

TEACHING THE LAW OF WAR

by

W. Hays Parks*

Ethics and morality have been in the news of late,^{1/} and it is difficult resisting the temptation to discuss some of the current issues and their potential application to the military. Similarly, as a lawyer, there are any number of topics I would like to explore with you -- such as defining the moral and legal concept of *proportionality* -- that must await another time and place.

The opportunity to participate in this important conference was afforded me by the following paragraph in this year's Call for Papers:

One of our members has expressed concern about a recently published view that little or no instruction is provided in any of the services on the law of war....If any of our members is able to provide an empirically-based paper on the present state of teaching the law of war, that would be an important contribution.

Given that the armed forces of the United States enjoy an international reputation for having one of the best law of war programs; that military officers from other nations annually examine the U.S. military law of war program with a hope for replicating it within their armed forces; and that U.S. military personnel traditionally

*Special Assistant for Law of War Matters, Office of The Judge Advocate General of the Army. Colonel, U.S. Marine Corps Reserve; Executive Officer, Headquarters, U. S. Marine Corps Training Division Reserve Augmentation Unit (Law of War). The views expressed in this paper are the personal views of the author and do not necessarily reflect the policy of the United States Government or any agency thereof.

exercise leadership at international conferences on law of war training because of their considerable experience, I must express concern regarding the critic's sources, knowledge of the program as it exists today, and his possible motives. The facts recently reported to the International Committee of the Red Cross (ICRC) are clearly to the contrary. ^{2/} In elaborating on the report to the ICRC, I intend to address the traditional *who, what, where, when, why*, and *how* of law of war training in the United States military, as it directly pertains to the topic selected for JSCOPE IX. My emphasis on the law of war programs of the Army and Marine Corps is not intended to slight the excellent programs of the Navy and Air Force, but rather to focus on those programs with which I have the greatest experience.

The law of war ^{3/} as we know it today probably had its origins in the post-World War II trials of German and Japanese war criminals. While substantial elements of the modern law of war existed prior to World War II, the massive suffering of total war provided the impetus for clarification and codification of the law. The war crimes trials at Nuremberg, Tokyo, and other sites established clearly the individual criminal responsibility of military men who violate the law of war. The four 1949 Geneva Conventions for the Protection of War Victims ^{4/} expanded the codified law of war beyond protection just for wounded and captured soldiers to military personnel wounded or shipwrecked at sea, and to certain segments of the civilian population.

Ethics, morality, and the law often are described as strange bedfellows; perhaps incongruous if not contradictory; some also sug-

gest that "law of war" is a contradiction in terms. I disagree with both propositions.

Nuremberg was based on ethical standards transposed to positive legal norms; the tribunals frequently used "moral," "ethical," and "legal" interchangeably, although there are distinctions. The law of war is the vehicle by which nations have taken ethical concepts and applied them in concrete terms in the most demanding environment -- mortal combat. Much of the law of war is based on the Just War tradition. Some parts remain elusive of definition or codification, while other parts have been expressly rejected. Thus there remains no agreed international definition for the concept of *proportionality*, while the four 1949 Geneva Conventions require application of their terms regardless of the justness of one's cause. ^{5/}

The law of war reflects an attempt by nations to establish certain minimum standards of conduct by parties to armed conflict that will ameliorate the suffering of the innocent. As with all law, it is highly dependent on good faith by all concerned; at its best, it will not prevent all suffering. As Clausewitz warned, there is no way that war can be made "nice." ^{6/} We have learned at considerable expense that when a nation endeavors to make war "nice," or accepts limitations on the use of force beyond those required by law of war treaties, it does so at its peril. A less-moral nation will take advantage of its opponent's constraint, often to the detriment of the civilian population in the battle zone (as well as the military of the nation fighting with restraint). We were made painfully aware of this in the Vietnam War. ^{7/}

At the same time, failure to have a viable law of war program can be seen as a direct cause of the My Lai massacre. ^{8/}

After the Vietnam War, the U.S. military revised its law of war program. A Department of Defense directive was promulgated, which provides that each individual will receive law of war training "commensurate with his or her duties and responsibilities." ^{9/} This program is based on our treaty obligations ^{10/} and the Constitutional premise that these treaties are part of the law of the land. ^{11/} Each member of the United States military upon entering the armed forces takes an oath to discharge his or her duties in accordance with the laws of the United States, including the law of war.

But no program can survive simply because "it's the law," and the Vietnam-era law of war programs suffered demonstrably because they endeavored to stand solely on the basis that certain conduct was expected on the battlefield "because the law says so." In 1968, the Chief of Staff of the Army wrote the Commander, Military Assistance Command, Vietnam, noting his displeasure regarding recurring reports of mistreatment of prisoners of war. In response, the deputy commander, MACV, suggested that one reason was that judge-advocate-taught instruction in the law of war "has tended to be abstract and academic, rather than concrete and practical." ^{12/}

Today's law of war programs emphasize the military and political reasons for respect for the law of war. Four basic assumptions form the foundation for the U.S. military program:

-- Discipline in combat is essential.

-- Violations of the law of war detract from a commander's accomplishment of his mission.

-- Violations of the law of war frequently lead to a loss of public support (domestic and international) for the war effort.

-- Violations of the law of war may arouse an enemy to greater resistance, leading to increased friendly casualties.

Similarly, the law of war is viewed as one of a number of control measures used by the battlefield commander to assist him in the efficient employment of his forces. ^{13/} In comparing the definition of the law of war concept of *military necessity*, which authorizes "such destruction, and only such destruction, as is necessary, relevant, and proportionate to the prompt realization of legitimate military objectives," ^{14/} to a definition of the principle of war of *economy of force*, ^{15/} their common goal is clear: the efficient, discriminate use of force against legitimate targets. Each also coincides with the less-specific concepts of Just War and/or contemporary military ethics.

Each military service has developed its law of war training program in accordance with its mission, and the realities of training time, of which there is never enough for the myriad demands upon a unit's or individual's time. The previously-stated DOD standard ("commensurate with...duties and responsibilities") is one of *relevancy*. A sailor "shoveling steam" in the engineroom of a ship needs to know far less of the law of war than a rifleman of equivalent grade in the Army or Marine Corps; that rifleman needs to know far less than his battalion commander; a division or wing commander can look to his special staff (including his staff judge advocate) for expertise on

law of war matters. In the competition for training time, law of war training is not keyed to *nice to know*, but to *need to know* in order to meet the DOD standard.

The Marine Corps Law of War Program establishes three levels of training:

Level A. The minimum level of understanding of the law of war required of all Marines principally to be received during accession training.

Level B. The levels of understanding necessary for personnel whose military specialty or assignment involves tactical planning or direct confrontation with the enemy, commensurate with their grade and responsibility.

Level C. The level of understanding necessary for judge advocates whose military assignment entails advisory responsibility to tactical commands.

At the lowest level, every individual entering the Marine Corps (enlisted and officer) receives two hours of instruction instilling in him or her nine basic principles: 16/

1. Marines fight only enemy combatants.
2. Marines do not harm enemy soldiers who surrender. Disarm them and turn them over to your superior.
3. Marines do not kill or torture prisoners.
4. Marines collect and care for the wounded, whether friend or foe.
5. Marines do not attack medical personnel, facilities or equipment.
6. Marines destroy no more than the mission requires.
7. Marines treat all civilians humanely.
8. Marines do not steal. Marines respect private property and possessions.
9. Marines should do their best to prevent violation of the law of war. Report all violations of the law of war to your superior.

There are sound military reasons behind each of these principles in addition to any moral or legal obligation and, like it or not,

there is greater likelihood for respect for these principles if they are explained in military terms rather than solely from a moral or legal standpoint. For example, in instructing the individual Marine not to kill or torture prisoners of war, recognition of their intelligence potential carries greater weight than moral or legal values, which often are viewed as abstract and of questionable relevancy in the heat of battle. (It must be emphasized that tactical rationale is being used to support legal principles; Marines are taught that these nine principles are absolute and may not be waived when convenient.) Similarly, a lack of humane treatment may induce an enemy to fight to the death rather than surrender, thereby leading to increased friendly casualties. The instruction is candid, however, in admitting that humane treatment of enemy prisoners of war will not guarantee equal treatment for our captured servicemen, as we learned in World War II, Korea, and Vietnam; but it is emphasized that inhumane treatment will most assuredly lead to equivalent actions by the enemy. ^{17/}

Likewise, the admonition to "treat all civilians humanely" recognizes the need for a disciplined military force on the battlefield; a crime against a civilian on the battlefield is as much (and perhaps more) a detriment to unit discipline and integrity as one committed in Fayetteville, North Carolina, or Oceanside, California, by a member ^{18/} of the military. Mistreatment can alienate the civilian population. Abuses have a negative effect on public opinion, as evidenced by public reaction to the My Lai massacre. ^{19/} But the instruction is given a common sense perspective in that it is acknowledged that

civilians assume a certain degree of risk if they remain on the battlefield, or in proximity to legitimate military targets, or participate in activities that directly support the war effort of the enemy.

To reach personnel at intermediate levels, law of war instruction is provided at the Staff Noncommissioned Officers Academy; Amphibious Warfare School; Communications Officers School; and Command and Staff College. Special courses also are offered. The Marine Corps Law of War Course is a five-day course taught four to five times annually worldwide to company and field grade officers; the "mix" sought in each course is one-third each of judge advocates, ground officers (primarily combat arms), and aviators (fixed and rotary-wing). Its emphasis is on the practical rather than theoretical. Three days are spent on "Geneva" law relating to the protection of war victims, including prosecution of violations thereof; one day is devoted to "Hague" law, relating to means and methods of warfare; and final day classes address the law affecting peacetime military operations (including *jus ad bellum*) and the law relating to low-intensity conflict, including counterterrorism. In addition to Marine attendees, there have been students from the other U.S. services, Canada, the American National Red Cross, the League of Red Cross and Red Crescent Societies, and the International Committee of the Red Cross (ICRC). A member of the ICRC addresses each class on the role of the ICRC in peacetime and armed conflict.

The Marine Corps Law of War Course has been very successful. The key to its success lies in the knowledge of its instructors -- all reservists, many with command experience in combat -- of the law

of war and the business of the client; the subject cannot be taught in the abstract. There are several manifestations of the success of the course. It comes first through applications to attend, which vastly exceed available billets; such is the reputation the course enjoys within the Marine Corps and the other services. Student reaction also is significant. On the first day, even though they have applied to take the course, the members of the class generally are reserved as the students get to know one another and are exposed to the law of war in greater depth than previously. On the second and third days, lectures are interspersed with seminars in which students must address contemporary, "real world" problems; the officers warm to the subject, becoming more animated in their discussion and support for the law of war as wholly consistent with their doctrine, tactics, experience, common sense, and individual moral underpinnings. By the end of the course (despite an examination), they are avid enthusiasts for the law of war. One regimental commander described the course as the "best taught and most important course" he had attended in his entire career -- stark contrast to the criticism of law of war training reported earlier, and to the dilemma posed by the topic for JSCOPE IX. A final manifestation of success was the recent award of a Meritorious Unit Citation by the Secretary of the Navy to the Marine Corps Reserve unit responsible for conduct of the course. ^{20/}

Other courses are offered by the other services. For example, while continuing to utilize the Marine Corps Law of War Course, the Navy offered its first law of war course at the Naval Justice School in Newport, Rhode Island, in 1985. Also, selected members of the

U.S. military annually attend the twelve-day law of war course taught by the International Institute of Humanitarian Law in Sanremo, Italy.

At a higher level The Judge Advocate General of the Army since 1982 has sponsored annually a Military Operations and Law Symposium, the fifth of which was conducted at Headquarters, U. S. Central Command, in November. This symposium is attended by active duty personnel by invitation only. Invitees are senior operations planners for major U.S. commands worldwide and their staff judge advocates.^{21/} There also is limited allied participation. Representatives from the United Kingdom, Canada, Australia and New Zealand attended the 1984 symposium, for example, and spent the week preceding the symposium discussing common law of war issues.

The purpose of the symposium is to bring together key personnel to discuss contemporary operational-legal issues in a classified environment. Previous topics have included rules of engagement; navigation and overflight rights; peacekeeping operations; the 1981 Gulf of Sidra incident; the 1982 Falklands War (a British presentation); the 1983 Grenada rescue operation; and operations against Libya in 1986. In an effort to keep the law abreast of technology, subjects such as beyond-visual-range targeting and over-the-horizon targeting -- both tied to the moral/legal concept of *discrimination* -- also have been addressed. Each symposium has been an unqualified success.

Other blocks of instruction are tailored to the audience. A class on "Medical Personnel and the Law of War" is given at the Uniformed Services University for the Health Sciences (Bethesda); to prospective

commanding officers of Naval medical facilities (also at Bethesda); and in the U.S. Army Academy of the Health Sciences Advanced Combat Casualty Care Course (Fort Sam Houston). Targeting and the law of war is taught at the Air Command and Staff College (Maxwell Air Force Base) and the Air Force Target Intelligence Course (Lowry Air Force Base). "The Law Affecting Special Operations" is a classified presentation given special operations personnel who attend the Joint Special Operations Planning Workshop at the U.S. Air Force Special Operations School (Hurlburt Field). Less specialized but tailored blocks are offered at other service schools, such as the Army War College, Armed Forces Staff College, and the U.S. Navy Chaplain's School. This list is not all-inclusive, but merely representative of the wide variety of courses in which the law of war is discussed, studied, and taught. Overall, the amount of law of war instruction offered within the U.S. military is at least *double* that of any other nation.

One reason for the breadth and depth of U.S. law of war instruction is that we are a nation dedicated to the rule of law. Another is to make the future commander aware of the complexities of today's law while advising him of his responsibilities under that law. Recognizing the importance of compliance with the law of war in the conduct of U.S. military operations, the Joint Chiefs of Staff in 1979 promulgated a requirement that all operations plans, contingency plans, and rules of engagement undergo a legal review as part of the JCS operational review process. That directive was expanded and repromulgated in 1983. Its pertinent parts provide:

Conduct of Operations. Legal advisors should be immediately available to provide advice concerning law of war compliance during joint and combined operations. Such advice on law of war compliance shall be provided in the context of the broader relationships of international and U.S. and allied domestic law to military operations and, among other matters, shall address not only legal restraints upon operations but also legal rights to employ force.

Review of Joint Documents. All plans, rules of engagement, policies and directives shall be consistent with the DOD Law of War Program, domestic and international law, and shall include, as necessary, provisions for (1) the conduct of military operations and exercises in accordance with laws affecting such operations, including the law of war, and (2) the reporting and investigation of alleged law of war violations, whether committed by or against U.S. or allied military or civilians or their property. Such joint documents should be reviewed by the joint command legal advisor at each stage of preparation.

The "proof of the pudding," however, does not rest solely on formal instruction and review of plans. Because of the competition for training time, as well as the need for realistic, hands-on training, an increasing number of law of war problems are being built into field (and fleet) exercises at all levels. For example, the greatest reinforcement for classroom instruction on the handling of a prisoner of war has proved to be actual handling and processing of an "enemy" prisoner of war from the point of capture to turnover to appropriate authority. Other reinforcement measures have been instituted. The Judge Advocate General of the Army includes law of war issues as part of the special interest items for Article 6, UCMJ, inspections; the Air Force includes law of war questions in Operational Readiness Inspections; while the Center for Naval War Gaming at the Naval War College routinely incorporates law of war issues into its war games. These approaches have proved far more effective than forcing troops into a classroom to watch the same, outdated movie periodically, as previously was the case, while reaching all levels of command.

This approach to law of war training paid dividends during the planning of last year's operations against Libya, both in the early freedom-of-navigation exercises and the subsequent airstrikes against terrorist-related targets. Law of war experts at the USEUCOM, service, and JCS level assisted mission planners with promulgation of rules of engagement, selection of targets, and anticipation and consideration of other possible law of war issues. A close, working relationship was one of the many factors that led to successful conclusion of each mission. ^{23/}

Conclusion. The topic for JSCOPE IX is "How Shall We Incorporate Ethics Instruction in Military Education at All Levels?" I have endeavored to summarize current law of war training efforts within the U.S. military to explain one approach that is being taken in one aspect of ethics instruction. I do not wish to suggest that current service programs are perfect. There are shortfalls, and it is a continuous effort to identify and correct them. In the review of U.S. operations in Grenada, it was discovered that one unit had conducted no law of war training in the year preceding that rescue operation. That no offenses occurred is testimony to the quality of the leadership within the unit and to the consistency of the law of war with common sense and military doctrine. But it reminded us that a program is dependent on individuals and their interest in or support for the law of war. It has served as an impetus for review of law of war training to establish methods for insuring that law of war training is conducted within units. Other improvements will be made where needed.

Law of war training has made great strides in all of the services

over the past decade. Whereas previously the subject was received with passive resistance or in some cases outright skepticism, today it is greeted with active interest if not vigorous enthusiasm -- provided it is presented properly. I would like to close by offering some lessons learned from developing these law of war programs.

1. Have faith in the student. The men and women of today's military are intelligent, dedicated professionals, with a greater sense for what is moral or legal than we give them credit for having. They don't believe in Rambo any more than they believe in Jane Fonda. The historical emphasis of this nation on the citizen-soldier means that our military is a cross-section of our society with its Judeo-Christian heritage. More often than not we are preaching to the choir.

2. Be positive in your instruction. Past law of war instruction has suffered many sins, not the least of which was a heavy dose of negativism; instructors tended to emphasize that which was prohibited, and were reluctant to acknowledge that anything was permitted. In fact, the law of war permits more than it prohibits, and instruction today emphasizes rights as well as responsibilities.

3. Ascertain what is relevant to your audience, and teach your trade in the vocabulary of the audience. Several years ago I attended a law of war conference at the Naval War College; in those days the entire student body of the college sat in the large auditorium for three days while law of war experts engaged in a highly-esoteric "lovefest" in which they praised one another while talking about subjects of interest only to themselves and of relevance to no one. One particular scholar read a paper on the various ways in which you

classify an individual captured in battle a prisoner of war that was totally irrelevant to the more than 600 officers in the audience, and in legalistic terms that few understood (including the other professors). He did serious damage to the credibility to the law of war. Several students observed that the professor's presentation confirmed their suspicions that the law of war was totally irrelevant to the modern battlefield.

Like ethics, the law of war can be a very esoteric subject. But it also involves common sense, and instruction offered in terms of the student's work and in the vocabulary of his profession will go far towards convincing him or her of the importance of our subjects to his or her work.

4. Pose the right questions. One of the most controversial law of war scenarios with which to deal concerns a four-man reconnaissance team being pursued by enemy forces deep in hostile territory that stumbles upon an enemy soldier clearly within minutes of death from a fatal wound. If the team leaves the soldier alone, he may be found by its pursuers before he dies, endangering their survival. If the soldiers stay with the soldier until he dies from his wound, they probably will be detected. Yet to hasten his inevitable death through another violent act would constitute a violation of the law of war.

The odds against this situation occurring to any particular individual are greater than the national debt. Yet some law of war instructors insisted on self destruction by starting with this scenario, thereby losing the students for the balance of their presentation.

My point is that there are hypotheticals with answers, and others that can be debated until the cows come home without reaching an ac-

ceptable answer. Gaining credibility for your subject is achieved by going from easy to difficult though, of course, you must be prepared to address the tough questions when they are raised. Similarly, while we should encourage reasoning, thinking, and questioning, we should not select an approach that does little more than cast doubt. Many students enter a classroom environment with a suspicion that many of the things they might be asked to do are illegal or immoral -- but knowing that they will do them anyway. The myths regarding prohibited acts abound in the realm of the law of war. By correcting those myths and reassuring students that their doctrine and tactics are in accordance with the law of war, and explaining to them the consistency of the law of war with these things, the students gain confidence in what they are doing -- and understand better the need for the prohibitions that do exist.

5. Understand history. Neither ethics nor the law of war can be taught in a vacuum. A keen sense of history is essential to teaching ethical or legal concepts. Otherwise these concepts appear to stand in stark contrast with what students *believe* is history. For example, frequently I am asked to reconcile the law of war with the strategic air offensive against Germany or, more specifically, the bombing of Dresden. There are rational political, military, legal, and ethical reasons to support the decisions that led to each, but these were identified only after a great deal of research. An individual teaching either ethics or the law of war must have a natural inquisitiveness about history in order to place his topic in perspective.^{24/}

6. Recognize the importance of your subject. The concerns of the American people for morality and legality are regarded by the enemies

of the United States as a highly vulnerable center of gravity that must be exploited at every opportunity. Our loss in Vietnam in large measure occurred through the success of North Vietnam repeatedly casting all U.S. operations in terms of their alleged illegality, or the immorality of the war in general. The bombing campaigns over North Vietnam saw the greatest restraint ever offered by a warring nation to minimize collateral civilian casualties. The North Vietnamese responded by alleging massive civilian casualties while using their own civilian population to shield legitimate targets from attack. In the Rolling Thunder campaign, the Johnson Administration responded to the North Vietnamese charges by increasing the constraints on U.S. forces or denying authorization to attack legitimate targets in or adjacent to populated areas. The North Vietnamese were able to set the terms of reference for the war, and our national leadership was incapable of responding to or changing those terms of reference.

Today, opponents of U.S. assistance to the democratically-elected government in El Salvador and to support for the democratic resistance in Nicaragua couch their opposition in terms of the morality or legality of U.S. efforts. Following the airstrikes in Libya last year, Libyan officials attempted a similar disinformation effort, asserting massive civilian casualties while denying damage to the terrorist-related targets that were the object of attack. Recently it was disclosed that the alleged death of Moammar Gadhafi's stepdaughter in the air strike by U.S. Air Force F-111F aircraft on Aziziyah Barracks was a Libyan fabrication. Its purpose was clear: to influence public opinion in the United States and the western world to forestall further attacks.

Ethics and the law are not always synonymous, but they are compatible in many respects. Not the least of these is their value as a foreign policy tool. Each is extremely important in today's world in assuring the American people of the correctness of a strategic or tactical decision, and leaders at all levels ignore this fact at their peril. We have taken a pro-active approach to teaching the law of war by emphasizing this point. The same can be done in teaching other fields of ethics.

FOOTNOTES

1. See, for example, Norman Lamm, "From Ivy-Covered Walls, Ethical Illiterates," International Herald-Tribune, October 25, 1986, p. 5; Peter T. Kilborn, "Insider Scandal Stirs Ethics Debate," The New York Times, November 28, 1986, p. D1; and William J. Bennett, "A Cry for Sound Moral Education," Insight 2,52 (December 29, 1986), p. 61.
2. "Respect for International Humanitarian Law: Dissemination of International Humanitarian Law and the Principles and Ideals of the Red Cross" (C.1/2.4/3), Geneva, October 1986, pp. 179-181. A copy of these pages is attached as Annex A.
3. The Department of Defense, Joint Chiefs of Staff, Army, and Marine Corps utilize the traditional term "law of war;" the Navy and Air Force prefer the "law of armed conflict." The terms are regarded as synonymous, and are defined as "that part of international law that regulates the conduct of armed hostilities." Joint Chiefs of Staff Publication 1, Dictionary of Military and Associated Terms (January 1, 1986).
4. The 1949 treaties are the Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Geneva Convention Relative to the Treatment of Prisoners of War; and Geneva Convention Relative to the Protection of Civilian Persons in Time of War.
5. Common article 1 to the four 1949 Geneva Conventions states that "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." At the 1974-1977 Diplomatic Conference that negotiated the two 1977 Protocols Additional to the Geneva Conventions of 1949, the Socialist bloc

adamantly refused to accept any codification of the concept of *proportionality*. Although a standard was adopted that resembles the concept (without identifying it as such), it is fundamentally flawed and would be Constitutionally void for vagueness in its present form. Its negotiation illustrates the difficulty of applying general moral concepts to specific combat situations under all circumstances. Because of this and other substantial military, political, and humanitarian concerns with the highly-politicized language of Additional Protocol I, the decision has been taken to forward Additional Protocol II only to the United States Senate for its advice and consent to ratification. For discussion of the interrelationship between ethics and the law of war, see Geoffrey Best, Humanity in Warfare (1980); and William V. O'Brien, The Conduct of Just and Limited War (1981).

6. "Kind-hearted people might of course think there was some ingenious way to disarm or defeat an enemy without too much bloodshed, and might imagine this is the true goal of the art of war. Pleasant as it sounds, it is a fallacy that must be exposed; war is such a dangerous business that the mistakes which come from kindness are the very worst." Carl von Clausewitz, On War. Michael Howard and Peter Paret, ed. Princeton: Princeton University Press, 1976, p. 75.

7. During the 1965-1968 Rolling Thunder air campaign over North Vietnam, Secretary of Defense Robert S. McNamara elected to deny the military the authority to attack legitimate targets in populated areas, and authorized the attack of other targets only where collateral civilian casualties could be held to an absolute minimum. In some cases he directed attack parameters that placed U.S. aircraft and aircrews at greatest risk in order to hold down collateral civilian casualties. The North Vietnamese responded by placing all war materials and military units and positions within populated areas and armed the civilian population to create small arms barrages to defeat low-flying U.S. aircraft. Exploitation of the civilian population was so substantial that the ICRC warned the North Vietnamese government that such continued action could subject the entire population of North Vietnam to legitimate attack. For a law of war analysis of the bombing of North Vietnam, see the author's "Rolling Thunder and the Law of War," *Air University Review* (January-February 1982), pp. 2-23; and "Linebacker and the Law of War," *Air University Review* (January-February 1983), pp. 2-30.

8. See Guenter Lewy, America in Vietnam (New York: Oxford Press, 1978), pp. 366-369; and U.S. Department of the Army, Report on the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident (1970). Failure of law of war training was a common factor in most Vietnam-era incidents. See Parks, "Crimes in Hostilities," *Marine Corps Gazette* (August [pp. 16-22] and September [pp. 33-39] 1976).

9. Department of Defense Directive 5100.7, Subject: DOD Law of War Program. Service directives implementing the DOD directive are

Army Regulation 350-216; Air Force Regulation 110-32; Secretary of the Navy Instruction 3300.1A; OPNAVINST 3300.52; and Marine Corps Order 3300.3. In a related program, DOD Instruction 5500.15 requires the review of all new weapons to insure U.S. compliance with its law of war obligations. This directive was the first of its type anywhere in the world.

10. Article 1 of Hague Convention IV of 1907 provides that "The Contracting Parties shall issue instructions to their armed forces which shall be in conformity with the regulations respecting the laws and customs of war on land." The four Geneva Conventions of 1949 each contain a generally common article stating that "The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present convention[s] as widely as possible in their countries and, in particular, to include the study thereof in their programs of military instruction and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to their entire population." While there has been law of war instruction in the United States military for most of this century, no instruction is offered in the civilian sector, although other nations (such as Australia and Canada) have such programs. The responsible agency, the American National Red Cross, has been less than enthusiastic in its support of a program for civilian dissemination. This creates a problem in that the first and only exposure the average citizen has to the law of war is in the military service. Changing views on the relevance of ethics or morality on the battlefield in a brief lecture on the law of war is challenging, at the least.

11. Constitution of the United States, article VI.

12. Lewy, supra n. 8, at 367.

13. Others include the principles of war, military doctrine, rules of engagement, commander's instructions, leadership principles, target acquisition methods, communications procedures, and fire support coordination methods. Although this presentation concentrates on the law of war program, military ethics also is discussed in various leadership classes or courses taught within the military.

14. M. MacDougal and F. Feliciano, Law and Minimum World Public Order (1961), p. 72.

15. Air Force Manual 1-1, Functions and Basic Doctrine of the United States Air Force (1979), p. 5-5, defines *economy of force* to mean that "no more -- or less -- effort should be devoted to a task than is necessary to achieve the objective.... This phrase implies the correct selection and use of weapon systems, maximum productivity from available flying effort, and careful balance in the allocation of tasks." While this is neither the traditional nor current definition of *economy of force*, its emphasis on the judicious use of limited assets in the target-rich atmosphere of the modern battlefield shows the consistency with law of war principles urging discrimination in the use of firepower.

16. Headquarters, U.S. Marine Corps, The U.S. Marine -- Essential Subjects (Marine Corps Order P1550.14D [1983]), p. 1-27. This publication is distributed to every recruit upon entry into the Marine Corps, and is the foundation for his formal education as a Marine.

17. As happened in the brief flurry of shackling and countershackling of Canadian and German prisoners of war following the Dieppe raid. In contrast, German treatment of U.S. and British Commonwealth prisoners of war in World War II, while usually harsh and often brutal, was far better than that of Soviet soldiers for this reason.

18. Nazi abuse made the Soviet population, previously friendly and receptive, hostile. See Alexander Dallin, German Rule in Russia, 1941-1945: A Study of Occupation Politics (1957). Here, however, is where a distinction must be made between a moral democracy and an amoral totalitarian state. While Mao Tse-Tung emphasized the need to respect the civilian population, it was clear that what could not be gained through kindness would be achieved through intimidation. The Viet Cong assassination policy in South Vietnam, Soviet attacks on the civilian population in Afghanistan, the recent program by the Marxist People's Revolutionary Army factions of the Farabundo Marti National Liberation Front in El Salvador of assassinating democratically-elected mayors, and a similar assassination policy by the Maoist Shining Path guerrilla movement in Peru, indicate clearly that not all men accept the same moral/legal standards.

19. This effect again is uneven. Despite widespread abuse of the civilian population in Afghanistan by Soviet occupation forces, as reported in the February 1985 report of the United Nations Economic and Social Council, "Report on the Situation of Human Rights in Afghanistan" (E/CN.4/1985/21 [February 19, 1985]), and two reports by Helsinki Watch (Tears, Blood and Cries [December 1984] and To Die In Afghanistan [December 1985]), the Soviet Union has ignored international public opinion and, controlling the flow of information within its own borders, avoided even the most remote possibility of domestic moral anguish. Even within the United States, the standards regarding morality have been applied unevenly. Critics of U.S. support for the democratically-elected government of El Salvador have been quick to focus on any shortcoming of that government, actual, alleged, or, in some cases, contrived, but quicker to turn a blind eye to atrocities committed by the rebels, excusing them in the name of "liberation theology." To paraphrase a recent expression, "'liberation theology' is neither."

20. The unit is Headquarters Marine Corps Training Department's Reserve Augmentation Unit (Law of War). After two dozen courses, there is a mathematical probability of 1 in 40 that the commander of a deploying Marine Amphibious Unit will be a course graduate; 1 in 20 that one of his three element commanders will be a course graduate; better than 1 in 2 that his judge advocate will have attended the course; and a statistical certainty that one of the MAU's forty officers will have graduated from the course.

As part of the Marine Corps Law of War Course, the unit has published a deskbook used in conjunction with course lectures; prepared written seminar problems and solutions; and published a comprehensive reference book of sources and materials on the law of war.

Separately, the unit is preparing a correspondence course on the law of war for enlisted Marines, and a handbook for commanders similar to the Air Force's excellent AFP 110-34 (25 July 1980). The unit prepared a series of law of war articles that appeared in base newspapers and other service news sources such as the Air Force Times. Unit members are frequent contributors of law of war articles to professional journals such as the Marine Corps Gazette and the U.S. Naval Institute Proceedings. See, for example, Colonel James H. Jeffries III, USMCR, "Marines are Marines are Marines," Proceedings 113,1 (January 1987), pp. 117-118.

21. As well as representatives of the Office of the Secretary of Defense, the Joint Chiefs of Staff, service staffs, and the war colleges.

22. MJCS 59-83 (1983), Subject: Implementation of the DOD Law of War Program. A law of war checklist for review of operations plans was prepared by the Marine Corps Reserve law of war unit (fn. 20). The checklist is in use by all major commands and all services.

23. For discussion of the law of war factors considered in the planning and execution of the U.S. missions against Libya, see the author's "Crossing the Line," Naval Institute Proceedings 112,11 (November 1986), pp. 40-52.

24. An excellent example of the study of history from the point of view of ethics is Ronald Schaffer's Wings of Judgment: American Bombing in World War II (New York: Oxford University Press, 1985).

"Respect for International Humanitarian Law: Dissemination of International Humanitarian Law and the Principles and Ideals of the Red Cross," (C.1/2.4/3), XXVth International Conference of the Red Cross, Geneva, October 1986.

UNITED STATES OF AMERICA

DISSEMINATION OF THE GENEVA CONVENTIONS

IN THE UNITED STATES ARMED FORCES

By directive of the Secretary of Defense, training in the law of war, including the Geneva Conventions, is the responsibility of the three military Departments (Army, Navy and Air Force). Within these Departments, responsibility has been assigned to The Judge Advocates General of the Army, Navy and Air Force, as the chief uniformed legal professionals in the armed forces. In addition, the United States Army has been designated the executive agent for investigating allegations of violations committed against United States personnel. The Army is also primarily responsible, within the United States military establishment, for the administration of prisoner of war camps and the military government of occupied territory, and hence has a special role in ensuring that the Third and Fourth Conventions are complied with.

Each of four armed services (Army, Navy, Marine Corps and Air Force) maintains a special office under the appropriate Judge Advocate General, staffed by experts in international law, including the Conventions. These International Law or International Affairs Divisions are responsible for drafting manuals and regulations implementing the Conventions, including the dissemination requirement. Air Force Regulation 110-32, for example, assigns specific responsibilities for training in the law of armed conflict to ensure that all Air Force personnel are familiar with it to the extent required by their responsibilities and duties. Similar directives have been issued in the Army (AR 350-216 and AR 190-8), the Navy (OPNAVINST 3300.52) and the Marine Corps (Marine Corps Order 3300.3). The texts of the 1949 Conventions are also disseminated to the field units of the armed forces (see, e.g., Air Force Pamphlet 110-20, Selected International Agreements), along with training materials and manuals incorporating and commenting on their provisions (Army Field Manual 27-10, The Law of Land Warfare; NWIP 10-2, the Law of Naval Warfare; and Air Force Pamphlet 110-31, International Law - The Law of Armed Conflict and Air Operations).

Military personnel who are also licensed, university educated lawyers are assigned to every American military base, Army or Marine Corps division, and large naval units. These personnel are responsible for providing advice to their commanding officers on problems involving the law of war, including the Geneva Conventions, in accordance with the texts and directives issued by their service headquarters. Each service provides specialized training in the Conventions to the officers who staff these positions. The Army Judge Advocate General's School at Charlottesville, Virginia,

for example, provides a basic course which all Army military lawyers are required to complete in residence. Twenty-one hours of this course are devoted to the law of war. After approximately five years of active duty, selected Army lawyers are sent to a nine-month graduate level course at Charlottesville, 29 hours of which are devoted to the law of war. Electives in international law are also offered during this course. The Naval Justice School at Newport, Rhode Island (for Navy and Marine Corps lawyers), and the Air Force Judge Advocate General's School at Maxwell Air Force Base, Alabama, similarly provide instruction on the Conventions to lawyers entering those services.

In addition to these specialized courses for military lawyers, the armed forces also provide extensive training to the rest of their officer and enlisted membership. The philosophy underlying these training programs is to ensure that all members receive at least some orientation in the provisions of the Conventions, and that more detailed training be tailored to the individual's military duties. The Navy, for example, divides law of armed conflict training into three levels, vis: (1) a minimum level of understanding required for all members of the Navy; (2) a higher level for personnel whose speciality or assignment involves participation in combat operations, or whose military specialty or level of rank requires additional training and (3) the highest level, for personnel whose military job speciality or assignment involves participation in the direction of combat operations.

All services require that all personnel entering, either as officer or enlisted, receive at least a minimum orientation in the Conventions and the law of war. The United States Military Academy, the United States Naval Academy and the United States Air Force Academy all include this subject in required courses for their cadets and midshipmen. Similar training is provided in other officer accession programs and enlisted basic training. The nature of this training varies from service to service, due to inherent differences in the roles and missions of the armed forces. In the Air Force, for example, most combatant personnel will be officers, and the majority of the enlisted force will never be directly involved in the firing of weapons in combat. In other services, such as the Marine Corps, it is assumed that all or most active personnel must be prepared for direct participation in combat. It should be noted that the Marines have therefore elected to build their Law of War Program around nine basic principles patterned after the "Soldier's Rules" drafted at the 1977 European Red Cross seminar.

Advanced training is routinely furnished to military personnel requiring it. Intelligence officers of the Air Force and Navy are, for example, given special training in the international law applicable to air targeting. Medical personnel are of course given special instruction in the First and Second Conventions, while Army military police and Air Force security police are trained in

the requirements of the Third Convention. All the services include law of war training in their advanced courses for senior officers. The Army War College, the Air War College and the Naval Post-graduate School either require such courses of their students or offer them as electives. In addition, the Army Judge Advocate General's School offers a "Senior Officer Legal Orientation" course, for line officers, attended by about 360 colonels and lieutenant colonels per year. A portion of this course involves the practical application of the Geneva Conventions and the law of war. The Marine Corps offers a one-week graduate-level law of war course for commanders and staff officers five times per year. The United States also regularly participates in the International Course on the Law of Armed Conflict for officers, held annually in Sam Remo, Italy.

In recent years, the United States armed forces have increased their emphasis on including law of war problems in exercises and other military evaluations in order to disseminate the Conventions and to test the effectiveness of previous dissemination. In particular, the Marine Corps has recently included law of war tasks and information in its Combat Readiness Evaluation System for infantry battalions, and is currently working on similar standards for other combat organizations. Another recent example is Exercise Team Spirit 86, in March of 1986, where a naval task force commander, assisted by two Navy lawyers, promulgated law of armed conflict scenarios to ships and naval units participating in the exercise. Thus, for the United States armed forces, military exercises have become a means of strengthening the dissemination of international humanitarian law, in addition to their role in maintaining national and collective self-defense.