

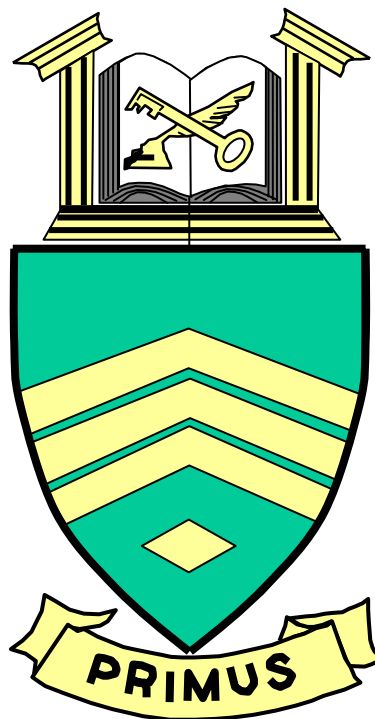
U.S. ARMY SERGEANTS MAJOR ACADEMY (FSC-TATS)

W652

JUN 06

LAW OF WAR

PRERESIDENT TRAINING SUPPORT PACKAGE



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PRERESIDENT TRAINING SUPPORT PACKAGE (TSP)

TSP Number / Title	W652 / LAW OF WAR
Effective Date	1 Jun 06
Supersedes TSP(s) / Lesson(s)	W652, LAW OF WAR, 1 Jun 2005
TSP Users	521-SQIM (DL), First Sergeant Course
Proponent	The proponent for this document is the Sergeants Major Academy.
Improvement Comments	<p>Users are invited to send comments and suggested improvements on DA Form 2028, <i>Recommended Changes to Publications and Blank Forms</i>. Completed forms, or equivalent response, will be mailed or attached to electronic e-mail and transmitted to:</p> <p>COMDT USASMA ATTN ATSS-DCF BLDG 11291 BIGGS FIELD FORT BLISS TX 79918-8002</p> <p>Telephone (Comm) (915) 568-8875 Telephone (DSN) 978-8875 E-mail: atss-dcd@bliss.army.mil</p>
Security Clearance / Access	Unclassified
Foreign Disclosure Restrictions	FD5. This product/publication has been reviewed by the product developers in coordination with the USASMA foreign disclosure authority. This product is releasable to students from all requesting foreign countries without restrictions.

PREFACE

Purpose

This Training Support Package provides the instructor with a standardized lesson plan for presenting instruction for:

Task Number

Task Title

Individual

181-433-1001

Conduct Company Level Combat Operations According to the Law of War

This TSP
Contains

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**LAW OF WAR (FSC PRE-RESIDENT)
W652 / Version 1
1 Jun 2006**

SECTION I. ADMINISTRATIVE DATA

All Courses Including This Lesson

<u>Course Number</u>	<u>Version</u>	<u>Course Title</u>
521 SQIM	1	First Sergeant Course

Task(s) Taught(*) or Supported

<u>Task Number</u>	<u>Task Title</u>
<u>Individual</u> 181-433-1001 (*)	Conduct Company Level Combat Operations According to the Law of War

Reinforced Task(s)

<u>Task Number</u>	<u>Task Title</u>
None	

Academic Hours

The academic hours required to teach this lesson are as follows:

Resident Hours/Methods

25 mins / Study Assignment

25 mins / Practical Exercise (Performance)

Test	0 hrs
Test Review	0 hrs

Total Hours: 1 hr

Test Lesson Number

	<u>Hours</u>	<u>Lesson No.</u>
Testing (to include test review)	3 hrs	E651 version 1

Prerequisite Lesson(s)

<u>Lesson Number</u>	<u>Lesson Title</u>
None	

Clearance Access

Security Level: Unclassified
Requirements: There are no clearance or access requirements for the lesson.

Foreign Disclosure Restrictions

FD5. This product/publication has been reviewed by the product developers in coordination with the USASMA foreign disclosure authority. This product is releasable to students from all requesting foreign countries without restrictions.

References

<u>Number</u>	<u>Title</u>	<u>Date</u>	<u>Additional Information</u>
Handbook 2004	Law of War Documentary Supplement	17 Sep 03	SH-1

Student Study

Assignments

-
- Read Student Handout 1.
 - Complete Practical Exercise 1.
-

Instructor Requirements

N/A

Additional Support Personnel Requirements

<u>Name</u>	<u>Stu Ratio</u>	<u>Qty</u>	<u>Man Hours</u>
None			

Equipment Required for Instruction

<u>ID Name</u>	<u>Stu Ratio</u>	<u>Instr Ratio</u>	<u>Spt</u>	<u>Qty</u>	<u>Exp</u>
None					

* Before Id indicates a TADSS

Materials Required**Instructor Materials:**

None

Student Materials:

- Pen or pencil.
 - Student Handout.
-

Classroom, Training Area, and Range Requirements

None

Ammunition Requirements

<u>Id</u>	<u>Name</u>	<u>Exp</u>	<u>Stu Ratio</u>	<u>Instr Ratio</u>	<u>Spt Qty</u>
None					

Instructional Guidance

Complete the practical exercise in accordance with the Pre-Resident Course instructions.

**Proponent
Lesson Plan
Approvals**

<u>Name</u>	<u>Rank</u>	<u>Position</u>	<u>Date</u>
Salcido, Benjamin	GS-09	Training Specialist	
Smith, Sandra	SGM	Chief Instructor, FSC	
Graham, Kevin	SGM	Chief, FSC	
Collins, Curtis R.	SGM	Chief, SMC	
Lemon, Marion	SGM	CMDD	

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SECTION II. INTRODUCTION

Method of Instruction: <u>Study Assignment</u>
Technique of Delivery: <u>Individualized self-paced instruction</u>
Instructor to Student Ratio is: <u>1:14</u>
Time of Instruction: <u>5 Mins</u>
Media: <u>None</u>

Motivator

As a first sergeant, you must prepare yourself to go to war and conduct operations according to the law of war. The law of war protects you and your soldiers. The law of war also protects noncombatants, and civilian and cultural property. Law of war violations put warriors and noncombatants at risk and require prosecution of those who violate the law of war.

Terminal Learning Objective

At the completion of this lesson, you [the student] will:

Action:	Define actions that prevent law of war violations and war crimes
Conditions:	As a first sergeant in a self-study environment given Law of War Documentary Supplement (SH-1).
Standards:	Defined actions that prevent law of war violations and war crimes IAW Law of War Documentary Supplement (SH-1).

Safety Requirements

None

Risk Assessment Level

Low

Environmental Considerations

NOTE: It is the responsibility of all soldiers and DA civilians to protect the environment from damage.

None

Evaluation

At the end of your Phase I training and before entering Phase II, you will take an on-line, multiple choice examination. It will test your comprehension of the learning objectives from this and other lessons in Phase I. You must correctly answer 70 percent or more of the questions on the examination to receive a GO. Failure to achieve a GO on the examination will result in a retest. Failure on the retest could result in your dismissal from the course.

Instructional Lead-In

This lesson covers the following topics: lawful and unlawful targets; excessive use of force; use of symbols, flags and uniforms; property; unnecessary suffering and harm; prisoners of war; and reporting violations of the law or war.

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SECTION III. PRESENTATION

NOTE: Inform the students of the Enabling Learning Objective requirements.

1. ENABLING LEARNING OBJECTIVE

ACTION:	Identify the key elements of the Hague and Geneva conventions and the actions to prevent violation of the law of war.
CONDITIONS:	As a first sergeant in a self-study environment given Law of War Documentary Supplement (SH-1).
STANDARDS:	Identified the key elements of the Hague and Geneva conventions and the actions to prevent violation of the law of war IAW Law of War Documentary Supplement (SH-1).

1. Learning Step / Activity 1. Hague and Geneva Conventions and Actions To Prevent Violation of the Law of War

Method of Instruction: Study Assignment
Technique of Delivery: Individualized, self-paced Instruction
Instructor to Student Ratio: 1:14
Time of Instruction: 15 mins
Media: None

To complete this learning step activity, you are to--

- Read the above ELO.
- Read Student Handout 1 (Appendix D).

2. Learning Step / Activity 2. Complete practical exercise.

Method of Instruction: Practical Exercise (Performance)
Instructor to Student Ratio: 1:14
Time of Instruction: 25 mins
Media: None

Complete the questions in the practical exercise without referring to the solution. Write your answers in the spaces provided.

- This is a self-graded exercise.
- It should take you approximately 25 minutes to complete the practical exercise.
- Complete the questions in pp C-2 and C-3.
- Compare your responses with the solutions on pp C-4 thru C-6.
- For any incorrect responses, review the appropriate reference/lesson material.

CHECK ON LEARNING: The practical exercise serves as a check on learning for ELO A.

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SECTION IV. SUMMARY

Method of Instruction: <u>Study Assignment</u>
Technique of Delivery: <u>Individualized self-paced instruction</u>
Instructor to Student Ratio is: <u>1:14</u>
Time of Instruction: <u>5 Mins</u>
Media: <u>None</u>

Check on Learning

The Practical Exercise in Appendix C serves as the Check on Learning.

Review / Summarize Lesson

Upon completion of this lesson you will be able to conduct company level operations according to the law of war. Adhering to the law of war will help protect yourself and your soldiers as well as noncombatants, and civilian and cultural property.

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SECTION V. STUDENT EVALUATION

**Testing
Requirements**

At the end of your Phase I training and before entering Phase II, you will take an on-line, multiple choice examination. It will test your comprehension of the learning objectives from this and other lessons in Phase I. You must correctly answer 70 percent or more of the questions on the examination to receive a GO. Failure to achieve a GO on the examination will result in a retest. Failure on the retest could result in your dismissal from the course.

**Feedback
Requirements**

NOTE: Feedback is essential to effective learning.
Please complete the student questionnaire and mail to USASMA.

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STUDENT QUESTIONNAIRE

Directions

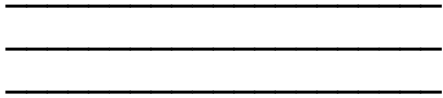
- Enter your name, your rank, and the date you complete this questionnaire.

Rank: _____ Name: _____ Date: _____

- Answer items 1 through 6 below in the space provided.
- Fold the questionnaire so the address for USASMA is visible.
- Print your return address, add postage, and mail.

Note: Your response to this questionnaire will assist USASMA in refining and improving this course. While completing the questionnaire, answer each question frankly. Your assistance helps build and maintain the best curriculum possible.

Item 1	Do you believe you have met the learning objectives of this lesson?
Item 2	Was the material covered in this lesson new to you?
Item 3	Which parts of the lesson were most helpful to you in learning the objectives?
Item 4	How could we improve the format of this lesson?
Item 5	How could we improve the content of this lesson?
Item 6	Do you have additional questions or comments? If you do, please list them here. You may add additional pages if necessary.



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Appendix A Figures Masters (N/A)

Appendix B Test(s) and Test Solution(s) (N/A)

Appendix C

PRACTICAL EXERCISE (S)/SOLUTION(S) FOR LESSON 1: W652 version1

PRACTICAL EXERCISE 1

Title	LAW AND ORDER						
Lesson Number/Title	W652 version 1 / LAW OF WAR						
Introduction	This practical exercise will give you an overview of this lesson and how well you were able to identify the elements of the Geneva Convention and ways to prevent violations of the law of war.						
Motivator	As a first sergeant, you must prepare yourself to go to war and conduct operations according to the law of war. The law of war protects you and your soldiers. The law of war also protects noncombatants, and civilian and cultural property. Law of war violations put warriors and noncombatants at risk and require prosecution of those who violate the law of war.						
Terminal Learning Objective	At the completion of this lesson, you [the student] will: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 15%;">Action:</td> <td>Define actions that prevent law or war violations and war crimes</td> </tr> <tr> <td>Conditions:</td> <td>Condition: As a first sergeant in a self-study environment given Law of War Documentary Supplement (SH-1).</td> </tr> <tr> <td>Standards:</td> <td>Defined actions that prevent law or war violations and war crimes IAW Law of War Documentary Supplement (SH-1).</td> </tr> </table>	Action:	Define actions that prevent law or war violations and war crimes	Conditions:	Condition: As a first sergeant in a self-study environment given Law of War Documentary Supplement (SH-1).	Standards:	Defined actions that prevent law or war violations and war crimes IAW Law of War Documentary Supplement (SH-1).
Action:	Define actions that prevent law or war violations and war crimes						
Conditions:	Condition: As a first sergeant in a self-study environment given Law of War Documentary Supplement (SH-1).						
Standards:	Defined actions that prevent law or war violations and war crimes IAW Law of War Documentary Supplement (SH-1).						
Safety Requirements	None						
Risk Assessment Level	Low						
Environmental Considerations	None						
Evaluation	This is a self-graded exercise.						
Instructional Lead-In	This lesson covers the following topics: lawful and unlawful targets; excessive use of force; use of symbols, flags and uniforms; property; unnecessary suffering and harm; prisoners of war; and reporting violations of the law of war.						
Resource Requirements	Instructor Materials: N/A						

Student Materials:

- Pen and pencil.
 - Student Handout.
-

**Special
Instructions**

None.

Procedures

Answer the questions in the space provided.

1. What is the term we use for anyone engaging in hostilities in an armed conflict on behalf of a party of the conflict?
2. What terms do we use for unavoidable and unplanned damage to civilian personnel and property incurred while attacking a military objective?
3. What does the term "Hors de combat" mean?
4. The law of war indicates that persons will lose their status as civilians if they do what?
5. What can you do to minimize collateral injury to civilians in a combat zone?
6. While attacking a military objective, soldiers may cause collateral or incidental injury to noncombatants. When is this collateral or incidental injury unlawful?
7. The law of war considers buildings dedicated to religion, art, science, and charitable purposes to be what kind of property?
8. List medical and religious emblems that we protect according to the law of war.
9. Medical units or establishments will lose their protection under the laws of war if they engage in what actions?
10. What kind of objective offers you a definite advantage if you destroy, capture, or neutralize them?

11. A white flag is an indication of a desire to what?

12. Combatants who commit actions in bad faith are guilty of what?

13. List three actions to protect civilian property.

14. Illegal weapons fall into three categories. The Protocols to the 1980 Conventional Weapons Treaty, prohibiting certain landmines, booby traps, and laser weapons is an example of which category of illegal weapon?

15. By whom and for whom were the general rules on how to treat prisoners of war developed?

16. If a POW violates the camp rules and regulations, how should you punish him?

17. During Desert Shield/Desert Storm we did not allow the news media to take close-up pictures of POWs. We did this to protect the POWs from what?

18. Under the Code of Conduct and Geneva Conventions, all POWs, American and otherwise, must provide what information to their captors?

19. "Grave breaches" are a type of war crime that roughly equate to what in our criminal law?

20. All parties to the Geneva Conventions must do what about persons responsible for war crimes?

**Feedback
Requirements**

Include any feedback to this exercise in the questionnaire.

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SOLUTION FOR PRACTICAL EXERCISE 1

1. What is the term we use for anyone engaging in hostilities in an armed conflict on behalf of a party of the conflict?

Combatant.

Ref: SH-1, para 1a.

2. What terms do we use for unavoidable and unplanned damage to civilian personnel and property incurred while attacking a military objective?

Incidental injury and collateral damage.

Ref: SH-1, para 1c.

3. What does the term "Hors de combat" mean?

Enemy personnel who are "out of combat."

Ref: SH-1, para 1f.

4. The law of war indicates that persons will lose their status as civilians if they do what?

Actively engage in hostilities

Ref: SH-1, para 2b.

5. What can you do to minimize collateral injury to civilians in a combat zone?

Evacuate civilians from a combat zone.

Ref: SH-1, para 2e.

6. While attacking a military objective, soldiers may cause collateral or incidental injury to noncombatants. When is this collateral or incidental injury unlawful?

When it is excessive in relation to the concrete and direct military advantage anticipated in the attack.

Ref: SH-1, para 2g.

7. The law of war considers buildings dedicated to religion, art, science, and charitable purposes to be what kind of property?

Cultural property.

Ref: SH-1, para 3b.

8. List medical and religious emblems that we protect according to the law of war.

Red Cross, Red Crescent and the Lion and Sun. The 1949 Geneva Convention does not mention the Red Star of David but we protect it as a matter of practice

Ref: SH-1, para 3h.

9. Medical units or establishments will lose their protection under the laws of war if they engage in what actions?

Acts harmful to the enemy.

Ref: SH-1, para 3l.

10. What kind of objective offers you a definite advantage if you destroy, capture, or neutralize them?

Military.

Ref: SH-1 para 4b.

11. A white flag is an indication of a desire to what?

Negotiate only.

Ref: SH-1, para 5c.

12. Combatants who commit actions in bad faith are guilty of what?

Treachery or perfidy.

Ref: SH-1, para 5a.

13. List three actions to protect civilian property.

1. Make minimization of collateral damage a key factor in the targeting process.
2. Do not treat several military targets located in a general civilian area as one large target.
3. Use real or artificial observation assets for indirect fire missions.

Ref: SH-1, para 6e.

14. Illegal weapons fall into three categories. The Protocols to the 1980 Conventional Weapons Treaty, prohibiting certain landmines, booby traps, and laser weapons is an example of which category of illegal weapon?

By agreement or prohibited by specific treaties.

Ref: SH-1, para 7b(3).

15. By whom and for whom were the general rules on how to treat prisoners of war developed?

By warriors for warriors.

Ref: SH-1, para 8a.

16. If a POW violates the camp rules and regulations, how should you punish him?

By court-martial or an administrative proceeding.

Ref: SH-1, para 8j.

17. During Desert Shield/Desert Storm we did not allow the news media to take close-up pictures of POWs. We did this to protect the POWs from what?

Further humiliation and his own government.

Ref: SH-1, para 8l.

18. Under the Code of Conduct and Geneva Conventions, all POWs, American and otherwise, must provide what information to their captors?

Name, rank, service number, and date of birth.

Ref: SH-1, para 8n.

19. "Grave breaches" are a type of war crime that roughly equate to what in our criminal law?

Felonies.

Ref: SH-1, para 9b.

20. Parties to the Geneva Conventions must do what about persons responsible for the commission of war crimes?

Search for and punish.

Ref: SH-1, para 9f.

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Appendix D

HANDOUTS FOR LESSON 1: W652 version 1

This appendix contains the items listed in this table

Title/Synopsis	Pages
SH-1, Law of War Handout	SH-1-1 thru SH-1-16

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Student Handout-1

Extracted Material from Law of War Documentary Supplement

This student handout consists of 15 pages of material provided by the Judge Advocate General School:

Law of War Documentary Supplement, Sep 2003

Disclaimer: The Judge Advocate General provided this student handout. The text is verbatim from the original source document and may contain passive voice, misspelling, grammatical errors, etc., and may not be in compliance with the Army Writing Style Program.

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Law of War

1. Lawful and unlawful targets.

a. Combatants are lawful targets. The law of war defines combatants as follows: Anyone engaging in hostilities in an armed conflict on behalf of a party to the conflict. Combatants are lawful targets unless "out of combat." Lawful Combatants receive protections of Geneva Conventions of 1949, specifically, the Geneva Convention for the Wounded and Sick in the Field (GWS), Geneva Convention for the Wounded, Sick and Shipwrecked at Sea (GWS Sea), and Geneva Convention for Prisoners of War (GPW). The Geneva Conventions definition of Combatant: under responsible command, wears distinctive sign recognizable at a distance, carries arms openly, and abides by the law of war. (GPW, art 4; GWS, art 13.) [Protocol I Definition. Article 44(3) of the 1977 Protocol I to the Geneva Conventions of 1949 (GP I) requires that a belligerent attains combatant status by merely carrying his arms openly during each military engagement, and when visible to an adversary while deploying for an attack. GP I thus drops the requirement for a fixed recognizable sign. The United States believes this does not reflect customary international law and diminishes the distinction between combatants and civilians, thus undercutting the effectiveness of the law of war.]

b. Military objectives are lawful targets. They are objects that by their nature, use, location, or purpose makes an effective contribution to military action. (FM 27-10, para 40, GP I, art 52(2).) The destruction, capture or neutralization must offer a definite military advantage. There must be a nexus between the object and a "definite" advantage toward military operations. Examples: munitions factory, bridges, railroads.

c. Incidental injury and collateral damage are unavoidable and unplanned damage to civilian personnel and property incurred while attacking a military objective. Incidental or collateral damage is not a violation of international law. While no law of war treaty defines this concept, its inherent lawfulness is implicit in treaties referencing the concept.

d. The law of war prohibits attacks on noncombatants.

e. According to the law of war, you may not use civilians and civilian property as the subject or sole object of a military attack. Civilians are persons who are not members of the enemy's armed forces and who do not take part in the hostilities (GP I, art 50 and 51).

f. The law of war contains prohibition against attacking enemy personnel who are "out of combat." Those out of combat include the wounded and sick, prisoners of war, parachutists and medical personnel. We call these personnel, "Hors de combat."

g. Those soldiers who have fallen by reason of sickness or wounds and who cease to fight are to be respected and protected. The definition of wounded and sick includes civilians (who because of trauma, disease, . . . are in need of medical assistance and care and who refrain from any act of hostility) (GP I, art 8). The law of war requires you to respect and protect shipwrecked members of the armed forces at sea (GWS Sea, art 12). Shipwrecked includes downed passengers/crews on aircraft, ships in peril, and castaways.

h. Anyone may surrender by any means that communicates the intent to give up. The laws of war contain no clear cut rule as to what constitutes a surrender. However, most agree surrender constitutes a cessation of resistance and placement of one's self at the discretion of the captor. The law of war puts the onus on the person or force surrendering to communicate intent to surrender. Captors must respect (not attack) and protect (care for) those who surrender--no reprisals. (GPW, art 4; Hague Regulations Respecting the Law and Customs of War on Land (HR), art 23c, d.)

i. According to FM 27-10, para 30, you may presume paratroopers are on a military mission and therefore you may target them. The law of war presumes parachutists who are crewmen of a disabled aircraft to be out of combat. You may not target them unless it's apparent they are engaged on a hostile mission. Parachutists, according to GP I, Article 42, "shall be given the opportunity to surrender before being made the object of attack."

j. The law of war considers medical personnel out of combat if they exclusively engage in medical duties. (GWS, art 24.) You may not directly attack them, however, accidental killing or wounding of such personnel due to their proximity to military objectives "gives no just cause for complaint" (FM 27-10, para 225). Medical personnel include:

(1) Medical personnel of the armed forces. (GWS, art 24.)

(a) Doctors, surgeons, nurses, chemists, stretcher bearers, medics, corpsman, and orderlies, etc..., who are "exclusively engaged" in the direct care of the wounded and sick.

(b) Administrative staffs of medical units (drivers, generator operators, cooks, etc..).

(c) Chaplains.

(2) According to the law of war, (GWS, art 25) for auxiliary Medical Personnel of the Armed Forces to gain the GWS protection, they must receive "special training" and be carrying out their medical duties when they come in contact with the enemy.

(3) According to GWS, art 26, personnel of National Red Cross Societies and other recognized relief Societies fall under GWS protection. GWS, art 27 covers personnel of relief societies of Neutral Countries.

k. According to GP I, art 79, journalists receive protection as "civilians" provided they take no action adversely affecting their status as civilians. (considered customary international law by US).

2. Protect noncombatants and unlawful targets.

a. The law of war prohibits direct attacks on non-combatants. Civilians and civilian property may not be the subject or sole object of a military attack. Civilians are persons who are not members of the enemy's armed forces and who do not take part in the hostilities (GP I, art 50 and 51).

b. The law of war defines civilians as persons not qualified for prisoner of war status under the Geneva Convention on Prisoners of War. What this translates into is that any person not identifiable as part of the enemy force, you should treat as a civilian. Of course, this does not mean that such persons can commit acts harmful to our forces with impunity. In fact, the law of war indicates that such individuals lose their status as civilians if they “actively engage in hostilities,” which it further defines as attempting to cause immediate harm to our forces.

c. It is never lawful to intentionally target civilians or civilian property. Drawing a distinction between enemy combatants and civilians is one of the most fundamental principles of the law of war. Many treaty provisions support this position. However, you do not automatically violate the law of war whenever a civilian is killed, or civilian property is damaged. Such consequences of combat are an unfortunate reality. But soldiers must recognize the immense distinction between causing such damage intentionally versus unintentionally. The logical offshoot of this rule is that combatants should take all reasonable steps to shield civilians and their property from the unintended consequences of combat, normally referred to as “collateral damage.”

d. According to FM 27-10, para 43, and HR, art 26, the general requirement to warn before a bombardment only applies if civilians are present. An exception to this rule exists if it is an assault (any surprise attack or an attack where surprise is a key element). GP I, Article 57(2)(c), however, requires warning of civilians before an attack (not necessarily a bombardment), unless circumstances do not permit (United States considers this customary international law).

e. If possible evacuate civilians from a combat zone in order to minimize collateral injury.

f. If possible place military objectives away from areas of civilian populations in order to minimize collateral injury.

g. Law of war prohibits direct attacks on Noncombatants or "Protected Property." When attacking a military objective, collateral or incidental injury to noncombatants and collateral or incidental damage to protected property is not unlawful unless it is excessive in relation to the concrete and direct military advantage anticipated in the attack. (FM 27-10, para 41 (change 1); GP I arts 52, 57).

h. The law of war requires you to discriminate or distinguish between combatants and non-combatants and between military objectives and protected people/protected places. GP I prohibits “indiscriminate attacks.” Under Article 51, paragraph 4, these are attacks that: are “not directed against a specific military objective,” (e.g., SCUD missiles during Persian Gulf

War); or “employ a method or means of combat the effects of which cannot be directed at a specified military objective” [e.g., might prohibit area bombing in certain populous areas, such as a bombardment “which treats as a single military objective a number of clearly separated and distinct military objectives in a city, town, or village...”(GP I, art 51, para 5(a))] To prevent indiscriminate use of weapons (especially indirect fire weapons) employ observed fire.

i. Rules of engagement (ROE) are directives issued by competent superior authority that delineate the circumstances and limitations under which U.S. forces will initiate and/or continue engagement with other forces. We draft ROE in part, based upon the law of war. Superior authorities draft ROE considering law of war, political policy, public opinion and military operational constraints. ROE are usually more restrictive than what the law of war would allow. ROE incorporate targeting rules.

3. Protected property and military objectives.

a. FM 27-10, para 246 and GP I, art 51(2) prohibit attacking civilians or civilian property. Presumption of civilian property attaches to objects traditionally associated with civilian use (dwellings, school, etc...) (GP I, art 52(3).) The law of war protects civilian property more extensively than enemy government property. As a result, you may only take such property based on a legitimate military need. If you take civilian property, you must follow property requisition procedures, established in FM 27-10.

b. The law of war Prohibits attacks on cultural property. The 1954 Cultural Property Convention elaborates, but does not expand, the protections accorded cultural property found in other treaties (HR, art 27; FM 27-10, para 45, 57.) The United States has not ratified the convention (treaty is currently under review with a view toward ratification with minor understandings. See GP I, art 53, for similar prohibitions.) Cultural property includes buildings dedicated to religion, art, science, charitable purposes, historic monuments, hospitals, and places used for the collection of the sick and wounded. Misuse will subject them to attack. The enemy has a duty to indicate the presence of such buildings with visible and distinctive signs.

c. The law of war requires the use of protective emblems on protected cultural property. The 1954 Hague Cultural Property Convention, art 16 and 17 describe the cultural property emblem as "A shield, consisting of a royal blue square, one of the angles of which forms the point of the shield and of a royal blue triangle above the square, the space on either side being taken up by a white triangle." Hague Convention No. IX Concerning Bombardment by Naval Forces in Time of War (art 5) describes emblems for protected cultural property as "[L]arge, stiff, rectangular panels divided diagonally into two colored triangular portions, the upper portion black, the lower portion white."

d. Medical property includes: ambulances, hospital ships, medical aircraft, MEDEVAC helicopters, and hospitals in buildings or tents.

e. You shall not attack transports of the wounded and sick or of medical equipment (GWS, art 35). Medical transports may include ambulances, medical ships, and medical aircraft. The Geneva Conventions of 1949 protect medical aircraft from direct attack only if they flew in

accordance with a previous agreement between the parties as to their route, time, and altitude. GP I extends further protection to medical aircraft flying over areas controlled by friendly forces. Under this regime, you must respect medical aircraft regardless of whether a prior agreement between the parties exist (GP I, art 25). In “contact zones”, protection can only be effective by prior agreement; nevertheless medical aircraft “shall be respected after they have been recognized as such.” (GP I, art 26 - considered customary international law by the United States.) Medical aircraft in areas controlled by an adverse party must have a prior agreement in order to gain protection (GP I, art 27).

f. According to FM 27-10, para 257 and 258 and GWS art 19 you will respect and protect fixed or mobile medical units. You will not intentionally attack them. Protection shall not cease unless the enemy uses them to commit “acts harmful to the enemy.”

g. Captors may keep mobile medical facilities, provided they reserve them for care of the wounded and sick. You may not destroy medical supplies.

h. Medical and religious emblems include the Red Cross; Red Crescent; Lion and Sun. The 1949 Geneva Convention does not mention the Red Star of David but we protect it as a matter of practice.

i. According to FM 27-10, para 238, we protect, under the conventions, objects and personnel displaying emblems. Under the Geneva Conventions of 1949, medical aircraft must have an agreement as to their route, altitude, and time of flight in order to receive protection (GWS, art 38).

j. Medical Guards are unit personnel armed for own their defense against marauders and those violating the law of war, e.g. by attacking a medical unit. Medical personnel thus may carry small arms, such as rifles or pistols for this purpose. In contrast, placing machine guns, mines, etc., around a medical unit would cause a loss of protection. According to Army Field Manual 8-10, para 3-21, normally medical units use their own personnel as guards. It will not lose its protection, however, if a military guard attached to a medical unit guards it. These personnel may be regular members of the armed force, but they may only use force in the same circumstances as discussed above.

k. If possible do not place medical facilities near military objectives in order to minimize collateral damage to medical facility in the event of an attack on the military objective.

l. Medical units and establishments lose protection if they commit "acts harmful to the enemy." Examples or acts harmful to the enemy are such acts as using a hospital as a shelter for combatants, as an ammunition dump, or as an observation post (GWS, Article 21). Protection ceases only after you give a warning and it remains unheeded after a reasonable time to comply. A reasonable time varies on the circumstances. According to FM 8-10, at para 3-20, no warning, would be necessary if a unit was taking fire from hospital.. Article 13, GP I, extends this same standard to civilian hospitals.

4. Excessive use of force.

a. The concepts of military necessity, humanity, proportionality, and discrimination define the bounds of lawful use of force.

(1) Military Necessity: The Law of War / Law of Armed Conflict allows combatants to take actions--with respect to targeting and engagement--that international law does not specifically prohibit (i.e., convention law) and that are necessary and directly related to the prompt submission of the enemy. ***The concept of military necessity NEVER allows for a waiver of the law of war.***

(2) Humanity: The law of war prohibits the use of arms, projectiles, and material calculated to cause unnecessary suffering and or destruction of property. You cannot otherwise use lawful arms so as to cause unnecessary suffering (i.e., use of unguided munitions with the *intent* to extend collateral damage to surrounding civilian property or persons would be unlawful.)

(3) Proportionality: The loss of life and damage to property incidental to an attack must not be *excessive* in relation to the *concrete and direct military advantage* gained.

(4) Discrimination: You must direct attacks against specific, military targets.

b. Military objectives are targets which if destroyed, captured or neutralized would offer a definite military advantage. Combatants, places, and objects which by their nature, location, purpose or use, make an effective contribution to the enemy's military action are all lawful objectives. You may not treat multiple and distinct military objects in a civilian population center as a single objective. You must target military objectives individually.

c. Unavoidable and *unplanned* damage to civilian personnel and property incurred while attacking a military objective is not in violation of the Law of Armed Conflict / Law of War. Those who plan or decide upon an attack, however, must take all reasonable steps to ensure not only that they identify objectives properly, but that they minimize the loss of civilian life and damage to civilian property. This includes the use of precision munitions where available and providing advance warning to civilians in the vicinity, if appropriate under the circumstances of the attack.

d. If possible place military objectives away from areas of civilian populations in order to minimize collateral damage to civilian property.

5. Use of symbols, flags and uniforms.

a. The law of war prohibits treachery and perfidy (FM 27-10, para 50; HR art 23b). Treachery or perfidy involves injuring the enemy by his adherence to the law of war (actions are in bad faith). Condemnation of perfidy is an ancient precept of the law of war--derived from principle of chivalry. Perfidy degrades the protections and mutual restraints developed in the mutual interest of all parties, combatants, and civilians. In practice, combatants find it difficult to respect protected persons and objects if experience causes them to believe or suspect that the adversaries abuse their claim to protection under the law of war to gain a military advantage. Thus, the prohibition directly relates to the protection of war victims. Practice of perfidy also inhibits restoration of peace (FM 27-10, para 50).

b. The law of war and HR, Article 23f restrict the use of the Red Cross, Red Crescent, and cultural property symbols to facilities or transport exclusively engaged in medical duties or recognized cultural property. The GWS requires respect and protection for the wounded and sick, hospitals, medical vehicles, and in some cases, medical aircraft. Facilities lose their protection if they commit acts harmful to the enemy. (DA Pam 27-161-2, p. 53, n. 61) Cultural property symbols include 1954 Hague Cultural Property Convention, Roerich Pact, 1907 Hague Conventions symbol. For example, you may not use an ambulance to transport ammunition while it has a protective emblem. You must take the emblem off, then you could use the ambulance to carry the ammunition.

c. A white flag is an indication of a desire to negotiate only and its holder has the burden to come forward. Falklands War Example: During the Battle for Goose Green, some Argentinean soldiers raised a white flag. A British lieutenant and 2 soldiers went forward to accept what they thought was a surrender. They were killed by enemy fire. Apparently, one group of Argentines was attempting to surrender, but not another group. The Argentinean conduct was clearly treachery if the Argentineans who raised the white flag killed the British soldiers. But it was not treacherous if other Argentineans, either unaware of the white flag, or not wishing to surrender, killed the British soldiers. You may not use a white flag to draw the enemy out into the open and then shoot at them (GP I, Art 37(1)(a)).

d. Combatants may wear enemy uniforms (for example, to infiltrate) but cannot fight in them. Note, however, that military personnel not wearing their uniform lose their prisoner of war status if captured and risk being treated as spies (FM 27-10, para 54, 74; NWP 1-14M, para 12.5.3; Air Force Pamphlet 110-31, and International Law--The Conduct of Armed Conflict and Air Operations, 1976 (AFP 110-31), 8-6). World War II--Germany: The most celebrated incident involving the use of enemy uniforms occurred during World War II in Germany with the Otto Skorzeny trial arising from activities during the Battle of Bulge. Otto Skorzeny was the brigade commander of the 150th SS Panzer Brigade. Several of his men were captured in U.S. uniforms, their mission being to secure three critical bridges in advance of the German attack. Eighteen of Skorzeny's men were executed as spies following the battle. Following the war, ten of Skorzeny's officers, as well as Skorzeny himself, were accused of the improper use of enemy uniforms, among other charges. All were acquitted. The evidence did not show that they actually fought in the uniforms, consistent with their instructions. The case generally stands for

the proposition that it is only the fighting in the enemy uniform that violates the law of war (DA Pam 27-161-2 art 54).

e. Misuse of cultural property will subject the property to attack. See Hague Cultural Property Convention of 1954, Article 4.

f. "Attacking enemy forces while posing as a civilian puts all civilians at hazard." (GP I, art 37(1)(c); NWP 1-14M, para 12.7.)

g. HR, Article 23b prohibits feigning incapacitation by wounds/sickness, e.g. shamming wounds and then attacking approaching soldier (NWP 1-14M, para 12.7. and GPI, art 37(1)(b)).

h. Geneva Protocol I (GP I, art 37(1)(d)) prohibits feigning protected status by using UN, neutral, or nations not party to the conflict's signs, emblems, or uniforms. As an example, on 26 May 1995, Bosnian Serb commandos dressed in uniforms, flak jackets, helmets, and with weapons of the French, drove up to the French position on a Sarajevo bridge in an APC with UN emblems. French forces thought all was normal. The commandos, however, then proceeded to capture French Peacekeepers without firing a shot. As in the case of the misuse of the flag of truce, misuse of a UN emblem which does not result in a killing, capture, or surrender, is nonetheless, a violation of Art 38, GPI. Note, however, that this prohibition only applies if the UN force is not an actual combatant force, a condition which has only arisen on one occasion: the Korean War.

6. Unnecessary destruction or seizure of property.

a. The law of war prohibits attacking civilians or civilian property (FM 27-10, para 246; GP I, art 51(2)). Presumption of civilian property attaches to objects traditionally associated with civilian use (dwellings, school, etc.) (GP I, art 52(3)). Incidental injury and collateral damage are terms used to describe unavoidable and unplanned damage to civilian property incurred while attacking a military objective. Incidental or collateral damage is not a violation of international law. The principle of proportionality states that the loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage you expect to gain (FM 27-10, para 41, change 1).

b. You must direct attacks against a specific, military target. Do not fire indiscriminately. Discriminate or distinguish between combatants and non-combatants, and between military objectives and protected people or places. GP I prohibits "indiscriminate attacks." Under Article 51, paragraph 4, indiscriminate attacks are attacks that: are "not directed against a specific military objective", (e.g., SCUD missiles during Persian Gulf War); or "employ a method or means of combat the effects of which cannot be directed at a specified military objective", [e.g., might prohibit area bombing in certain populous areas, such as a bombardment "which treats as a single military objective a number of clearly separated and distinct military objectives in a city, town, or village..." (GP I, art 51, para 5(a))] To prevent indiscriminate use of weapons (especially indirect fire weapons) employ observed fire.

c. Article 28 of the Hague Regulations prohibits pillage of a town or place. The law of war considers looting of private property larceny and it is prosecutable under the UCMJ. It is also important to recognize that the law of war never permitted "pillage." Pillage is the unjustified taking of civilian property without following proper procedures. It is really the law of war term for stealing civilian property, an action which is subject to punishment under the UCMJ.

d. Use of unobserved fires may lead to excessive destruction of civilian property. In areas of civilian population, you should observe the effects of indirect fire weapons. Lack of such observation may lead to indiscriminate use of the weapon, which the principles of the law of war prohibit.

e. To protect civilian property:

- Make minimization of collateral damage a key factor in the targeting process.
- Do not treat several military targets located in a general civilian area as one large target.
- Use real or artificial observation assets for indirect fire missions.

These examples are just some of many measures a commander can take to minimize collateral damage to civilian property during the course of hostilities. These measures apply to every level of military organization, from the infantry team all the way up to the unified command. They implement the fundamental requirement to always distinguish between lawful and unlawful targets. The law of war requires the first two measures listed, factoring minimization of collateral damage into the targeting process, and not treating multiple military targets located in a civilian area as one large target. The last example is the type of measure that must be qualified by the "as feasible" limitation. This highlights the fact that the law of war expects combatants to do more than the bare minimum to limit the harmful consequences of combat. We base many actions available to achieve this goal upon a good faith analysis of feasibility. It is the military decision-maker that must conduct this analysis and decide whether such measures are feasible.

f. The law of war imposes obligations on combatants to respect private civilian property. FM 27-10, Section V details these obligations. The basic premise of these rules is that you must presume civilian property is "off limits" to our forces. However, this presumption is not absolute. If a military leader determines that it is imperative to seize or requisition civilian property, such action is lawful. However, law of war requires strict compliance with receipt requirements. This helps ensure the force is able to legitimately determine compensation for the owner of the property at a later date.

7. Unnecessary suffering and harm.

a. According to HR, art 23e, "It is especially forbidden . . . to employ arms, projectiles or material calculated to cause unnecessary suffering." This concept also extends to unnecessary destruction of property. You cannot use arms calculated to cause unnecessary suffering (e.g. projectiles filled with glass, irregular shaped bullets, dum-dum rounds, lances with barbed

heads). You cannot use otherwise lawful arms in a manner that causes unnecessary suffering (e.g., 2000 pound bomb instead of precision guided munitions against a military objective where civilians are nearby, used with the intent to cause civilian suffering).

b. Weapons may be illegal in the following three categories:

(1) Per se. Those weapons calculated to cause unnecessary suffering, determined by the “usage of states.” Examples: lances with barbed heads, irregular shaped bullets, projectiles filled with glass (FM 27-10, para 34).

(2) By improper use. Using an otherwise legal weapon in a manner to cause unnecessary suffering. Example: a conventional air strike against a military objective where civilians are nearby vs. use of a more precise targeting method that is equally available--if you make this choice with the intent to cause unnecessary suffering.

(3) By agreement or prohibited by specific treaties. Example: The Protocols to the 1980 Conventional Weapons Treaty prohibit certain landmines, booby traps, and laser weapons.

c. Typically, hollow point ammunition is semi-jacketed ammunition designed to expand dramatically upon impact. Customary international and the treaties mentioned above prohibit this ammunition for use in armed conflict. There are situations, however, where use of this ammunition is lawful because its use will significantly reduce collateral damage to noncombatants and protected property (hostage rescue, aircraft security).

d. According to FM 27-10, para 34, fragmentation is legal unless used in an illegal manner (on a protected target or in a manner calculated to cause unnecessary suffering). Fragmentation is unlawful if fragments are undetectable by X-ray, such as weapons that employ glass or plastic fragments. (Protocol I, 1980 Conventional Weapons Treaty).

e. The law of war outlawed poison for thousands of years. The law of war considered poison a treacherous means of warfare (FM 27-10, para 37). The problem is that once you unleash poison, it is hard to control (HR, art 23a). The 1925 Geneva Protocol applies to all international armed conflicts and prohibits use of lethal, incapacitating, and biological agents (FM 27-10, para 38, change 1). Protocol prohibits use of "asphyxiating, poisonous, or other gases and all analogous liquids, materials or devices. . . ." The United States considers the 1925 Geneva Protocol as applying to both lethal and incapacitating chemical agents. The United States ratified the 1993 Chemical Weapons Convention (CWC) treaty, and it came into force in April 1997. Article I states that parties agree to never develop, produce, stockpile, transfer, use, or engage in military preparations to use chemical weapons. In a significant departure from 1925 Geneva Protocol, retaliatory use (second use) is not allowed. CWF requires destruction of chemical stockpiles. Each party agrees not to use Riot Control Agents (RCAs) as a “method of warfare.”

f. Altering lawful weapons may create unnecessary suffering; if so, it is also illegal. For example, a soldier cannot take issued ammunition and cut the metal jacket so that the round expands as it travels through the air.

8. Prisoners of war (POWs) and detainees.

a. Our nation's laws require that we afford certain rights to persons we capture on the battlefield. There are several laws that are very basic, but every disciplined soldier needs to be aware of them. As the defenders of our Constitution, we have an obligation to enforce its tenets. However, affording these protections also is of military value. Warriors developed these general rules on how to treat POWs for warriors (by warriors for warriors). These are not a bunch of rules made up by lawyers. Lawyers only wrote down what the commanders practiced. We also comply with these rules because it helps us on the battlefield. If the enemy soldiers know that we will treat them with dignity and respect and not harm them, they are more likely to surrender. When you look at these rights, they are pretty basic rights that we hope an enemy will afford to our soldiers if they become a prisoner of war.

b. Initially, always treat captured persons as prisoners of war. Process them according to the 5Ss (search, silence, segregate, safeguard, and speed to the rear)

c. The Geneva Convention relative to Treatment of Prisoners of War number 3, Articles 25 thru 77 defines the rights and responsibilities of POWs. POWs have the right to receive the basic necessities to stay in good health. We have an obligation to reasonably accommodate the POWs food habits. For example, one should not provide a person of the Muslim faith with pork. Shelter and clothing should be consistent with the climate in the area. For example, if you capture a POW in Korea during the winter, the United States has an obligation to ensure that the prisoner has proper clothing and protection from the elements. This does not mean that you, the individual soldier, must give up your equipment to comfort the POW. But you must find adequate clothing or tell your chain of command that your prisoners are inadequately clothed.

d. Prisoners of war may keep their personal property items, such as pictures of their significant other, a religious medallion, his badges, and basic clothing items. Take from prisoners any weapon, or military equipment they would not need for health, protection, or shelter reasons. What a prisoner needs depends on where he is on the battlefield. For example, allow a POW to retain his helmet while near the FEBA. However, as he moves farther to the rear, he will no longer need the helmet for protection. Then, you may take the helmet from him.

f. If during a search of the POW you find money, notify an officer. Only an officer can seize money from a prisoner, and even then, the officer must issue the POW a receipt stating the amount seized and the name, rank, and unit of the officer seizing the money.

g. Once a POW reaches a camp, you must make a copy of the Geneva Convention on POWs available to him. If one is not available, seek out the senior ranking officer so he may request one. Alternatively, the International Committee of the Red Cross will normally have copies available.

h. POWs have the right to make requests regarding the conditions of captivity to the camp commandant. If we are holding the POWs, the prisoners representative makes the request. This will be either the POWs senior ranking officer or it will be a POW elected by fellow POWs. If

you are the POW, you will direct your complain to the camp authorities through the senior ranking U.S. person, officer or enlisted, present in the camp.

i. POWs have the right to practice their religion. You shall also provide them with premises where they can conduct worship of their religion.

j. If a POW violates the camp rules and regulations, you can punish him either by a court-martial or an administrative proceeding. The administrative punishments are similar to those of a field grade article 15: 50 percent of their working pay and allowances; curtailment of privileges; fatigue duties up to 2 hrs per day; and confinement for up to 30 days. If a POW commits a serious breach of camp rules and regulations (i.e. assaulting a guard), he can be court-martialed. His trial and sentence limits will be IAW the enemy's military law.

k. The United States, through its soldiers, has an affirmative obligation to protect POWs in our hands from harm. The last of the 5Ss, speed to the rear, is designed to do three things. First, to remove the POW from harms way. Second, to speed up the likelihood of gaining timely intelligence from the POW. Third, to decrease the adverse effect of retaining POWs near the FEBA. Guarding POWs drains resources from your command. You want to transfer prisoners to the rear as quickly as possible so you can continue to focus on your current mission.

l. Our obligation to POWs extends to protecting them from their own government. The best example of how we should do this was how we did it in Desert Shield/Desert Storm. We did not allow the news media to take close-up pictures of POWs for two reasons. First, any POW is humiliated by the very fact that he is captured by his enemy. We have an obligation to treat a fellow warrior with respect and not further humiliate his situation. Second, and more compelling, Saddam Hussein in a radio broadcast told his soldiers that if he found out that they had surrendered that he would have the POWs' families executed. Therefore, by precluding photos of the POWs, we limited Saddam's ability to kill his own people.

m. We have an obligation to segregate men and women POWs. This rule recognizes the modesty aspects of co-habitation between the sexes and also ensures that the women are not sexually abused by other POWs.

n. All POWs, American or otherwise, must provide their name, rank, service number, and date of birth. This is a requirement not only of the Code of Conduct, but is a requirement of the Geneva Convention. Other armies allow their POWs to provide more information, but our Code of Conduct limits Americans to providing only the Big 4.

o. POWs have an obligation to obey all rules established by their captor. This does not mean that you cannot attempt to escape. However, there is a consequence associated with attempting escape. Think of it as a contract. The enemy agrees not to kill or harm you and in exchange, you promise not to commit an act harmful to the enemy or his cause. If you violate the terms of this contract, then the enemy can punish you for doing so.

p. Because POWs are a burden on the capturing nation, the detaining country can compel POWs to do certain work. Captors can require a POW to do any act within the camp that is of

benefit to the entire camp. Examples would be: cooking the POWs food, digging latrines, and building their shelters. Captors can also compel POWs to do work outside the camp, i.e., working on farms and in commercial businesses and transporting and handling of goods which are not military in character or purpose.

9. Law of war violations and war crimes.

a. A “war crime” is a technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime. (Chairman of the Joint Chiefs of Staff Initiative (CJCSI) 5810.1)

b. Grave breaches are serious violations of the law of war and may be roughly equated to felonies in our criminal law. Specifically enumerated in each of the four Geneva Conventions, grave breaches include:

- Willful killing;
- Torture or inhumane treatment;
- Biological experiments;
- Willfully causing great suffering or serious injury to body or health;
- Taking of hostages;
- Extensive destruction of property not justified by military necessity;
- Compelling a POW to serve in the forces of a hostile power; and
- Willfully depriving a POW of his right to a fair and regular trial.

Note: The commission of grave breach war crimes triggers a specific obligation to prosecute violators.

c. The law of war obligates States to enact legislation to provide effective penalties for persons who either commit grave breach war crimes or order such crimes committed. In addition, a State (party to the Geneva Conventions) is obligated to:

- (1) Search for persons alleged to have committed, or to have ordered to be committed, grave breaches; and
- (2) Prosecute such persons in its own courts; or
- (3) Extradite (hand over) such persons to another State for prosecution.

These obligations apply without regard to the nationality of the alleged offender--in other words, grave breaches are a crime of *universal jurisdiction* and ALL states have an obligation to investigate, pursue, and prosecute such violations.

d. DOD Directive 5500.77 is the law of war Program for the Department of Defense. It requires the prompt reporting and investigation of alleged war crimes as well as appropriate disposition of resulting cases under the UCMJ. Most violations of the law of war committed by persons subject to the UCMJ will constitute violations of the UCMJ and will be prosecuted there

under. Violations that are not subject to the punitive articles of the UCMJ usually constitute violations of federal laws.

e. CJCSI 5810.01, which came out in August of 1996, establishes joint policy and guidance for the implementation of the Law of War. It provides that it is the policy of the Department of Defense to ensure that U.S. armed forces observe and enforce the law of war. It requires prompt reporting of law of war violations, whether committed by or against U.S. or enemy personnel. It requires thorough investigation and where appropriate, corrective action taken. You must report law of war violations alleged to have been committed by or against allied military or civilian personnel through appropriate command channels for transmission to appropriate agencies or allied governments. Combatant commanders are responsible for the overall execution of the DOD law of war program. It is up to them to create appropriate plans, policies and directives for reporting through command channels any law of war violations, as well as for conducting appropriate investigations to determine if U.S. military were involved and ensuring future enforcement of the law of war.

f. FM 27-10 requires parties to the Geneva Conventions to search for and punish those responsible for the commission of war crimes.

10. Obligations of a military commander with respect to prevention, suppression, and prosecution of war crimes.

a. According to DoD Directive 5100.77 (Law of War Program) and CJCSI 5810.01 (Implementation of the DoD Law of War Program), it is DoD policy that commanders ensure that:

(1) U.S. Armed Forces personnel observe and enforce the law of war and the obligations of the U.S. government under the law of war.

(2) U.S. Armed Forces personnel promptly report, thoroughly investigate, and, where appropriate, remedy by corrective action alleged violations of the law of war, whether committed by or against U.S. or enemy personnel.

(3) U.S. Armed Forces personnel report violations of the law of war allegedly committed by or against allied military or civilian personnel, through appropriate command channels for ultimate transmission to appropriate agencies of allied governments.

b. The nature of military organizations is such that complicity in a war crime may be present, but difficult to demonstrate. In order to mitigate the practical difficulties of prosecution, the doctrine of “command responsibility” has developed. Under the doctrine of command responsibility, the commander is directly responsible, and subject to prosecution for, a war crime if:

(1) he orders the commission of the crime; or

(2) has actual knowledge--or should have knowledge--through reports received by him or through other means, that persons subject to his control are about to commit or have committed a war crime and he fails to take the necessary and reasonable steps to insure compliance with the law of war or fails to punish violators thereof. (DoD Directive 5100.77 and CJCSI 5810.01)

11. Reporting violations of the Law of War.

a. Normally the Commander of the Combatant Command will put out a regulation or policy on how to report law of war violations. CJCSO now requires this. As an example, during Desert Storm, the CENTCOM Commander put out a regulation that an individual must report alleged violations of the law of war to his immediate commander as soon as possible. If the facts or circumstances indicated the commander was or may be involved then the individual was to report the event to the next higher command authority. The commander then is to report the information to the SJA and the next higher command. (DoD Directive 5100.77 and CJCSI 5810.01)

b. Any individual should pass on any information known about the event, such as persons involved, location, date, time, names of witnesses, and description of events, as well as any physical evidence, and other evidence that may exist, to the commander and then by the commander to others. The commander will make the effort to secure all documentation and evidence relating to the report. The higher command will appoint an investigating officer, if necessary (DoD Directive 5100.77 and CJCSI 5810.01).

c. In spite of the stated process for reporting war crimes, the Chaplain, JA, IG or others receive reports of violations (DoD Directive 5100.77 and CJCSI 5810.01). Should you receive an order you believe to be illegal it is your responsibility not to comply with the order. Instead you should seek to have the illegal order clarified to ensure that you understand it, in order to determine if it is illegal. If after clarification it is still an illegal order and the person giving the order insists on compliance seek to have it revoked or modified to comply with the law of war. If all attempts fail, then refuse to obey the illegal order, even if under duress, and report the event as soon as possible.

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