankind. To guard against this threat, Committee III of the Diplomatic Conference, in 1975, adopted rules which will improve considerably the protection of civilians during an armed conflict.

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#### THE INTERNATIONAL LAW OF WAR; THE RED CROSS AND NEW TRENDS IN THE DEVELOPMENT OF HUMANITARIAN LAW

by Marion Mushkat

Before entering *in media res*, the author attempts to distinguish, in international law, some concepts that have become all too narrow and obsolete.

It is found that present day *jus gentium* no longer confines itself solely to settlements between Sovereign States, but encompasses a whole set of legal rules governing inter-State relationships and a whole range of international groups of social, political and economic interest.

Humanitarian law has become universal and its chief aim is the preservation of peace. This "law of peace" is essentially a law promulgated by way of "declaration", contrary to the law of war, which is a system of constraints.

The writer further finds—and deplores—the fact that, under the impulsion of certain States, in the recent work of the UN and other international institutions, Human Rights concepts have become intermingled with Law of War concepts (*jus in bello—jus ad bellum*); these are two topics of the Law of Nations which, despite the existence of various points in common, are different one from the other. The writer describes in clear cut terms common denominators and differences.

Since the colonial era is nearing its end and since most modern conflicts are "third world" type wars, the Law of War must adapt itself

to new situations relating to increasingly frequent internal conflicts where rebel groups clash with States.

It is equally pointed out that the classical distinction between international and internal conflicts and the law of war has lost a great deal of its importance and that provisions governing international conflicts should gradually be applied to internal conflicts, although there is an awareness of the risks entailed in the application *in toto* of the Geneva Law to each and every type of internal conflicts, e.g., acts of terrorism.

Finally, certain aspects of H. Dunant's life and personality as well as the organization and working of the International Red Cross to our day and age are highlighted.

J. LEJEUNE

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