

THE LAW OF WAR AND THE ARMED FORCES

by F. de Mulinen

1. Growing complexity of armed conflicts and of the law governing them

Armed conflicts in modern times are becoming more and more complex. The once classic distinction between international and non-international wars is increasingly blurred. Technical developments in weapons continue to advance and their destructive power, their velocity and their range have not ceased to grow.

Only a hundred years ago, fighting took place exclusively between soldiers and did not affect civilians, apart from the very few who had the misfortune to be near a battlefield. But since then, and especially since the Second World War, civilian casualties have increasingly outnumbered military.

A natural sequence to the development of the methods and means employed in war has been that the law of armed conflicts has also continued to grow in complexity. The first Geneva Convention concluded in 1864 was clear and succinct. In ten articles it set forth the basic principles of equal treatment of the wounded irrespective of whether they were friend or foe, of the right of civilians to treat wounded soldiers, of the neutrality of military medical services and of the distinctive sign of the red cross on a white ground. The Convention stated that "the implementing of the present Convention shall be arranged by the Commanders-in-Chief of the belligerent armies following the instructions of their respective Governments and in accordance with the general principles set forth in this Convention" (Article 8).

Since that time, several sets of Geneva and Hague Conventions have been drawn up. The provisions concerning the conduct of hostilities were drafted in 1907, before the use of aircraft, while the rules for the benefit of the victims of hostilities (wounded, prisoners, inhabitants of enemy-occupied territories), i.e., those contained in the Geneva Conventions, were revised in 1949 and were based on the experience derived

from the Second World War, as also was the 1954 Hague Convention for the Protection of Cultural Property.

The Conventions, being so widely separated in time, bear the marks of their epoch. The terminology current at the beginning of this century has also changed. For instance, in 1907 one still spoke of “undefended towns, villages, dwellings, or buildings”, a notion recalling the distinction, inherited from the Middle Ages, between towns surrounded by fortifications recognizable as such from afar, and open localities which were neither fortified nor defended. Today, the more usual terms are “military objective” and “non-military or civilian object”. It is therefore necessary to know the modern meanings of expressions of an earlier period.

The new Conventions are, moreover, much more detailed. They still state a considerable number of essential principles, but the provisions in respect of particular cases are much more numerous. It has become difficult to pick out the more significant clauses among the six hundred articles (not to mention the annexes) of the main Conventions still in force.

2. Need to establish priorities and methods for creditable teaching

One of the consequences of the ever-growing number of conventions, their increasing bulk and complexity, is to diminish the creditability of the law of armed conflicts. Men trained to do battle and ready if need be to lay down their lives in the accomplishment of their duty do not wish to be encumbered with regulations which to their minds are just fanciful theories propounded by jurists who have no idea of the military realities. At best, even though soldiers might perhaps be inclined to observe certain elementary humanitarian principles, they are not sure that their adversaries will do likewise and they consequently yield to the urge to consider themselves free of any such obligation.

Any kind of genuine teaching of the law of armed conflicts must take into account this kind of unfavourable background. The aim must therefore be to create a climate conducive to effective and durable instruction.

The question is one of priorities and methods.

It is important, at the outset, to realize, and in particular to win over those who are still not yet convinced that it is impossible to instruct everyone in all the various aspects of the law of armed conflicts. A selection has to be made, which means that *priorities* must be established, with regard to the subjects as well as to the persons to be taught. There will inevitably be, on the one hand, matters of primary and of secondary importance, and on the other, there will be some persons who should receive instruction before others. A subject which might be of primary importance for one category of persons might be of lesser importance or none at all for other categories.

Among those to receive instruction, priority should be given to the armed forces set up and trained for combat, whose members must therefore know their obligations, under the law of armed conflicts, to cause the least possible loss of life and material damage. Compared to the combat duties to be discharged by the armed forces, by their units, and even by each man, the law of armed conflicts will always seem to them to be of minor importance. It is essential to seek the best means to render the instruction effective. Thus the problem of *methods* automatically attends the problem of priorities. The two are extremely important to ensure respect for the law of armed conflicts in all circumstances, chiefly in actual combat, and not only during exercises.

To obtain respect for the law of armed conflicts, hence to render it efficacious, its teaching must be made creditable. This means that abstract notions must be set aside and that one must constantly seek to relate the international regulations to the practical facts which States and their armed forces have to contend with. For example, it is not enough to tell the men that an enemy who is captured or who surrenders becomes a prisoner of war. They should first of all be given realistic and practical instructions what to do with such an enemy, where he should be taken, how to treat him and where he should be held pending his evacuation, what to do with the weapons and other military equipment he might have had with him, and so on.

Moreover, the prisoner must not be considered singly, outside the context of the unit which captured him. This particular unit has a mission to discharge. If the capture took place in the course, or at the end, of an assault, the leader and his men will still be primarily concerned with the job of continuing the assault or, if their objective had been attained, with the task of organizing defence in the event of a counter-attack by the enemy. It would not be possible to detach too many men to guard the prisoner. Perhaps, he could be looked after provisionally, possibly in a shelter, until more time could be devoted to him and he could be evacuated to the rear.

In any case, whatever may be the priorities and methods employed and the degree of creditability reached in the teaching, it will always be the responsibility of each State to ensure respect for the law of armed conflicts, in accordance, for instance, with Article 1 of each of the four Geneva Conventions of 1949, which states: "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances".

3. Special features of the military background

Members of the armed forces are more likely to accept the ideas put forward if the expressions used are familiar to them. Those trained to fight in time of war comprehend the expression "law of war"—which

needs no explanation—better than terms such as “law of armed conflicts” or “humanitarian law”. The usual acceptance of the latter term is in any case too narrow, as implying only the law of Geneva. Consequently, for creditability and efficacy, we will speak from now on only of the “law of war”.

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It is the experience of the International Committee of the Red Cross, in particular, that to spread knowledge of the law of war throughout the world in general, among civilians as much as among members of the armed forces, considerable efforts must be made to adapt teaching methods and means to the special circumstances reigning in different regions of the world. What is suitable for Europe cannot be exported wholesale to Africa, while a model which has been devised specially for Africa, or parts of Africa, will not suit countries in Asia or Latin America. Traditions, motivations, the origins of the law regulating relations between peoples, nations and States, whether in time of peace or in time of war, differ from place to place.

For the armed forces, the situation is quite different. There is less need, if at all, to adapt instruction to the various regions, because armed forces by their very nature resemble each other to such an extent, in their organization, structure, terminology, and methods and means of combat, that they are in many respects practically identical. In fact, the organizational terminology based on French has been adopted by most States and is everywhere understood, even in translations which are often a mere adaptation of the pronunciation of the French word. For example, the words non-commissioned officer, captain, company, artillery, division, mean the same thing for every one, and the same applies to certain elementary tactical expressions like to attack, to defend, to hold, etc.

It follows that military people, especially those who have similar functions, can understand each other very well. It was found, at the international courses on the law of war first organized in 1976 for officers by the San Remo International Institute of Humanitarian Law, that officers belonging to the same arm or service, but coming from different continents, often understood each other more easily than officers of the same nationality, for instance, one belonging to an arm and the other to the military judiciary.

To summarize, it may be said that models may be devised for use in all armed forces, but that among civilians, one would have to take regional considerations much further into account.

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The only rules that count for the armed forces are those that must be applied in war. The question as to who is at the origin of a conflict and who is the victim is a matter belonging to the realm of politics and is of no concern to members of the armed forces. All they need to know is that their country is at war and that they are obliged to respect the law applicable in armed conflict, that is *jus in bello*. In this way the armed forces and their members are not involved in any possible political discussions and controversies on the right to wage war or not to wage war, that is *jus ad bellum*. The respect for *jus in bello* is not, therefore, dependent on individual opinions as to the causes or the justice of the conflict.

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In the armed forces, it is the commanders' duty to ensure observance of the law of war. Every leader is responsible for giving instruction to his men and for their behaviour in action.

First of all, the leader must be able to act sufficiently early to avoid the commission of acts which are contrary to the law of war. As he is responsible for acts committed by his subordinates, he must be capable of imposing his will, if necessary by taking disciplinary measures. This forms a part of the requirements of order and discipline. With this end in view, he must not be bound by a complicated legal system, calling immediately for charges to be brought before a court or containing numerous possibilities of appeal. Such a system would undermine his authority, impair order within his unit, waste time and delay disciplinary sanctions which would no longer have their full effect and consequently could run contrary to the aims of the Geneva and Hague Conventions.

To deprive a leader of the means of exercising his authority might, among other consequences, cause him to act arbitrarily regardless of the law of war. He would then only take military requirements into account. But this must be avoided. General Eisenhower's Christmas message to his troops should be kept in mind: "I do not wish the expression military necessity to mask slackness or indifference; it is sometimes used where it would be more exact to say military convenience or even personal convenience."

4. Priorities outlined in the Conventions

The law of war has very little to say on the matter of choices to be made and priorities to be observed. In the Geneva Conventions of 1949 and the Hague Convention of 1954, it is laid down, in general terms "... in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible... and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction...".

Depending on the purpose of each Convention, a few supplementary indications are to be found. In the First and Second Geneva Conventions (wounded and sick), there is the following: "... in particular to the armed fighting forces, the medical personnel and the chaplains"; in the Third Geneva Convention (prisoners of war): "Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions"; the Fourth Geneva Convention (civilians) contains a text similar to the one in the Third Convention; and the Hague Convention of 1954 has the following: "... and personnel engaged in the protection of cultural property". Even though those Conventions do not say much, they do nevertheless give an indication of how to determine priorities and make a choice.

Some problems may have to be faced by all members of the armed forces, while others concern only specific levels or particular services. If we consider the law of Geneva, we will at once see that, apart from the requirements regarding the care and evacuation of the wounded, the major part of the First and Second Conventions concern medical personnel alone and more particularly those in the rear. In the Third Convention, only the few articles concerning capture, evacuation and the elementary requirement to treat prisoners humanely are of general interest. All the other provisions concern solely life in prisoner-of-war camps and are consequently directed to specialized personnel. As for the Fourth Convention, apart from some basic provisions regarding relations between military and civilian persons, it belongs essentially to the field of the "G 5" (civilian affairs) and the occupation bodies. A survey of the principal Hague Conventions leads to a similar result.

The first conclusion to be drawn, therefore, is that very few provisions of the law of war are of immediate interest to all the members of the armed forces. Most of the numerous articles in the Conventions concern only special categories of military personnel.

5. Priorities according to specific levels and functions

At the European Red Cross Seminar on the Dissemination of Knowledge of the Geneva Conventions, held at Warsaw in March 1977,¹ a group of military experts outlined a table of priorities according to

¹ Organized jointly by the International Committee of the Red Cross and the Polish Red Cross, and attended by representatives of 23 National Red Cross Societies of European and North American countries. — The experts' full report was published in the *International Review of the Army, Navy and Air Forces Medical Services*, Liège (Belgium), Nos. 9-10 (1977) pp. 737 ff.

specific levels (see Table 1, below), showing the knowledge required concerning the law of war. So as not to include too much detail, which might be confusing, only the numbers of the articles and the keywords relating to the subject mentioned have been indicated.

The table offers suggestions and is not meant to be exhaustive. It was drawn up on the basis of the requirements of the combat troops of the land forces. Adjustments and amendments are necessary where naval and air forces are concerned. Similar tables may be devised for the internal needs of certain services, such as the prisoners' service (camps, transit camps, general administration), medical service (from combat units to central command), military police (here, national data are particularly important as the organization of the police varies greatly from State to State), administration of occupied territory (law and order, logistics, justice, etc.).

The teaching of military personnel should not start from nothing; it should be able to count on at least an elementary set of moral principles based on the respect of the human person which the soldiers will have acquired at school while still in civilian life prior to their recruitment.

Within the armed forces, the main effort of instruction should be directed to privates, who are in the majority and who go into action on the battlefield; they should be the first to receive instruction.

When teaching privates, consideration should be given to the most unfavourable circumstances, when the fighting man, almost or entirely alone, suddenly has to face the unexpected: an enemy who surrenders, a wounded soldier lying across his path, a civilian who moves into his line of fire just as he is about to squeeze the trigger, an objective which is found during an attack to be marked with a red cross, etc. Such situations demand a response which should not only be immediate, but should be above all correct and in conformity with the law of war.

These responses should be as automatic to every soldier as is his use of weapons. They should occur under all circumstances, especially when a soldier, alone in action, is in hostile surroundings, caused either by the enemy or by the natural environment; when his nerves are stretched almost to breaking-point, when he has seen his best friends killed or dying, when he has been ambushed, maybe by irregular forces, or when he is suffering from bad weather or extremes of cold or heat.

It is not only the men belonging to the fighting units proper who should develop such reflexes. Sudden and unforeseeable situations, due to transportation by air, parachuting, or guerrilla action, may develop anywhere at any time, even in reputedly safe zones located far behind the front. Therefore, all members of the armed forces should be trained to act automatically. Such reflexes are achieved only by intensive training and, above all, by constant repetition. This instruction should result in observance of at least the minimum obligations required to produce behaviour in conformity with the law of war, such obligations

TABLE 1 PRIORITIES ACCORDING TO SPECIFIC LEVELS

Prior to recruitment	General principles	
Privates	"The Soldier's Rules"	
Non-commissioned officers	As above, with all or some of the articles taught to lieutenants and captains	
Lieutenants to captains	As above and: H WL: 22-28 H WL: 32 G 1-4: 3 G 1: 15-18 G 1: 24, 25 G 3: 4 G 3: 5 G 3: 12-20 G 4: 27-34 H CP: 4 H CP: 8, 9 G 1: 49, 50 G 2: 50, 51 G 3: 129, 130 G 4: 146, 147 H CP: 28	conduct of combat bearer of flag of truce (respect) minimum rules protecting persons not or no longer taking part in hostilities care for wounded; the dead medical personnel and chaplains prisoner-of-war status prisoners of doubtful status protection and evacuation of prisoners of war protection of civilians cultural property (general protection) cultural property (special protection) penal sanctions (general provisions, grave breaches)
Majors to colonels/brigadiers	As above and: H WL: 33, 34 G 1: 19, 21, 22 G 4: 15, 17 G 4: 18, 19	bearer of flag of truce (treatment) military medical establishments neutralized zones; local arrangements civilian hospitals
Division commanders and higher levels	As above and: G 1: 23 G 1: 28, 29 G 4: 14 H CP: 11	hospital zones and localities captured medical personnel (status) hospital and safety zones and localities cultural property (special protection: withdrawal of immunity)
At commander-in-chief level	all Conventions	

Abbreviations: see p. 26.

being set out in a sort of code, called the "Soldier's Rules", like the one drawn up by military experts at the Warsaw Seminar (see Table 2).

Leaders of small units might also find themselves in the same situation as the isolated soldiers. Patrol, section or platoon leaders and even company commanders should react immediately to ensure respect of the law of war. All these leaders must make their decisions alone.

As a general rule, the higher the level the greater should be the range of knowledge of the law of war. Though problems are more complex, they are not so urgent, and the commander has more time and, especially, a staff at his disposal, to work out solutions.

However, even at the level of units comprising a staff, the teaching of the law of war should not be too concerned with minute details. Apart from fundamental or current matters, the problem mainly consists in knowing where to search and find answers and solutions to the questions raised. If a particular question cannot be answered with the assistance of a specialist from the staff or with the documentation available, one should know to what superior or parallel level or service one should apply.

Needless to say, at commander-in-chief and government level all problems related to the law of war should be solved.

6. Teaching methods in general

The ultimate purpose of the teaching of the law of war being to ensure genuine respect for that law, such teaching must be made creditable. A favourable climate must be created and, especially, the authorities responsible for the instruction of the armed forces in the first place, and all military leaders in the second place, must be won over.

Only men convinced of the need and creditability of the law of war will wish to do and know how to do what is required to ensure its respect. This consideration must guide the choice of methods.

Abbreviations used in Table 1

H WL	Regulations respecting the Laws and Customs of War on Land, The Hague, 1907
G 1	First Geneva Convention of 1949
G 2	Second Geneva Convention of 1949
G 3	Third Geneva Convention of 1949
G 4	Fourth Geneva Convention of 1949
G 1-4	Article common to the four Geneva Conventions of 1949
H CP	Convention for the Protection of Cultural Property in the event of Armed Conflict, The Hague, 1954

TABLE 2 THE SOLDIER'S RULES

1. Be a disciplined soldier. Disobedience of the laws of war dishonours your army and yourself and causes unnecessary suffering; far from weakening the enemy's will to fight, it oftens strengthens it.
2. Fight only enemy combatants and attack only military objectives.
3. Destroy no more than your mission requires.
4. Do not fight enemies who are "out of combat" or who surrender. Disarm them and hand them over to your superior.
5. Collect and care for the wounded and sick, be they friend or foe.
6. Treat all civilians and all enemies in your power with humanity.
7. Prisoners of war must be treated humanely and are bound to give only information about their identity. No physical or mental torture of prisoners of war is permitted.
8. Do not take hostages.
9. Abstain from all acts of vengeance.
10. Respect all persons and objects bearing the emblem of the Red Cross, Red Crescent, Red Lion-and-Sun, the white flag of truce or emblems designating cultural property.
11. Respect other people's property. Looting is prohibited.
12. Endeavour to prevent any breach of the above rules. Report any violation to your superior. Any breach of the laws of war is punishable.

There can never be only one correct method; but there are principles valid in general for every type of teaching. The choice of methods depends on the objectives to be reached in accordance with the priorities which have been fixed.

The methods used to teach the privates, whose responses must be automatic, will be quite different from those suitable to levels and specialists confronted by problems demanding consideration and study.

It is important to avoid teaching systems which are too complicated. As for the choice of subjects to be taught and the people to be taught, methods must be simple and must concentrate on essentials.

The teaching of the law of war must cease to be marginal, as it all too frequently is, and must become an integral part of the day-to-day work and life of the soldier. It must no longer be a sideline, and an exception, or even an unwelcome task which is mentioned as little as possible, if at all, on the pretext that programmes are already overloaded or that a teacher is not available.

It is better not to speak of the law of war at all than to discuss it badly, haphazardly or without conviction.

As long as the teaching of the law of war remains marginal, it will not have any lasting effect. We must therefore introduce law of war problems regularly and as frequently as possible into the work and exercises of staffs and units.

These preliminary remarks lead us to two types of teaching; one we shall call "*teaching to convince*", and the other "*teaching properly so called*" which is intended to have a lasting effect. This second teaching is not to be confused with current information of mainly transient effect and akin to public relations.

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"*Teaching to convince*" is for persons who, by reason of both their position in the national administration and their personal ability, are capable of understanding and especially of ensuring, in a creditable and effective manner, the teaching of the law of war right down to the level of the privates.

This teaching does not and should not claim to produce specialists. Its aim is to show the problems raised by the law of war, what is of general interest, and what is of concern only to specific arms, services or functions. Next, the international regulations should constantly be studied in relation to the specific aspects of national military organization. This must all be done without losing sight of the need to adopt the most appropriate methods of teaching.

The teaching designed "to convince" may with advantage cover topical law-of-war problems requiring additional measures to be taken by every State and its armed forces. This is the case in anticipation of the forthcoming ratification and application of the Protocols additional to the Geneva Conventions of 1949.

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In "teaching properly so called", at all levels and for every specialty, the first and constant concern should be to remove the marginal character of the teaching of the law of war. It is not just a matter of incorporating this subject into teaching programmes; what is required especially is to ensure that everyone actually participates in accordance with the demands of his functions. No one should feel that he is wasting his time on the law of war or that he is being given something to do for want of more useful work.

The leaders must exert some imagination to conceive of exercises and a suitable scenario.

The outline of teaching with general needs in mind will be as follows:

Lectures, regulations, booklets and if possible films, may serve to give an introductory lesson to the company. For privates the main part of the work will be done during individual or squad combat exercises; for NCOs and officers it will be done during practical training sessions.

For majors and upwards there will be few lectures but mainly seminars at which more complex problems may be discussed. At these levels, practical training will take place during tactical and special exercises, at commander-in-chief level during strategic exercises. For the ranks from major to colonel there will be individual work as well as staff work, above them it will mainly be staff work. At division and higher levels, relations with the civilian authorities and the population will also be dealt with, while at commander-in-chief level a large part of the work will be devoted to international problems.

Within the armed forces practical detailed procedures will take into account the special needs of each type of unit. For a section, or platoon, belonging to a company of a battalion, which itself belongs to a divisional regiment or brigade, the practical detailed procedures will not be the same as for an isolated patrol or other small independent unit. Another example is that detailed procedures for infantry will differ from those for armoured units. Each unit must consequently adapt the general teaching methods to its own requirements.

When establishing teaching concepts it is important to avoid pictures which may be interpreted in a manner contrary to what was intended.

Simplification by the use of pictures is sometimes dangerous. For example, an illustration of the prohibition of a particular action against a specific object might give the impression that any other hostile act against that same object is lawful. This is the case of a picture sometimes shown depicting a soldier about to empty into a reservoir a recipient bearing the skull and cross-bones and the word "poison". This is intended to show that it is not permitted to poison water. Yet it has been inferred that this picture recommends the destruction of that very same reservoir by the use of explosives. Common sense indicates often that the reservoir must not be harmed, for the attacker would derive no advantage from destroying the water supply of the locality he wishes to take, since the water supply would peter out only some hours after destruction of the reservoir. Such destruction will be of no use to the attacker and will in no way inconvenience the defender. On the other hand, the attacker will suffer the consequences once the objective is taken.

Teaching to small units and privates must be kept simple. Repeated exercises are essential; demonstrations and audiovisual methods should only be used by way of introduction to the teaching. It should never be forgotten, incidentally, that expensive training methods can be used on a large scale only in few countries, and therefore do not lend themselves to constant repetition at lower levels.

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General information on the law of war is given in a number of ways, including occasional lectures, courses, articles in the daily press and in periodicals, booklets and all kinds of audiovisual techniques. Such information is frequently for all and sundry.

General information is usually more occasional than regular and makes no demands on the audience. However, when it is conveyed methodically and repeated continually, it can fulfil a public relations function by creating a favourable climate for understanding and respect for essential humanitarian principles.

7. Example of teaching "to convince"

Since its foundation in 1970, the International Institute of Humanitarian Law (San Remo) has considered that one of its essential tasks was to contribute to the dissemination of knowledge of the law of war among the armed forces. To do so it set up a general concept of teaching

TABLE 3 INTERNATIONAL COURSES ON LAW OF WAR FOR OFFICERS
(General working programme of the International Institute of Humanitarian Law)

	Wednesday	Thursday	Friday	Saturday	Sunday	Monday	Tuesday	Wednesday
Morning	Opening	GC introduction L hostilities S hostilities	GC combatants L medical service S medical service	GC protected places * ad hoc teaching	No ** scheduled activities	Exercise I	GC civilians L neutrality S neutrality	Exercise II Closure
Afternoon	L introduction S introduction	GC hostilities L combatants S combatants	GC medical service L protected places * S protected places *	No ** scheduled activities	No ** scheduled activities	GC exercise I L civilians S civilians	GC neutrality L application L/S dissemination	

* "Protected places" = term covering places and establishments enjoying particular status: e.g. safety and/or hospital zones and localities, medical establishments, cultural property.

** Saturday afternoon and Sunday can be used by the teaching staff to prepare work for the second week, taking into account the experience of the first week.

L = lecture (45 min.) S = seminar (120 min.) GC = general conclusions (15 min.).

and a detailed working plan for courses of the type "to convince". Since 1976 it has been organizing international courses on the law of war for officers.¹

These courses are intended for high ranking officers with the necessary authority to ensure the effective dissemination of knowledge of the law of war in the armed forces, and also, for a wide range of specialists, to show at seminars and exercises the peculiarities of the various arms and services.

Teaching is given subject by subject and is not a systematic study of the Conventions one after the other (see Table 3). In this way, similar and related problems are dealt with together. The choice of subjects and the order in which they are dealt with depend on their importance for the armed forces.

Emphasis is laid on work in small groups. Each main subject is introduced in one short lecture for the whole course. Practical work then takes place in the form of seminars in classes of ten participants at most. This practical work is supplemented by two exercises.

Seminars and exercises are based on actual tactical situations. They are intended to demonstrate the tasks of the various levels in the law of war, the importance of inter-service and inter-arm relations, to show and solve the problems which occur in combat and, finally, to elaborate the most suitable methods of teaching troops the essential principles of the law of war.

At the end of each seminar and exercise the course director draws up the general conclusions on the essentials to be kept in mind.

In the exercises in which each participant assumes a specific function (commander or member of a staff), it is important to carry to extremes, up, down and sideways, the events which have occurred and the decisions which are taken at a given level. By such action, one goes beyond the abstract and relates international provisions to the specifics of the organization and terminology peculiar to States and their armed forces.

In dual action exercises, one approaches law of war problems from various angles and stimulates discussion between neutrals and belligerents, likewise between opposing belligerents, in the latter case directly or through a third party (protecting powers, International Committee of the Red Cross, United Nations and UN forces, UNESCO). An extract of a scenario is given in Table 4.

In addition to the teaching of the main subjects there is special instruction on, for example, the Red Cross and problems of interest more especially to certain participants (e.g. air warfare, sea warfare). This teaching is given in *ad hoc* lectures for which half-a-day is set aside midway through the course.

¹ The general concept has already been presented in *The Military Law and Law of War Review*, Brussels, Vol. XV-1-2 (1976), pp. 171 ff.

**TABLE 4 DUAL ACTION EXERCISE: ALPHALAND
AT WAR WITH BETALAND**

Extract from a quick-action scenario

Time	Event	Communicated to:	
		ALPHA- LAND	BETA- LAND
2110	Company Commander requests artillery fire to destroy observation post in church tower		Battalion
2114	Section requests explosives to blow up village water reservoir		Company
2118	An ALPHALAND company has retaken village Z and has learnt that BETALAND has taken away some of the inhabitants to BETALAND	Battalion	
2122	Delegate of the International Committee of the Red Cross asks to visit the POW camps in BETALAND		Commander-in-Chief
2126	Mayor of X, a town in ALPHALAND, asks for neutral status for eastern part of the town to protect the population from the fighting	Division	
2130	Mixed Medical Commission arrives at POW camp 27 in ALPHALAND	Commander of POW camp	
2134	In view of the threat from BETALAND the regional government proposes to declare its capital an "open town".	Government	
2138	Message announcing overflight of BETALAND territory by an ALPHALAND medical aircraft conveying seriously wounded		Anti-aircraft battery
2142	BETALAND advances rapidly towards POW camp 12 and the military hospital Q in ALPHALAND	Commander of rear zone	
2146	First two BETALAND tanks destroyed as they reach the outskirts of the "open town"		Tank company
2150	ALPHALAND government requests repatriation of its medical personnel captured by BETALAND		Government
2154	An NCO: "I have four prisoners and am making them remove mines"	Section	
2158	A POW has killed a guard in POW camp Y in BETALAND		Commander of POW camp
2202	BETALAND military police chief in occupied town X: "6 armed civilians captured"		Commander of rear zone

Experience has shown that these courses “to convince” require very careful preparation. Repetitions and loopholes must be avoided, and balanced teaching throughout the course is indispensable. For that purpose, subjects must be well defined, and the same applies to whatever is planned for the introductory lecture and what is set aside for the actual seminar. Once these limits have been defined, the content and the proceedings of the lectures, seminars and exercises will be recorded in a teaching guide for lecturers and class leaders.

To ensure optimum results, each course must be in one language only. Consequently, there cannot be a permanent teaching staff, which would be the ideal system from the point of view of instruction. The thorough preparation of the teaching staff, particularly of the class leaders, before the course, is therefore of the greatest importance. The director of the course and the class leaders should review all seminars and exercises. It is of advantage for them to know beforehand the lectures prepared by the lecturers.

The lecturers' qualifications must include a minimal military background, combined with a sound knowledge of what they are to teach, while for the class leaders, the main need will have to be a sound training in co-ordinated arms actions, a need which is best satisfied by general staff officers with wide practical experience.

Nevertheless, and whatever the extent of preparation of the course and of the teaching staff, account must be taken of the special fields in which those taking the course are qualified; these are often unknown before the course so that the teaching must be adjusted in terms of their needs. The whole concept of the course must allow of flexibility, which is possible only if the course director is firmly in control.

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The International Institute of Humanitarian Law has organized three “international courses on the law of war for officers”:

First course: 16-23 June 1976, at San Remo (Villa Nobel, the Institute's headquarters), in French. Participants: Belgium, Congo, Iran, Italy, Switzerland, Zaïre.¹

Second course: 15-22 June 1977, San Remo (Villa Nobel), in French. Participants: Belgium, Cameroon, Canada, Spain, Iran, Switzerland.

Third course: 7-14 September 1977, Florence (*Scuola di guerra aerea*), in Italian. Participants: Italy and Switzerland.²

In future the courses will be given also in other languages.

¹ Complete course published in: *Collana di studi del Comitato italiano per le ricerche sulla pace*, Rome, Vol. VI (1977) and in: *The Military Law and Law of War Review*, Brussels, Vol. XVI-1 (1977).

² Complete course to be published in: *Rassegna dell'Arma dei Carabinieri*.

8. Automatic responses of privates

As priority in teaching must be given to the privates, the main consideration in the choice of methods should be the automatic responses to be inculcated into every soldier.

These responses can only be obtained by correctly and regularly repeated action. The soldier must therefore carry out the exercises himself, for repeated practice cannot be replaced by the words of a teacher or by audio-visual means. This applies to the law of war just as it does to driving a car or using a weapon. One cannot learn to drive a car or shoot a rifle by watching a film, seeing the projection of a few slides or looking through a picture book. These are only secondary means, useful for giving an initial example or providing general information. What finally matters is the personal action, regularly repeated.

Let us refer again to the example of a captured adversary, taking a case in which a squad led by an NCO has reached its objective, an isolated house. One man in the squad enters the basement and finds an enemy who was unable to escape and stands with his hands in the air. His weapon is on the ground at his feet. What must be done? There is no time to hesitate, for the squad's mission continues and the problems created by the surrendering adversary must be solved at once.

Generally speaking, it should be made clear

- (a) that enemies who are surprised, who are unable to fight or who surrender must be captured;
- (b) that they must be disarmed, by taking from them any military equipment used for combat, but leaving them with military equipment which serves as clothing, food and protection, along with their personal effects;
- (c) that they must be evacuated as quickly as possible (by specified route and means of transport, and to a given destination);
- (d) that while awaiting evacuation, they must be guarded and as much as possible sheltered from the fighting;
- (e) what should be done with their weapons and military equipment.

It is advisable to incorporate these requirements into an aide-memoire providing a kind of "recipe" for the instruction, for a simple, direct and practical teaching adapted to the lower levels of the military hierarchy. It should provide answers to the problems confronting the combatant.

Other aide-memoires or "recipes" can be provided for other categories of captured men, for the wounded, the special cases of medical personnel and chaplains, and for the dead. "Recipes" may also deal with the correct conduct with regard to medical establishments and vehicles, cultural property, etc.

It is up to the armed forces in each State to prepare the necessary aide-memoire. On the basis of a particular scenario for each case, these will set forth the consecutive measures that the leader, or even the isolated man, should take. For evacuations, the way to follow and the final destination should be indicated.

The aide-memoire for the training of men is designed for company commanders, that is for the captains who are responsible for the preparation and engagement in action of all the means of combat of their unit.

For practical instruction, still using the example of a captured enemy, the director of the exercise needs only to choose a man to represent the enemy who surrenders and to specify his posture and location. His capture and subsequent treatment will then follow the aide-memoire. In an initial exercise, the case should be simply that of an enemy soldier. Later, difficulties may be added, by capturing an enemy who has important military documents or by confronting the NCO with more than one enemy so as to make his mission difficult to fulfil.

To simulate the treatment of the wounded, the director of the exercise will find it useful to have the co-operation of a military doctor, who will describe the condition of the patient and judge the correctness of the steps taken. Teaching of the law of war can thus be effectively combined with first aid training.

In the same way, the director of the exercise may call upon the services of a military chaplain to deal with the problems presented by the dying and the dead.

The questions raised above are of concern in training the privates. In the company as a whole, adequate teaching must also be given to the officers and main NCOs, in the interest of order and discipline and to reconcile the needs of captured persons with tactical requirements.

In addition, it is necessary to specify where and when the interrogation is to take place and who is responsible for it. This is obviously of concern to the intelligence service. Differences of language may create difficult problems calling for special rules. Each army will establish the procedure to be followed, taking into account its own needs and possibilities.

Another problem is that of the number and qualifications of the persons captured and the importance of the documents seized. Here again, the soldier must be told what to do. The aide-memoire cannot however cover every contingency without becoming overloaded. It is therefore important to specify that every capture must be reported to a superior as quickly as possible. It is up to the superior to take the necessary steps, for example to deal immediately with a captured officer in whom the intelligence service will be interested, or to reinforce the unit which has captured so many enemies that it may be unable to disarm, guard and protect them properly or evacuate them without jeopardizing its mission.

9. Problems raised by the Protocols additional to the Geneva Conventions of 12 August 1949

On 8 June 1977, at Geneva, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law adopted two Protocols additional to the Geneva Conventions of 12 August 1949.

Unlike their precursors, the 1949 Conventions were not revised, and the risk was thus avoided of calling into question what had already been achieved. On the other hand, numerous subjects are now covered by separate texts.

A great deal of work must therefore be done within each State and especially in its armed forces. With a view to obtaining ratification and to putting the Protocols into effect, summaries must be made of the Conventions and Protocols, and a complete body of regulations governing specific subjects must be worked out. This procedure is necessary whenever a provision of one of the Protocols develops one or another of the Conventions only to a slight degree or only on a matter of detail, which is often the case. When, on the other hand, a Protocol provides an almost total innovation, one may use the Protocol as the essential basis, with relatively little reference to the Convention. This is the case for example for medical aircraft and their identification, since the slight references made in the First and Second Conventions are repeated in full and widely developed in Protocol I.

This work must primarily be done for combatants who, confronting an enemy, need clear, exact and immediately applicable instructions.

The Protocols contain some provisions, often rather long, which are the results of concessions which had to be made in order to reach agreement. A number of these concessions resulted in a loss of clarity and the possibility of various interpretations. There is great danger in such cases that States, in their internal documents providing for execution of the Protocols, will give too special an interpretation to certain provisions of the Protocols.

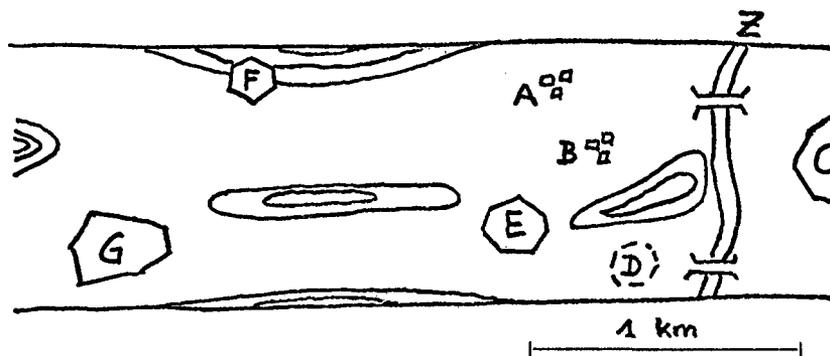
Other provisions indeed are even incomprehensible to the military mind, such as the definition which states that "Attacks mean acts of violence against the adversary, whether in offence or in defence". (Protocol I, article 49). But for any normally trained soldier, attack is one thing and defence another.

Consequently, in order to make the Protocols more creditable and hence truly applicable, it is essential to clarify for the armed forces points which are not clear and to "translate" into terms comprehensible to any soldier such phrases as that defining "attacks".

The International Institute of Humanitarian Law, conscious of the problems presented to the armed forces, especially by Parts III and IV of Protocol I, considered that it was not only useful but that it was its duty to study them thoroughly and to propose solutions, in the very interest of obtaining ratification and eventual application of the Protocols.

TABLE 5 COMMON TACTICAL DATA

Terrain



- A 3 houses (30 inhabitants)
- B 3 multi-storeyed buildings (300 inhabitants)
- D ancient ruins
- E 500 inhabitants
- F 100 inhabitants
- G 800 inhabitants

bridges—equal capacity

northern bridge—tower at each end

Missions

- *tank battalion* (2/3 tanks, 1/3 mechanized infantry)
to capture village C
- *infantry battalion*
to prevent adversary from reaching river Z and to bar passage near village F

TABLE 6 LEGAL BACKGROUND

Test 1

Law now in force (mainly the Hague Regulations on land warfare, 1907)

Test 2

Same as test 1, plus the following:

- 1 100-bed civilian hospital at G
- 1 cultural object under special protection: ancient ruins D
- 1 cultural object under general protection: northern bridge and its two towers
- 1 chapel on hill north of ruins D

Test 3

Same as test 2, but with the following provisions:

Protocol I, Article 57—*Precautions in attack*

Protocol I, Article 58—*Precautions against the effects of attacks*

In this spirit, the Institute took the occasion of two of its international courses on the law of war to carry out some practical tests. These courses, of the type "to convince", took place respectively at San Remo in June 1977 and at Florence in September 1977, after adoption of the final texts of the Protocols.

The tests were related to Parts III and IV of Protocol I, and especially to the military implications of new provisions dealing with conduct of combat.

To arrive at valid conclusions from the tests, it was essential to postulate conditions as simple and as similar as possible, so as not to lose sight of essentials and avoid becoming bogged down in details.

For this purpose, a very simple model was adopted: a strip of terrain 1 km wide and 3 km in depth. In this sector were two opposing battalions, one on the offensive and the other on the defensive. To bring into play the characteristics of different arms, the attacking unit was a tank battalion and the defending one an infantry battalion. The terrain was partly open ground suitable for tanks, and partly impracticable for armour, and therefore favourable for the infantry, due to its configuration, cover and inhabited zones (see Table 5).

Some conditions had to be imposed that were unlikely to occur very often in reality. To reach the direct confrontation between the adversaries and present both of them with the same problems, it was assumed that the defensive sector of one should correspond exactly to the attack stripe of the other.

To bring into evidence the consequences of different legal backgrounds, the same test was carried out three times on the same terrain with the same battalions having the same missions: the first time on the basis of the prevailing law (essentially that of the Hague Regulations on land warfare of 1907); the second time with the addition of a hospital and of two types of cultural property (one under special protection and one under general protection) and a chapel; and the third time the same as the second, but under the limitations of Articles 57 (Precautions in attack) and 58 (Precautions against the effects of attacks) of Protocol I (see Table 6).

The three tests produced the following results:

In tests 1 and 2, the Hague Conventions of 1907 (land warfare) and of 1954 (cultural property) and the Geneva Conventions of 1949 presented no obstacle to the conduct of combat, on the condition that in the same sector the protected places (civilian and military medical establishments, hospital and/or safety zones and localities, cultural property, etc.) were not too numerous, too large or too significant.

With regard to the new provisions of Protocol I, checked in test 3, it was found that those which impose restrictions and measures of precaution upon the combatants should not be regarded as being

addressed individually to each soldier. In such a hypothesis, these provisions would not be very creditable and therefore would be hardly applicable.

One cannot imagine, to take the case of an attacking tank battalion, that each one of the 30 or 40 tank leaders would, on his own, and constantly, balance "the concrete and direct military advantage anticipated" against the losses and damage which might be entailed in the civilian sector. Nor can one imagine that each of these tank leaders would interrupt the attack, that is, that he would stop his own tank in the midst of the general advance. Such estimates and the decisions resulting from them are still not conceivable at the level of the platoon (or section), the company, or the battalion. It would produce enormous confusion on the battle area, such confusion as to forbid any co-ordinated and hence successful military action, unless it were conducted in a completely desert zone.

Test 3 was therefore repeated at the level of the division. So as to permit comparisons, the figures for the sector were simply multiplied by 10, from an area 1 km in width and 3 km in depth to one of 10 km by 30 km, with 10 times the number of inhabitants in each locality (Table 7).

This variant of test 3 showed that what is inconceivable for a battalion becomes possible at division level and above. It is nevertheless incumbent upon the defender, whenever possible, to evacuate the population from the regions in which he intends to fight, so as to minimize the risks to the civilian sector. One must bear in mind that wherever he is, the defender will draw the fire of the attacker.

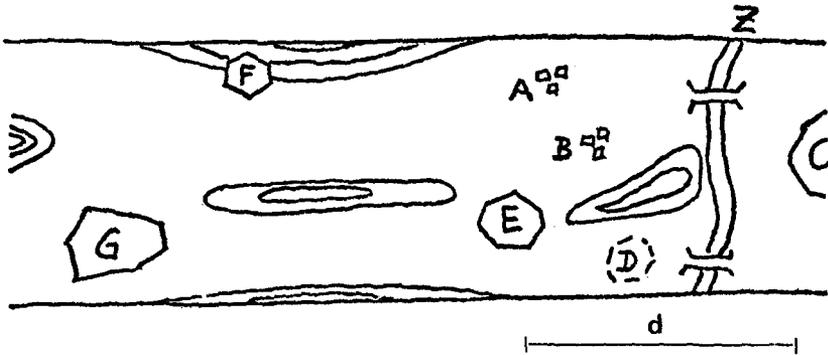
The measures and precautions set forth in particular in Articles 57 and 58 of Protocol I take a certain time to put into effect and have to be co-ordinated. It will nevertheless not always be possible to do all this in time, especially in the event of an improvised attack or defence, that is, in the case of units engaged while they are in movement, or in the case of reserves urgently rushed into battle.

On the other hand, whether in planning the attack or the defence, great precautions should and must be taken at and above the divisional level. It is at these levels that the co-ordinated arms action is planned and conducted, concentrating in a single area all the firepower available.

A great responsibility is therefore imposed upon the commanders of divisions and of groups of several divisions, to ensure the application of and respect for the provisions of Protocol I relating to conduct of combat. One cannot expect the impossible of them, however.

It is essential to reckon with these new provisions of the law of war already at the level of the government which assigns missions to their armed forces. One must not order missions which cannot be carried out and simply leave it to the subordinates to do the best they can. Too many "legal obstacles" added to the difficulties of the terrain may render an

TABLE 7 TEST 3 AT BATTALION
AND DIVISIONAL LEVELS



Battalion level ($d = 1 \text{ km}$)

- A 3 houses (30 inhabitants)
- B 3 multi-storeyed buildings (300 inhabitants)
- D ancient ruins; cultural object under special protection
- E 500 inhabitants
- F 100 inhabitants
- G 800 inhabitants, with a 100-bed civilian hospital
- bridges—equal capacity
- northern bridge—tower at each end; cultural object under general protection
- chapel on hill north of ruins D

Division level ($d = 10 \text{ km}$)

- A 3 houses (300 inhabitants)
- B 3 multi-storeyed buildings (3,000 inhabitants)
- D ancient ruins; cultural object under special protection
- E 5,000 inhabitants
- F 1,000 inhabitants
- G 8,000 inhabitants, with a 1,000-bed civilian hospital
- bridges—equal capacity
- northern bridge—tower at each end; cultural object under general protection
- chapel on hill north of ruins D

action impossible. The danger is that they may bring soldiers to the point of seeing military necessities everywhere.

It is the responsibility of every leader to evaluate the real possibilities open to his subordinates before assigning a mission to them. If there are too many legal constraints in the sector he intends to entrust to a subordinate, it is up to him to take this into consideration, either by modifying the mission he had in mind or the sector he had envisaged, on the one hand, or by taking adequate measures himself with regard to the "legal obstacles", on the other.

10. Conclusions

The law of war is becoming more and more complicated and less and less creditable amongst the armed forces. Its teaching, often marginal and intermittent, has little effect.

It is no longer possible to teach everything to every soldier. Choices must be made. It is a question of priorities and methods.

The most urgent aim is to inculcate a minimum of automatic responses in every soldier. To achieve this, the teaching of the law of war must no longer be regarded as a marginal matter but must be integrated into everyday military life.

Respect for the law of war is a matter of order and discipline. It is the responsibility of leaders to give effect to it and to take it into account in the missions assigned to their subordinates so that recourse to military necessity will remain exceptional.

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