

CHAPTER 11

Noncombatant Persons

11.1 INTRODUCTION

As discussed in Chapter 5, the law of armed conflict is premised largely on the distinction to be made between combatants and noncombatants.¹ Noncombatants are those individuals who do not form a part of the armed forces and who otherwise refrain from the commission of hostile acts.² Noncombatants also include those members of the armed forces who enjoy special protected status, such as medical personnel and chaplains, or who have been rendered incapable of combat by wounds, sickness, shipwreck, or capture. This chapter reviews the categories of noncombatants and outlines the general rules of the law of armed conflict designed to protect them from direct attack.³

11.2 PROTECTED STATUS

The law of armed conflict prohibits making noncombatant persons the object of intentional attack⁴ and requires that they be safeguarded against injury not incidental to military operations directed against military objectives.⁵ When circumstances permit, advance warning should be given of attacks that might endanger noncombatants in the

¹ See paragraph 5.3 and note 11 (p. 5-7). See also Ipsen, *Combatants and Non-Combatants*, in Fleck at 65-104.

² In this context, "hostile acts" include those actions described in the second subparagraph of paragraph 11.3 (p. 11-3). (For nations bound thereby, GP I, art. 51(3), addresses this rule by granting protection to civilians "unless and for such time as they take a direct part in hostilities" without further definition. The United States supports this principle. The Sixth Annual American Red Cross-Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions, 2 Am. U.J. Int'l L. & Policy 426 (1987) (remarks of U.S. Department of State Deputy Legal Adviser Matheson). (See paragraph 5.4.2, note 34 (p. 5-13) regarding the U.S. decision not to seek ratification of GP I.)

³ Incidental injury to or death of civilians is discussed in paragraph 8.1.2.1 (p. 8-4). A useful summary of the rules governing capture of noncombatants (as that term is used in this chapter) may be found *in de Preux*, Synopsis V: Capture, 1986 Int'l Rev. Red Cross 89, and of the obligations of neutrals regarding noncombatants *in de Preux*, Synopsis VIII: Conventions and Neutral Powers, 1989 *id.* 125.

⁴ Medical personnel: GWS, art. 24; GWS-Sea, art. 36; wounded and sick: GWS, art. 12(1); shipwrecked: GWS-Sea, art. 12(1) ("shall be respected and protected in all circumstances"); prisoners of war: GPW, art. 13 (humanely treated; protected); civilians: GP I, arts. 51(2) & 57(5) ("shall not be the object of attack"); Matheson remarks, note 2, at 423; Self, *Protection of Civilians Against the Effects of Hostilities Under Customary International Law and Under Protocol I*, 1 Am. U.J. Int'l L. & Policy 117, 130 (1986).

⁵ GPW, arts. 19(3) & 23; GP I, arts. 48 & 57(2)(a).

vicinity.⁶ Such warnings are not required, however, if mission accomplishment requires the element of surprise or the security of the attacking forces would be otherwise compromised.⁷ On the other hand, a party to an armed conflict has an affirmative duty to remove civilians under its control as well as the wounded, sick, shipwrecked, and prisoners of war from the vicinity of targets of likely enemy attack.⁸ Deliberate use of noncombatants to shield military objectives from enemy attack is prohibited.⁹ Although the principle of proportionality underlying the concept of collateral damage and incidental injury continues to apply in such cases, the presence of noncombatants within or adjacent to a legitimate target does not preclude attack of it.¹⁰

⁶ HR, art. 26; Hague IX, art. 6; GP I, art. 57(2)(c); Matheson remarks, note 2, at 427. *See also* paragraph 8.5.2 (p. 8-28).

⁷ *See* paragraph 8.5.2 (p. 8-28).

⁸ GWS, art. 19 and GC, art. 18 (locate hospitals away from military objectives); GC, art. 28; GP I, arts. 58(a) & (b).

This duty requires only actions that are feasible under the circumstances. For example, civilians accompanying an armed force, such as journalists and media representatives, civilian governmental employees and contractor employees, obviously cannot be separated from all military targets. Similarly, civilian crewmembers on merchant vessels, trains and civil aircraft cannot be separated from such objects which are often legitimate military objectives. Cities often surround transportation centers. The urban population cannot be separated from docks, warehouses, runways and similar military objectives within these cities.

An occupying power may evacuate an area if civilian protection or military reasons demand. *See* Gasser, Protection of the Civilian Population, *in* Fleck at 544; Green at 255-56. Transfer outside of occupied territory must be avoided if possible. GC, art. 24, and GP I, art. 78, contain special restrictions on evacuation of children, especially from occupied territory.

⁹ GC, art. 28 (enemy aliens in national territory of a belligerent and civilians in occupied territory); GP I, art. 51(7) (own civilians); GPW, art. 23(1); GP I, art. 12(4) (medical units); Matheson remarks, note 2 (p. 11-1), at 426. *See also* CG, art. 34, which prohibits the taking of hostages. During the Persian Gulf War, Iraq's taking of U.S. and other hostages, including civilians forcibly deported from Kuwait, and their placement in or around military targets as a "human shield," in violation of GC, arts. 28 & 34, constituted grave breaches under GC, art. 147. Title V Report at 0-607, 08; Moore, Crisis in the Gulf 86, 87 (1992).

¹⁰ Solf, Protection of Civilians, note 4 (p. 11-1) at 131, correctly notes:

[W]hile a civilian may not lose his protection against individualized attack while working in a munitions plant, he assumes the risk of collateral injury when he is in the vicinity of the munitions plant, although he continues to retain full protection while at home.

Cf. GPW, art. 23(1); GC, art. 28; GP I, arts. 51(7) & 12(4); notes 14 & 15 and accompanying text (p. 11-4). Precautions to be taken in attack are discussed *in* Chapter 8.

11.3 THE CIVILIAN POPULATION

The civilian population as such, as well as individual civilians, may not be the object of attack or of threats or acts of intentional terrorization.¹¹ The civilian population consists of all persons not serving in the armed forces, militia, or paramilitary forces and not otherwise taking a direct part in the hostilities.¹² Women and children are entitled to special respect and protection.¹³ Unlike military personnel (other than those in a specially protected status such as medical personnel and the sick and wounded) who are always subject to attack whether on duty or in a leave capacity, civilians, as a class, are not to be the object of

¹¹ 1923 Draft Hague Rules of Air Warfare, art. 22; GC, art. 33; common article 3; GP I, art. 51(2); GP II, arts. 4(2)(d) & 13(2); Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 426; Green 220-233. The concept of terror has been explained as follows:

Any action which carries warfare to civilians is bound to create terror in some and perhaps all. However, what the present article prohibits is only conduct which is intended to terrorize civilians. Otherwise legal acts which cause incidental terror to civilians (for example, the bombing of a munitions factory the work force of which is civilian) are not within the prohibitions of the present article.

Levie, 1 *The Code of International Armed Conflict* 217-18 (1986). *See also* CDDH/215/ Rev.1; XV Official Records 261, at para. 51; Levie, 3 *Protection of Victims of War* 158 (1980); Gasser, *Prohibition of Terrorist Acts in International Humanitarian Law*, 1986 *Int'l Rev. Red Cross* 200.

Starvation as a method of warfare is discussed in paragraph 8.1.2, note 15 (p. 8-4).

¹² GP I, art. 50. *Cf.* GPW, arts. 4A(4)-(5); GC, arts. 4 & 13. Under GP I, art. 51(3), civilians taking a direct part in hostilities lose their protection against dangers arising from military operations, but not their status as civilians. Bothe, Partsch & Solf 301.

War correspondents accredited by the armed forces which they accompany, although civilians, are entitled to prisoner of war status on capture. GPW, art. 4A(4). Other journalists do not have this protected status, although nations must treat them (and accredited war correspondents) prior to capture as civilians provided the unaccredited journalists take no action adversely affecting their status as civilians. The United States supports the principle in GP I, art. 79, that journalists must be protected as civilians under the same conditions. Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 428. (Nations bound by GP I may issue identity cards to journalists on dangerous professional missions in areas of armed conflict, art. 79 & Annex II.) *See also*, Green 233. Both accredited war correspondents and other journalists act at their own risk if they operate too close to military units engaged in or subject to attack. Gasser, *The Protection of Journalists Engaged in Dangerous Professional Missions: Law Applicable in Periods of Armed Conflict*, 1983 *Int'l Rev. Red Cross* 3.

¹³ The special respect and protection to which women and children in the power of a party to the conflict (friend or foe) are entitled is detailed in GWS, art. 12(4); GWS-Sea, art. 12(4); GPW, arts. 14(2), 25(4), 29(2), 88(2,3), 97(4) & 108(2); GC, art. 27(2), 85(4), 124(3) & 97(4) (women); and GC, arts. 14(1,2), 17, 23, 24, 38(5), 50(1-5), 51(2), 68(4), 76(5), 89(5) & 132 (children); and for parties thereto amplified in GP I, arts. 76-78, and GP II, arts. 4-6. The United States supports the principles in GP I, arts. 76, 77, that women and children be the object of special respect and protection, that women be protected against rape and indecent assault, and that all feasible measures be taken in order that children under the age of fifteen do not take direct part in hostilities. Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 428. *See also* de Preux, *Synopsis III: Special Protection of Women and Children*, 1985 *Int'l Rev. Red Cross* 292; Krill, *The Protection of Women in International Humanitarian Law*, 1985 *id.* 337; Singer, *The Protection of Children During Armed Conflict Situations*, 1986 *id.* 133; Plattner, *Protection of Children in International Humanitarian Law*, 1984 *id.* 140.

attack. However, civilians that are engaged in direct support of the enemy's war-fighting or war-sustaining effort are at risk of incidental injury from attack on such activities.¹⁴

Civilians who take a direct part in hostilities by taking up arms or otherwise trying to kill, injure, or capture enemy persons or destroy enemy property lose their immunity and may be attacked.¹⁵ Similarly, civilians serving as lookouts, guards, or intelligence agents for military forces may be attacked.¹⁶ Direct participation may also include civilians serving as guards, intelligence agents, or lookouts on behalf of military forces. Direct participation in hostilities must be judged on a case-by-case basis. Combatants in the field must make an honest determination as to whether a particular civilian is or is not subject to deliberate attack based on the person's behavior, location and attire, and other information available at the time.¹⁷

11.4 THE WOUNDED, SICK, AND SHIPWRECKED

Members of the armed forces incapable of participating in combat due to injury or illness may not be the object of attack.¹⁸ Moreover, parties to the conflict must, after each engagement and without delay, take all possible measures to search for and collect the

¹⁴ The "direct support" envisaged includes direct support by civilians to those actually participating in battle or directly supporting battle action, and military work done by civilians in the midst of an ongoing engagement. Bothe, Partsch & Solf 302-304. Civilians not in a "direct support" role also assume the risk of incidental injury as a result of attacks against legitimate military objectives in the immediate vicinity, *e.g.*, "their places of work or transport." *Id.*

¹⁵ GC, art. 5; GP I, arts. 45 & 51(3); FM 27-10, para. 81; Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 426.

¹⁶ GC, art. 5. Civil defense personnel have limited protection under GC, art. 63(2); for nations party thereto, civil defense personnel are given more detailed protection by GP I, arts. 61-67. When performing purely humanitarian duties related to protection and rescue of endangered civilians, civil defense personnel, recognized as such, should not be attacked, and should be permitted to perform their civil defense tasks except in cases of imperative military necessity. Matheson remarks, note 1 (p. 11-1), at 427. Examples of such humanitarian duties include warning, evacuation, management of shelters, management of blackout measures, rescue, medical and religious services, fire-fighting, detection and marking of danger areas, providing emergency accommodations and supplies, providing emergency assistance in the restoration and maintenance of order, emergency repair of utilities, decontamination, emergency disposal of the dead and assistance in the preservation of objects essential for survival. These activities do not amount to acts harmful to the opposing force. However, these personnel are legitimate targets if they directly engage in hostile acts. *See* Jakovljevic, *New International Status of Civil Defence* (1982); Green 242-45; Kalshoven, *Constraints on the Waging of War 107-09* (2d. ed. 1991). They also assume the risk of incidental injury in the circumstances described in note 14 (p. 11-4).

¹⁷ *Compare*, GP I, art. 51 and commentary thereon *in* Bothe, Partsch & Solf at 301-04.

¹⁸ GWS, art. 12(1); GP I, art. 41(1). *See generally*, Bothe & Janssen, *Issues in the Protection of the Wounded and Sick: The Implementation of International Humanitarian Law at the National Level*, 1986 *Int'l Rev. Red Cross* 189; Green 207-11; Rabus, *Protection of the Wounded, Sick and Shipwrecked*, *in* Fleck at 293-99.

wounded and sick on the field of battle, protect them from harm, and ensure their care.¹⁹ When circumstances permit, an armistice or cease-fire should be arranged to enable the wounded and sick to be located and removed to safety and medical care.²⁰ Wounded and sick personnel falling into enemy hands must be treated humanely and cared for without adverse distinction along with the enemy's own casualties.²¹ Priority in order of treatment may only be justified by urgent medical considerations.²² The physical or mental well-being of enemy wounded and sick personnel may not be unjustifiably endangered, nor may they be subjected to any medical procedure not called for by their condition or inconsistent with accepted medical standards.²³

Similarly, shipwrecked persons, whether military or civilian, may not be the object of attack.²⁴ Shipwrecked persons include those in peril at sea or in other waters as a result of either the sinking, grounding, or other damage to a vessel in which they are embarked, or of the downing or distress of an aircraft.²⁵ It is immaterial whether the peril was the result of enemy action or nonmilitary causes.²⁶ Following each naval engagement at sea, the

¹⁹ GWS, art. 15(1); GC, art. 16; GP I, art. 33(1); Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 424. This requirement also extends to the dead, and includes a requirement to prevent despoiling of the dead. GWS, art. 15(1); GC, art. 16(2); GP I, art. 34(1). The United States also supports the new principles in GP I, arts. 32 & 34, that families have a right to know the fate of their relatives, and that as soon as circumstances permit, arrangement be made to facilitate access to grave sites by relatives, to protect and maintain such sites permanently, and to facilitate the return of the remains when requested. Matheson *id.*, at 424. Further, the United States supports the principles in GP I, art. 74, that nations facilitate in every possible way the reunion of families dispersed as a result of armed conflicts and encourage the work of humanitarian organizations engaged in this task, and the principle in article 73 that persons who were considered as refugees or stateless persons before the beginning of hostilities nonetheless be protected persons under the GC. Matheson *id.*, at 427. See Vecsey, Co-operation between the Central Tracing Agency of the International Committee of the Red Cross and National Red Cross and Red Crescent Society Tracing Services, 1988 Int'l Rev. Red Cross 257.

²⁰ GWS, art. 15(2); GWS-Sea, art. 18(2); GC, art. 17; GP I, art. 33(4).

²¹ GWS, art. 12(1-2); GP I, art. 10(2). This protection also extends to the shipwrecked. GWS-Sea, art. 12(2).

²² GWS, art. 12(3); GP I, arts. 10(2), 15(3); Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 423. This protection applies to the shipwrecked. GWS-Sea, art. 12(3).

²³ GWS, art. 12, as amplified by GP I, art. 11(1); Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 423. This protection also applies to the shipwrecked. GWS-Sea, art. 12.

²⁴ HR, art. 23(c); GWS-Sea, art. 12(1); GP I, art. 41(1); *Trial of Eck*, 1 War Crimes Trials 1, 1 Repts. U.N. Comm. 1 (1945) (*The Peleus Trial*); *The Llandoverly Castle Case*, 16 Am. J. Int'l L. 708 (1922); *The Jean Nicolet*, F.E.I.M.T. Proc. 15,095-148, Judgment 1072; Mallison 139-43. See also San Remo Manual, para. 47(j) and paragraph 8.3, note 86 (p. 8-19).

²⁵ GWS-Sea, art. 12(1); GP I, art. 8(b). The shipwrecked may display the international code signal of distress indicated by "NC" on their liferaft. This signal means "I am in distress and require immediate assistance." International Convention for the Safety of Life at Sea, Annex B, Regulation 31 (N over C); Eberlin, Protective Signs 60 (1983).

²⁶ GWS-Sea, art. 12(1).

belligerents are obligated to take all possible measures, consistent with the security of their forces, to search for and rescue the shipwrecked.²⁷

Shipwrecked persons do not include combatant personnel engaged in amphibious, underwater, or airborne attacks who are proceeding ashore, unless they are clearly in distress and require assistance.²⁸ In the latter case they may qualify as shipwrecked persons only if they cease all active combat activity and the enemy has an opportunity to recognize their condition of distress.²⁹ Shipwrecked combatants falling into enemy hands become prisoners of war.³⁰

11.5 MEDICAL PERSONNEL AND CHAPLAINS

Medical personnel, including medical and dental officers, technicians and corpsmen, nurses, and medical service personnel, have special protected status when engaged exclusively in medical duties and may not be attacked.³¹ Possession of small arms for

²⁷ Hague X, art. 16; GWS-Sea, art. 18(1); GP I, art. 33(1). An engagement is not finished until the warships involved are safe from attack. Frequently, it is operationally hazardous or infeasible for a submarine to comply with this requirement. 2 Pictet 131, *citing with approval* Tucker 71-73. But if military circumstances permit, it is a war crime to fail to provide for the safety of survivors, or to take affirmative actions to prevent survival, such as shooting at life rafts. See note 24 (p. 11-5) and paragraph 6.2.5, subparagraph 5 and note 63 (p. 6-28). See also Rabus, paragraph 11.4 note 18 (p. 11-4) at 297.

²⁸ GP I, art. 42(3).

²⁹ GP I, art. 42(2).

³⁰ GWS-Sea, art. 16.

³¹ GWS, art. 24; GWS-Sea, art. 36. Medical personnel are therein defined as:

1. Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, and staff exclusively engaged in the administration of medical units and establishments;
2. Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick, if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands;
3. Staff of National Red Cross Societies and of other Voluntary Aid Societies, duly recognized and authorized by their Governments, employed as in subparagraph 1 above, provided the staff of such societies are subject to military laws and regulations;
4. Medical and hospital personnel of hospital ships and their crews.

The United States supports the principle in GP I, art. 15, that civilian medical and religious personnel be respected and protected and not be made the object of attacks. Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 423. See also (continued...)

self-protection, for the protection of the wounded and sick, and for protection from marauders and others violating the law of armed conflict does not disqualify medical personnel from protected status.³² Medical personnel may not use such arms against enemy forces acting in conformity with the law of armed conflict.³³ Chaplains attached to the armed forces are entitled to respect and protection.³⁴ Medical personnel and chaplains should display the distinctive emblem of the red cross or red crescent when engaged in their respective medical and religious activities.³⁵ Failure to wear the distinctive emblem does

³¹(...continued)

Rabus, paragraph 11.4, note 18 (p. 11-4) at 300-19; Green 212-19.

See generally, Pictet, *The Medical Profession and International Humanitarian Law*, 1985 *Int'l Rev. Red Cross* 191; Bothe & Janssen, *Issues in the Protection of the Wounded and Sick*, 1986 *id.* 191-99; and Mine, *The Geneva Conventions and Medical Personnel in the Field*, 1987 *id.* 180. The protections afforded hospitals and hospital ships are discussed in paragraph 8.5.1.4 (p. 8-25) and paragraph 8.2.3, note 62 (p. 8-13), respectively.

³² GWS, art. 22(1); GP I, arts. 13(2)(a) & 65(3). *Cf.* GP I, art. 65(3), defining the arms civil defense personnel may use as "light individual weapons." There was no agreement at the Diplomatic Conference which negotiated GP I as to what that term meant, although a number of military experts agreed with this British proposal: "The term 'light individual weapons' excludes fragmentation grenades and similar devices, as well as weapons which cannot fully be handled or fired by a single individual and those basically intended for non-human targets." CDDH/406/Rev. 1, paras. 56 & 58; 13 Official Records 372; Bothe, Partsch & Solf 414-15; ICRC, *Commentary (GP I)*, para. 2626, at 776 ("a valuable contribution to the definition"). Rabus, paragraph 11.4, note 18 (p. 11-4) at 311, states that:

Medical personnel may be equipped with small-arms weapons for the protection of the wounded, sick and shipwrecked in their charge and for their own protection Small-arms are pistols, sub-machine guns and rifles.

³³ 1 Pictet 203.

³⁴ GWS, art. 24; GWS-Sea, art. 36. To be entitled to protection, chaplains, unlike medical personnel, need not be exclusively or even partially assigned to the wounded and sick. However, U.S. Navy Regulations, 1990, art. 1063, requires that "while assigned to a combat area during a period of armed conflict" they be engaged exclusively in religious duties. Chaplains must abstain from all hostile acts. Further, to be accorded immunity they must be attached to the armed forces and not be mere volunteers. The government thus decides who is a chaplain for this purpose. The Geneva Conventions do not otherwise attempt to define who is a chaplain; GWS-Sea, art. 36 uses the term "religious personnel" in lieu of "chaplains". GP I, art. 8(d), speaks of chaplains by way of example only, in expanding the units to which "religious personnel" may be attached. Chaplains lose their special status if they commit acts harmful to the enemy outside their humanitarian functions. Although not forbidden by international law, U.S. Navy chaplains are forbidden to carry arms by SECNAVINST 1730.7A, Subj: Religious Ministries in the Navy, encl. 1, para. 1e. Unlike the protected "staff" of medical units, enlisted religious program specialists have no such special status since they are not chaplains. *See generally*, Rabus, *Religious Personnel*, in Fleck at 369-75.

³⁵ GWS, arts. 39 & 40; GWS-Sea, arts. 41 & 42. Personnel exclusively engaged in medical duties, along with personnel temporarily assigned to medical duties, may wear an arm band on the left arm bearing a red cross or red crescent. The arm band in actual practice has not been worn with any regularity, and the U.S. Navy Bureau of Medicine and Surgery has no regulation regarding its wearing. Experience has shown that the "regular" arm band is not recognizable beyond 60 meters. de Mulinen, *Signalling and Identification of Medical Personnel and Material*, 1972 *Int'l Rev. Red Cross* 479, 483. Accordingly, GP I, Annex I, arts. 3, 4, provide that the distinctive emblem shall be as large as appropriate under the

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not, by itself, justify attacking a medical person or chaplain, recognized as such.³⁶ Medical personnel and chaplains falling into enemy hands do not become prisoners of war.³⁷ Unless their retention by the enemy is required to provide for the medical or religious needs of prisoners of war, medical personnel and chaplains must be repatriated at the earliest opportunity.³⁸

11.6 PARACHUTISTS

Parachutists descending from disabled aircraft may not be attacked while in the air unless they engage in combatant acts while descending.³⁹ Upon reaching the ground,⁴⁰

³⁵(...continued)

circumstances, and worn so as to be visible from as many directions and from as far away as possible, such as large emblems worn on the chest and back. For nations bound by GP I, this rule effectively supersedes the narrow requirements set forth above. That rule should be followed whenever tactically appropriate. See Cauderay, *Visibility of the Distinctive Emblem on Medical Establishments, Units, and Transports*, 1990 Int'l Rev. Red Cross 295.

Personnel exclusively engaged in medical duties should, in time of armed conflict, carry a special identity card (such as the Geneva Conventions Identity Card DD Form 1934) bearing the distinctive emblem (red cross or red crescent) to establish their status in the event of capture. GWS, art. 40 & Annex II; GWS-Sea, art. 42 & Annex. For additional guidance regarding the identity card, see *Naval Military Personnel Manual (MILPERSMAN) 4620100*.

Chaplains are entitled to wear the arm band. Chaplains in time of armed conflict should carry a special identity card bearing the red cross (such as DD Form 1934) or equivalent emblem. This identification card is identical to that carried by medical personnel. For additional guidance see *MILPERSMAN 4620100*.

³⁶ 1 Pictet 307. See paragraph 11.9.6 (p. 11-19).

³⁷ GPW, art. 33(1); GWS, art. 28(2); GWS-Sea, art. 37. See DOD Directive 1300.7, Subj: Training and Education Measures Necessary to Support the Code of Conduct, for a discussion of U.S. Code of Conduct implications for medical personnel and chaplains who fall into enemy hands. This requirement of GPW, GWS and GWS-Sea that medical personnel be repatriated immediately unless their retention is necessary in order to provide for the medical needs of prisoners of war, does not apply to captured personnel who are specially trained for employment, should the need arise, as hospital orderlies, auxiliary stretcher-bearers, *etc.*, but who are not "exclusively" so engaged. This is true even if they were engaged in such duties at the time of capture. They are, of course, to be "respected and protected" while so engaged and are accorded prisoner of war status upon capture. GWS, art. 25. Captured personnel not attached to the medical service of their armed forces but who are physicians, surgeons, nurses or medical orderlies, may be required by the enemy to "exercise their medical functions in the interests of prisoners of war." Such personnel are, however, prisoners of war and need not be repatriated when their medical capabilities are no longer required for the support of other prisoners. GPW, art. 32.

³⁸ GWS, art. 28(1); GWS-Sea, art. 37; GPW, arts. 4C & 33. See ICRC Model Agreement relating to the Retention of Medical Personnel and Chaplains, September 1955, *reprinted in* Levie, Documents at 668. Based upon past experience, in future conflicts retention will be the general practice.

³⁹ GP I, arts. 42(1) & 42(2), codifying the customary rule set out in the 1923 Draft Hague Rules of Air Warfare, art. 20; Spaight 152, 155-64; AFP 110-31, para. 4-2e; Bothe, Partsch & Solf 226; Matheson remarks, note 1 (p. 11-1) at 425. Firing a weapon is clearly a combatant act.

⁴⁰ A downed airman, who aware of the presence of enemy armed forces, attempts to evade capture, will probably be (continued...)

such parachutists must be provided an opportunity to surrender. Airborne troops, special warfare infiltrators, and intelligence agents parachuting into combat areas or behind enemy lines are not so protected and may be attacked in the air as well as on the ground.⁴¹ Such personnel may not be attacked, however, if they clearly indicate in a timely manner their intention to surrender.⁴²

11.7 PRISONERS OF WAR⁴³

Combatants cease to be subject to attack when they have individually laid down their arms to surrender, when they are no longer capable of resistance, or when the unit in which they are serving or embarked has surrendered or been captured.⁴⁴ However, the law of armed conflict does not precisely define when surrender takes effect or how it may be accomplished in practical terms. Surrender involves an offer by the surrendering party (a unit or individual combatant) and an ability to accept on the part of the opponent. The latter may not refuse an offer of surrender when communicated,⁴⁵ but that communication must be made at a time when it can be received and properly acted upon--an attempt to surrender in

⁴⁰(...continued)

considered as engaging in a hostile act and, therefore, subject to attack from the ground or from the air. However, mere movement in the direction of one's own lines does not, by itself, constitute an act of hostilities. Airmen remaining within a disabled aircraft for a forced landing are not within the purview of paragraph 11.6. *See* Green 179.

⁴¹ GP I, art. 42(3). These persons may be attacked whether or not the airplane from which they are descending is in distress. *See also* Bothe, Partsch & Solf 227.

⁴² HR, art. 23(c); GP I, arts. 41(1) & 41(2)(b).

⁴³ *See generally* Levie, Prisoners of War, and Levie, Documents. *See also* Green 188-206; Fisher, Protection of Prisoners of War, in Fleck at 701-33.

⁴⁴ HR, art. 23(c); GP I, art. 41. Such persons are *hors de combat* and must be permitted to surrender (that is, quarter must be granted). The walking wounded leaving the battlefield also may not be attacked.

⁴⁵ It is forbidden to declare that no quarter will be given or that no prisoners will be taken. HR, art. 23(d); GP I, art. 40. Such an order:

tends to stiffen the adversary's will to resist and is therefore counterproductive to the achievement of the legitimate objectives of a military operation. Moreover, it incites the adversary to adopt a similar policy thus causing the conflict to degenerate into unrestrained savagery.

Bothe, Partsch & Solf 217. Although it is not prohibited to issue such an order as a reprisal, this form of reprisal offers little military advantage. Bothe, Partsch & Solf 218, 221-22. Reprisals are discussed in greater detail in paragraphs 6.2.3 to 6.2.3.3 and accompanying notes (pp. 6-16 to 6-21). *See also* paragraph 11.7.1, note 58 (p. 11-13).

the midst of a hard-fought battle is neither easily communicated nor received. The issue is one of reasonableness.⁴⁶

Combatants that have surrendered or otherwise fallen into enemy hands are entitled to prisoner-of-war status and, as such, must be treated humanely and protected against violence, intimidation, insult, and public curiosity.⁴⁷ When prisoners of war are given medical treatment, no distinction among them will be based on any grounds other than medical ones.⁴⁸ (See paragraph 11.4 for further discussion of the medical treatment to be accorded captured enemy wounded and sick personnel.) Prisoners of war may be interrogated upon capture but are required to disclose only their name, rank, date of birth, and military serial number.⁴⁹ Torture, threats, or other coercive acts are prohibited.⁵⁰

⁴⁶ For an excellent discussion on surrender *see* Robertson, *The Obligation to Accept Surrender*, *Nav. War Coll. Rev.*, Spring 1993, at 103. *See also* San Remo Manual, para. 43; Title V Report, at 0-629 to 632 (discussing the concept of surrender in the context of the Coalition's breaching of the Iraqi defensive line and the Coalition attack on Iraqi troops retreating from Kuwait City).

⁴⁷ GPW, art. 13. In the U.S. armed forces, the control and care of PWs, inhabitants of occupied territory and civilian internees is a primary function of the U.S. Army which has issued detailed regulations on the matter. However, this paragraph provides general guidance for Navy, Marine Corps and Coast Guard personnel who may take custody of or control enemy personnel in the absence of, or before turning them over to, Army personnel. For further guidance, *see* SECNAVINST 3461.3, Subj: Program for Prisoners of War and Other Detainees; OPNAVINST 3120.32 (series), Subj: Standard Organization and Regulations of the U.S. Navy, para. 650.3 (POW Bill); FMFRP 4-26, Subj: Enemy Prisoners of War and Civilian Internees; FM 19-4, Subj: Military Police, Battlefield Circulation Control, Area Security, and Prisoners of War; and AR 190-8 (Ch. 1), *Enemy Prisoners of War: Administration, Employment, and Compensation*.

The rights and obligations of PWs are detailed in GPW. The Convention's underlying philosophy is that PWs should not be punished merely for having engaged in armed conflict, and that their captivity should be as humane as possible. Although difficulties have been encountered in practice, GPW is the universally accepted standard for treatment of PWs; virtually all nations are parties to it and it is now regarded as reflecting customary law. *See also* de Preux, *Synopsis VII: Combatants and Prisoner-of-War Status*, 1989 *Int'l Rev. Red Cross* 47-50, and Dutli, *Captured Child Combatants*, 1990 *Int'l Rev. Red Cross* 421.

For guidance on the conduct of U.S. military personnel taken prisoner by the enemy, *see* *The Code of Conduct at Annex A11-1* (p. 11-25); DOD Directive 1300.7, Subj: Training and Education Measures Necessary to Support the Code of Conduct; OPNAVINST 1000.24 (series), Subj: Code of Conduct Training; and OPNAVINST C3305.1 (series), Subj: Survival, Evasion, Resistance and Escape (SERE) Program, Doctrine and Policy Concerning.

⁴⁸ GPW, art. 16.

⁴⁹ GPW, art. 17(1). These items are contained on each U.S. armed forces identification card, DD Form 2, which also serves as the Geneva Conventions Identification Card. The permissible sanction for a PW failing to furnish basic required information is to treat that PW as the equivalent of an E-1 and not afford the PW any privileges that might be due because of military rank or status. GPW, art. 17(2).

This rule does not prohibit a Detaining Power from interrogating a PW on subjects going far beyond name, rank and service number. While the range of questioning is completely unlimited, the means of questioning are limited. *Levie*, 1 *The Code of International Armed Conflict* 310. The PW is, of course, not bound to respond beyond name, rank, *etc.* Indeed, the
(continued...)

Persons entitled to prisoner-of-war status upon capture include members of the regular armed forces, the militia and volunteer units fighting with the regular armed forces, and civilians accompanying the armed forces.⁵¹ Militia, volunteers, guerrillas, and other partisans not fighting in association with the regular armed forces qualify for prisoner-of-war status upon capture,⁵² provided they are commanded by a person responsible for their

⁴⁹(...continued)

Code of Conduct, art. V, requires that U.S. military personnel taken prisoner by the enemy evade answering further questions to the utmost of their ability. *See* Annex A11-1 (p. 11-25).

⁵⁰ GPW, art. 17(4). There are a variety of practical as well as humane reasons to support this prohibition. The truth and accuracy of information obtained through coercion, torture or threats is always suspect. Humane treatment of PWs encourages other enemy personnel to surrender or defect, and permits the use of fewer resources to detain PWs and obtain reliable information. Disclosure that PWs have been tortured will almost always produce adverse public opinion in both belligerent and neutral nations. *See*, Stockdale & Stockdale, *In Love and War* 295-325, 361-71 (1984). Moreover, maltreatment of PWs by one side may lead the other side to reciprocate.

⁵¹ HR, art. 3; GPW, arts. 4A(1) & 4A(4). The United States supports the principle that persons entitled to combatant status be treated as prisoners of war in accordance with GPW. Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 425.

Persons who accompany the armed forces without actually being members thereof include "civilian members of military aircraft crews, war correspondents, supply contractors, members of labor units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card." GPW, art. 4A(4). BUPERSINST 1750.10, Subj: Identification Cards for Members of the Uniformed Services, Their Family Members and Other Eligible Persons governs the issuance of identity cards for civilians accompanying the armed forces.

Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the parties to the conflict, who do not benefit by more favorable treatment under any other provisions of international law, and members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power, are also entitled to PW status upon capture. GPW, arts. 4A(5) & 4A(3).

The officers and crews of captured or destroyed enemy warships and military aircraft (including naval auxiliaries) should be made PWs. *See* paragraph 8.2.2.1 (p. 8-9) regarding the treatment of officers, crew and passengers of captured enemy merchant vessels and civil aircraft. *See* paragraph 7.10.2 (p. 7-34) regarding treatment of officers, crew and passengers of captured neutral merchant vessels and civil aircraft.

Any wounded, sick or shipwrecked found on board a hospital ship or neutral merchant vessel may be taken on board the searching warship providing they are in a fit state to be moved and the warship can provide adequate medical facilities. If they are of enemy nationality, they become PWs. *See also* paragraph 8.2.3, note 62 (p. 8-13). This situation may arise when a warship exercises its right to search any hospital ship or neutral merchant vessel it meets on the high seas. (*See* paragraph 7.6 (p. 7-23) regarding visit and search generally.)

⁵² Members of a *levee en masse*, *i.e.*, inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces without having had time to form themselves into regular armed units are also entitled to PW status upon capture, provided they carry arms openly and respect the laws and customs of war. GPW, art. 4A(6).

conduct, are uniformed or bear a fixed distinctive sign recognizable at a distance, carry their arms openly, and conduct their operations in accordance with the law of armed conflict.⁵³

Should a question arise regarding a captive's entitlement to prisoner-of-war status, that individual should be accorded prisoner-of-war treatment until a competent tribunal convened by the captor determines the status to which that individual is properly entitled.⁵⁴ Individuals captured as spies or as illegal combatants have the right to assert their claim of entitlement to prisoner-of-war status before a judicial tribunal and to have the question adjudicated.⁵⁵ Such persons have a right to be fairly tried for violations of the law of armed conflict and may not be summarily executed.⁵⁶

11.7.1 Trial and Punishment. Prisoners of war may not be punished for hostile acts directed against opposing forces prior to capture, unless those acts constituted violations of the law of armed conflict.⁵⁷ Prisoners of war prosecuted for war crimes committed prior to or after capture are entitled to be tried by the same courts as try the captor's own forces and

⁵³ Declaration of Brussels art. 9; HR, art. 1; GPW 1929, art. 1; GPW, art. 4A(2). GP I, art. 44(3), would significantly diminish these requirements for irregulars by requiring them to carry their arms openly only "during each military engagement and during such time as they are visible to the enemy while engaged in a military deployment preceding the launching of an attack." Perhaps more than any other provision, this proposed change is the most militarily objectionable to the United States because of the increased risk to the civilian population within which such irregulars often attempt to hide. U.S. Secretary of State Letter of Submittal, 13 December 1986, 26 Int'l Leg. Mat'ls 564; Feith, *The National Interest*, Fall 1985, at 43-47; Sofaer, *Foreign Affairs*, Summer 1986, at 914-15; Roberts, 26 Va. J. Int'l L. 128-34; Levie, 1 *The Code of International Armed Conflict* 300-01; The Sixth Annual American Red Cross-Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions, 2 Am. U.J. Int'l L. & Policy (1987) (remarks of U.S. Department of State Legal Adviser Sofaer) at 463 & 466-67. Some nations have ratified GP I on the understanding that this exception would apply only in occupied territory (Belgium, Canada, Italy, New Zealand, South Korea, Spain, United Kingdom on signature) or in wars of national liberation covered by GP I, art. 1(4) (Belgium, Canada, New Zealand, South Korea, United Kingdom on signature), and that "deployment" means any individual or collective movement towards a position from which an attack is to be launched (Belgium, Canada, Italy, Netherlands, New Zealand, South Korea, Spain, United Kingdom on signature). Some of these nations have also declared that "visible to the adversary" includes visible with the aid of any form of surveillance, electronic or otherwise, available to keep a member of the armed forces of the adversary under observation (New Zealand). The negotiating history on these points is analyzed in Bothe, Partsch & Solf 251-55 and ICRC, *Commentary* (GP I) 529-36.

⁵⁴ GPW, art. 5(2); GP I, art. 45(1); Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 425. For instances of its application, see Levie, *Prisoners of War* 55-57; Levie, *Documents* 694, 722, 732, 737, 757 & 771; Green 109.

⁵⁵ GP I, arts. 45(3), 75(3) & 75(7); Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 425-26. See also the discussion on spies at paragraph 12.8 (p. 12-9).

⁵⁶ GP I, art. 75(4). See also paragraph 12.7.1 (p. 12-8) (illegal combatants) and paragraph 12.8.1 (p. 12-10) (PWs).

⁵⁷ See paragraph 6.2.5.1 (p. 6-30) regarding war crime trials during hostilities. See also Levie, *Criminality in the Law of War*, in 1 *International Criminal Law* (Bassiouni ed., 1986), reprinted in Schmitt & Green at chap. 11.

are to be accorded the same procedural rights.⁵⁸ At a minimum, these rights must include the assistance of lawyer counsel, an interpreter, and a fellow prisoner.⁵⁹

Although prisoners of war may be subjected to disciplinary action for minor offenses committed during captivity, punishment may not exceed 30 days confinement.⁶⁰ Prisoners of war may not be subjected to collective punishment nor may reprisal action be taken against them.⁶¹

11.7.2 Labor. Enlisted prisoners of war may be required to engage in labor having no military character or purpose.⁶² Noncommissioned officers may be required to perform only supervisory work.⁶³ Officers may not be required to work.⁶⁴

11.7.3 Escape. Prisoners of war may not be punished for acts committed in attempting to escape, unless they cause death or injury to someone in the process. Disciplinary punishment

⁵⁸ GPW, art. 84. Such trials may be in military or civilian courts. 3 Pictet 412; Levie, Documents 372.

⁵⁹ GPW, art. 105, which details these and other rights, including the right to call witnesses.

⁶⁰ GPW, arts. 89 & 90. This limitation of course applies only to "minor offenses."

⁶¹ GPW, arts. 26(6), 87(3) & 13(3).

⁶² GPW, art. 50; Levie, Prisoners of War 225-37. Prisoners of war may not be compelled to remove mines or similar devices. GPW, art. 52(3); Levie, *id.*, 238-40; Levie, 1 The Code of International Armed Conflict 356-57.

In the Falklands/Malvinas conflict, Argentine PWs, specialized in engineering, voluntarily took part in operations under the responsibility of British officers to mark the outer limit of minefields. . . . On visiting these prisoners, the ICRC made sure that they were doing this marking work without compulsion. However, and although there was no compulsion, one incident associated with the dangerous nature of these operations did occur after which the British no longer requested the voluntary assistance of the Argentine prisoners of war.

Junod, Protection of the Victims of Armed Conflict: Falklands-Malvinas Islands (1982): International Humanitarian Law and Humanitarian Action 30 (1984). See also London Times, 2 June 1982, at 1; *id.*, 3 June 1982, at 1; U.N. Docs. S/15176, 7 June 1982, and S/15182, 8 June 1982 (Argentine letters of complaint); U.N. Doc. S/15198, 11 June 1982 (British response).

⁶³ GPW, art. 49(2).

⁶⁴ GPW, art. 49(3). Officers may, however, volunteer to do so. "It has been found that the physical and mental health, and morale, of prisoners of war who are not given work to occupy their time (which in any event passes all too slowly) steadily deteriorate. In addition they are much more susceptible to being led into disruptive actions, such as mutinies, when their time is not fully occupied." Levie, 1 The Code of International Armed Conflict 351; Levie, The Employment of Prisoners of War, 57 Am. J. Int'l L. 318 (1963) *reprinted in* Schmitt & Green at chap. 3.

may, however, be imposed upon them for the escape attempt.⁶⁵ Prisoners of war who make good their escape by rejoining friendly forces or leaving enemy controlled territory, may not be subjected to such disciplinary punishment if recaptured. However, they remain subject to punishment for causing death or injury in the course of their previous escape.⁶⁶

11.7.4 Temporary Detention of Prisoners of War, Civilian Internees, and Other Detained Persons Aboard Naval Vessels. International treaty law expressly prohibits "internment" of prisoners of war other than in premises on land,⁶⁷ but does not address temporary stay on board vessels.⁶⁸ U.S. policy permits detention of prisoners of war, civilian internees, and detained persons on naval vessels as follows:⁶⁹

1. When picked up at sea, they may be temporarily held on board as operational needs dictate, pending a reasonable opportunity to transfer them to a shore facility or to another vessel for evacuation to a shore facility.
2. They may be temporarily held on board naval vessels while being transported between land facilities.
3. They may be temporarily held on board naval vessels if such detention would appreciably improve their safety or health prospects.

Detention on board vessels must be truly temporary, limited to the minimum period necessary to evacuate such persons from the combat zone or to avoid significant harm such

⁶⁵ GPW, arts. 92 & 93. Art. III of the Code of Conduct (Annex A11-1 (p. 11-25)) imposes a duty on all U.S. PWs to escape and to aid others to escape. Persons guarding PWs may use weapons against PWs escaping or attempting to escape only as an extreme measure and must always precede their use by giving warning appropriate to the circumstances. GPW, art. 42. Unless he or she injures someone in the process, a PW cannot be awarded more than the disciplinary punishment noted in paragraph 11.7.1 (p. 11-12) for trying to escape or helping others to escape.

⁶⁶ Declaration of Brussels, art. 28; GPW, art. 91.

⁶⁷ GPW, art. 22(1). This provision was made explicit in GPW, probably in response to the use of ships to intern prisoners of war during World War II. The practice had previously been prevalent especially during the Napoleonic Wars. ICRC, 1 Report on its Activities During the Second World War 248 (1948); Levie, Prisoners of War 121 & n.84; Levie, 1 The Code of International Armed Conflict 318. Cartel vessels are discussed in paragraph 8.2.3 and note 61 (pp. 8-12 & 8-13).

⁶⁸ This need was acutely present at the end of the 1982 Falklands/Malvinas Conflict when 13,000 Argentine soldiers surrendered, winter was fast approaching, and the tent shelters Britain had sent were lost in the sinking of the ATLANTIC CONVEYOR. Middlebrook, Task Force: The Falklands War, 1982, at 247, 381, 385 (rev. ed. 1987).

⁶⁹ AR 190-8, paragraph 11.7, note 47 (p. 11-10).

persons would face if detained on land.⁷⁰ Use of immobilized vessels for temporary detention of prisoners of war, civilian internees, or detained persons is not authorized without NCA approval.⁷¹

11.8 INTERNED PERSONS

Enemy civilians falling under the control of a belligerent may be interned if security considerations make it absolutely necessary to do so.⁷² Civilians sentenced for offenses committed in occupied territory may also be ordered into internment in lieu of punishment.⁷³ Enemy civilians may not be interned as hostages.⁷⁴ Interned persons may not be

⁷⁰ PWs must be evacuated, as soon as possible after capture, away from the combat zone to safe camps. While awaiting evacuation from a fighting zone, PWs must not be unnecessarily exposed to danger. Evacuation must be effected humanely and under conditions similar to those used to evacuate the capturing force. GPW, arts. 19-20. In small unit operations such as commando raids, long range reconnaissance patrols and airborne operations, it is frequently impracticable to evacuate PWs promptly from the combat zone. Bothe, Partsch & Solf 224. PWs may not be put to death even if their presence retards movement or diminishes operational effectiveness. FM 27-10, para. 85, at 35. Rather, such PWs may be disarmed and released at some appropriate time taking all feasible precautions for their safety. GP I, art. 41(3). Those precautions are only those practicable in light of the combat situation and all other circumstances prevailing at the time. There is, of course, no requirement for the captors to render themselves ineffective in providing for the PWs' safety after their release.

Within the limits imposed by available resources and without endangering its own forces, the detaining power must provide sufficient free food, clothing, shelter and medical care for PWs to maintain good health. GPW, arts. 15 & 25-28.

Arms, military documents and military property may be confiscated. PWs must be allowed to keep all personal property, identification, military articles issued for personal protection from the elements, and uniforms, badges of rank and decorations. For security reasons the detaining power may limit the amount of currency and other articles of value in each PW's possession. GPW, art. 18.

⁷¹ AR 190-8, paragraph 11.7, note 47 (p. 11-10).

⁷² They may also be assigned residence. GC, arts. 42(1) & 78. In the U.S. armed forces, responsibility for handling internees is generally a function of the Army. See FM 19-40, Enemy Prisoners of War and Civilian Internees; Gasser, Protection of the Civilian Population, *in* Fleck at 288-96.

⁷³ GC, art. 68(1). The general penal laws and regulations of the occupying power applicable to all citizens of the occupied territory or to all citizens of the territory of a party to the conflict apply to individuals after their internment. An internee may be subjected to judicial punishment only for a violation of these substantive laws. Internees may receive only disciplinary punishments for acts which are punishable when committed solely by them, but which are not punishable when committed by persons who are not internees. The punishments for such acts are severely curtailed; no internee can be fined more than 50% of his pay for one month, given fatigue duties exceeding two hours daily for one month, or imprisoned for more than one month. Such disciplinary punishment may only be ordered by the commander of the place of internment, or by one to whom the commander has delegated his disciplinary powers. The disciplinary sanctions allowed against internees are the same as those against PWs. GC, arts. 117-26. See also Green 220-23.

⁷⁴ GC, art. 34; 4 Pictet 229-31. Cf. *The Hostages Case, U.S. v. Wilhelm List et al.*, 11 TWC 1230 (1948). For a discussion of Iraqi violation of this prohibition during the Persian Gulf War see Title V, Report at 0-607; Moore, Crisis in the Gulf 86-88 (1992). See also paragraph 11.2 and note 8 (pp. 11-1 & 11-2).

removed from the occupied territory in which they reside except as their own security or imperative military considerations may require.⁷⁵ All interned persons must be treated humanely and may not be subjected to reprisal action or collective punishment.⁷⁶

11.9 PROTECTIVE SIGNS AND SYMBOLS

11.9.1 The Red Cross and Red Crescent. A red cross on a white field (Figure 11-1a) is the internationally accepted symbol of protected medical and religious persons and activities. Moslem countries utilize a red crescent on a white field for the same purpose (Figure 11-1b).⁷⁷ A red lion and sun on a white field, once employed by Iran, is no longer used.⁷⁸

⁷⁵ GC, art. 49(2); 4 Pictet 278-83. This prohibition results from the experiences of World War II when:

[T]here were many instances of individual and mass forcible transfers or deportations of the inhabitants of occupied territories by the Occupying Power, frequently under horrendous conditions and usually accomplished solely because the Occupying Power wanted additional manpower for labor in other areas (perhaps in armament factories in its home territories or, just as important, as agricultural workers), or because it desired to make room for the movement of its own nationals into the occupied territory.

Levie, 2 *The Code of International Armed Conflict* 720. GP I, art. 78, details restrictions on the evacuation of children applicable to parties to GP I. The United States supports the principle in article 78 that no nation arrange the evacuation of children except for temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety so require. Matheson remarks, paragraph 11.1, note 2 (p. 11-1), at 428. The complex body of law that may be applicable in the variety of situations involving the evacuation of children is carefully explained in ICRC, *Commentary (GP I)* 908-15.

Whether interned in occupied territory or in territory of a party to the conflict, an individual's status as an internee during hostilities is subject to periodic review at least every six months in domestic territory, and if possible, every six months in occupied territory. GC, arts. 43 & 72(2). If occupation is terminated by the withdrawal of the occupying power before the close of hostilities, such power may not forcibly transfer internees out of the former occupied territory. GC, art. 49(1). Since the existence of hostilities is the main cause for internment, internment should cease when hostilities cease. GC, art. 133(1).

⁷⁶ GC, arts. 32 & 33. Professor Levie cites this extreme example of illegal imposition of collective punishment:

The execution of 190 male residents, the deportation of the women, the dispersion of the children, and the razing of the town of Lidice, in Czechoslovakia, on 10 June 1942, because of the assassination of the Nazi gauleiter Reinhard Heydrich . . . by Czech resistance fighters parachuted in from Great Britain.

Levie, 1 *The Code of International Armed Conflict* 444. See Calvocoressi & Wint, *Total War* 267 (1972); Asprey, *War in the Shadows: The Guerrilla in History* 421 (1975); and sources cited therein.

⁷⁷ HR, art. 23(f); GWS, art. 38; GWS-Sea, art. 41; GC, art. 18. The red cross on a white ground was first adopted in the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva, 22 August 1864, 22 Stat. 940; 55 BFSP 43; *reprinted in* Schindler & Toman 213, at art. 7, reversing the Swiss Federal colors as a compliment to Switzerland. The strengths and weaknesses of the emblems are discussed in a series of articles appearing in 1989 Int'l Rev. Red Cross 405-64, and Caudey, *Visibility of the Distinctive Emblem on Medical Establishments, Units and Transports*, 1990 Int'l Rev. Red Cross 295.

⁷⁸ As from 4 July 1980. 1980 Int'l Rev. Red Cross 316-17.

Israel employs a red six-pointed star, which it reserved the right to use when it ratified the 1949 Geneva Conventions (Figure 11-1c). The United States has not agreed that it is a protected symbol.⁷⁹ Nevertheless, all medical and religious persons or objects recognized as being so marked are to be treated with care and protection.⁸⁰

11.9.2 Other Protective Symbols. Other protective symbols specially recognized by international law include an oblique red band on a white background to designate hospital zones and safe havens for noncombatants (Figure 11-1d).⁸¹ Prisoner-of-war camps are marked by the letters "PW" or "PG" (Figure 11-1e);⁸² civilian internment camps with the

⁷⁹ The Israeli reservations to GWS, GWS-Sea and GC are quite similar. The reservation to the GWS reads:

Subject to the reservation that, while respecting the inviolability of the distinctive signs and emblems of the Convention, Israel will use the Red Shield of David as the emblem and distinctive sign of the medical services of her armed forces.

To GWS-Sea, Israel's reservation states:

. . . Israel will use the Red Shield of David on the flags, armlets and on all equipment (including hospital ships), employed in the medical service.

Schindler & Toman 576. The Director of the ICRC has argued that the Israeli statement constitutes merely a unilateral declaration. Pilloud, Reservations to the Geneva Conventions of 1949, 1976 Int'l Rev. Red Cross 121-22. Israel continues to use the Red Star of David as its protective emblem. CDDH/SR.37 Annex, 6 Official Records 78-79, Levie, 1 Protection of War Victims 309, 4 *id.* 161.

The United States has rejected the Israeli reservations, as part of its rejection of all reservations to the 1949 Geneva Conventions, while accepting treaty relations with all parties "except as to the changes proposed by such reservations." Schindler & Toman 590. As a result, the use of the Red Shield of David (Magen David Adom) has to be, and has been in the Arab-Israeli conflicts, recognized as a protective emblem by any other party to an armed conflict with Israel. Bothe, Partsch & Solf 103; Vienna Convention on the Law of Treaties, art. 20.5. Nevertheless, despite strenuous efforts, the Red Shield of David has not been formally recognized as a protective symbol in the relevant treaties. Rosenne, The Red Cross, Red Crescent, Red Lion and Sun and the Red Shield of David, 5 Israel Y.B. Human Rights 1 (1975). Multiplicity of protective emblems does not facilitate their recognition in the heat of battle. Gasser, The Protection of Journalists Engaged in Dangerous Professional Missions, 1983 Int'l Rev. Red Cross 10.

⁸⁰ Pilloud, note 79, at 122; Levie, 2 The Code of International Armed Conflict, art. 1011.1.2, at 651. See also paragraph 11.9.7 (p. 11-19).

⁸¹ GC, art. 14 & Annex I, art. 6. A history of hospital and safety zones may be found in 4 Pictet 121-24. Hospital zones for the wounded and sick combatants are to be marked with red crosses. GWS, art. 23 & Annex I, art. 6; 1 Pictet 422; 4 Pictet 634.

⁸² GPW, art. 23(4); 3 Pictet 190. PW camps are to be marked with the letters PW or PG (*prisonniers de guerre*) placed so as to be clearly visible from the air in daytime. If the exact locations of PW camps are provided as required by GPW, art. 23(3), the need for this marking may be reduced. Levie, Prisoners of War 123-24; Levie, 2 The Code of International Armed Conflict 689. The parties may agree on some other marking scheme. Areas other than PW camps must not bear these markings. GPW, art. 23(4).

letters "IC" (Figure 11-1f).⁸³ A royal-blue diamond and royal-blue triangle on a white shield is used to designate cultural buildings, museums, historic monuments, and other cultural objects that are exempt from attack (Figure 11-1g).⁸⁴ In the Western Hemisphere, a red circle with triple red spheres in the circle, on a white background (the "Roerich Pact" symbol) is used for that purpose (Figure 11-1h).⁸⁵

Two protective symbols established by the 1977 Protocol I Additional to the Geneva Conventions of 1949, to which the United States is not a party, are described as follows for informational purposes only. Works and installations containing forces potentially dangerous to the civilian population, such as dams, dikes, and nuclear power plants, may be marked by three bright orange circles of equal size on the same axis (Figure 11-1i).⁸⁶ Civil defense facilities and personnel may be identified by an equilateral blue triangle on an orange background (Figure 11-1j).⁸⁷

11.9.3 The 1907 Hague Symbol. A protective symbol of special interest to naval officers is the sign established by the 1907 Hague Convention Concerning Bombardment by Naval Forces in Time of War (Hague IX). The 1907 Hague symbol is used to mark sacred edifices, hospitals, historic monuments, cultural buildings, and other structures protected from naval bombardment. The symbol consists of a rectangular panel divided diagonally into two triangles, the upper black, the lower white (Figure 11-1k).⁸⁸

11.9.4 The 1954 Hague Convention Symbol. A more recent protective symbol was established by the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict.⁸⁹ Cultural sites that are of artistic, historical, or archaeological interest, whether religious or secular, may be marked with the symbol to facilitate recognition. The symbol

⁸³ GC, art. 83(3); 4 Pictet 383-84. The letters IC are used only if military considerations permit and are to be placed so as to be clearly visible from the air in daytime. If the exact locations of internment camps are provided as required by GC, art. 83(2), the need for this marking may be reduced. The parties may agree on some other marking scheme. Areas other than internment camps must not bear these markings. GC, art. 83(3).

⁸⁴ Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954, 249 U.N.T.S. 240, *reprinted in* Schindler & Toman 749, art. 16.

⁸⁵ Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, Washington, 15 April 1935, 49 Stat. 3267; T.S. 899; 3 Bevans 254; 167 L.N.T.S. 279, art. 3. Parties to the Roerich Pact include Brazil, Chile, Colombia, Cuba, Dominican Republic, El Salvador, Guatemala, Mexico, the United States, and Venezuela.

⁸⁶ GP I, art. 56(7). *See* paragraph 8.5.1.7 (p. 8-27).

⁸⁷ GP I, art. 66(4). Civil defense personnel are discussed in paragraph 11.3, note 16 (p. 11-4).

⁸⁸ Hague IX, art. 5. Hospitals should be marked with red crosses.

⁸⁹ *See* note 84 (p. 11-18).

may be used alone or repeated three times in a triangular formation. It takes the form of a shield, pointed below, 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 (Figure 11-1g).

11.9.5 The White Flag. Customary international law recognizes the white flag as symbolizing a request to cease-fire, negotiate, or surrender. Enemy forces displaying a white flag should be permitted an opportunity to surrender or to communicate a request for cease-fire or negotiation.⁹⁰

11.9.6 Permitted Use. Protective signs and symbols may be used only to identify personnel, objects, and activities entitled to the protected status which they designate.⁹¹ Any other use is forbidden by international law.⁹²

11.9.7 Failure to Display. When objects or persons are readily recognizable as being entitled to protected status, the lack of protective signs and symbols does not render an otherwise protected object or person a legitimate target. Failure to utilize internationally agreed protective signs and symbols may, however, subject protected persons and objects to the risk of not being recognized by the enemy as having protected status.⁹³

⁹⁰ Lieber Code, arts. 111-14; HR, arts. 23(f) & 32; GP I, art. 38(1); FM 27-10, paras. 53, 458, 460 & 467. See paragraph 11.7 (p. 11-9) for a discussion of surrender.

⁹¹ GWS, art. 44(1); GWS-Sea, art. 44; Hague Cultural Property Convention, art. 17. See paragraph 11.9.2, note 84 (p. 11-18); GP I, art. 66(8) (civil defense). The United States has reserved the right of a few of its businesses to continue using the red cross commercially provided it was so used prior to 1905. Schindler & Toman 590; 1 Pictet 387; Pilloud, paragraph 11.9.1, note 79 (p. 11-17) at 123.

⁹² HR, art. 23(f); GWS, art. 53; GP I, art. 38; implemented in 18 U.S.C. sec. 706 (1982). There are no express limitations on the use of the special sign of the Roerich Pact, the Hague 1907 sign, or for dams, dikes and nuclear power stations established by art. 56(7) of GP I. However, "the supervision and control of the special sign [for dams, dikes, and nuclear generating stations] depends on the more general provisions of Art. 80 and the general prohibitions against improper use of recognized emblems of Art. 38" of GP I. Bothe, Partsch & Solf 357. They are of the view that in some (unspecified) circumstances, "the deliberate misuse of the special sign could constitute a grave breach" under art. 85(3)(f) of GP I. *Ibid.* The same rationale would apply to misuse of the Roerich Pact and Hague 1907 signs. Improper use of protected signs and symbols constitutes perfidy. See paragraph 12.1.2 (p. 12-3) for a discussion of perfidy. The protections for dams, dikes and nuclear electrical generating stations are discussed in paragraph 8.5.1.7 and accompanying notes (p. 8-27).

⁹³ 1 Pictet 307 recognizes there are circumstances when display of the distinctive emblem unnecessarily exposes noncombatants to risk of attack in violation of their immunity or compromises operational integrity. In the U.S. Army, authority to direct the protective emblem not be used for tactical or operational reasons is held by the "major tactical commander." AR 750-1, Subj: Maintenance of Supplies and Equipment: Army Materiel Maintenance Policy and Retail Maintenance Operations (ch. 1), paras. 4-41d(6) & (7).

11.10 PROTECTIVE SIGNALS

Three optional methods of identifying medical units and transports have been created internationally.⁹⁴ United States hospital ships and medical aircraft do not use these signals.

11.10.1 Radio Signals. For the purpose of identifying medical transports by radio telephone, the words PAN PAN are repeated three times followed by the word "medical" pronounced as in the French MAY-DEE-CAL. Medical transports are identified in radio telegraph by three repetitions of the group XXX followed by the single group YYY.⁹⁵

11.10.2 Visual Signals. On aircraft, the flashing blue light may be used only on medical aircraft. Hospital ships, coastal rescue craft and medical vehicles may also use the flashing blue light. Only by special agreement between the parties to the conflict may its use be reserved exclusively to those forms of surface medical transport.⁹⁶

11.10.3 Electronic Identification. The identification and location of medical ships and craft may be effected by means of appropriate standard maritime radar transponders as established by special agreement to the parties to the conflict. The identification and location of medical aircraft may be effected by use of the secondary surveillance radar (SSR) specified in Annex 10 to the Chicago Convention. The SSR mode and code is to be reserved for the exclusive use of the medical aircraft.⁹⁷

⁹⁴ GP I, art. 18(5-6) & Annex I, art. 5.

⁹⁵ Radio Regulations (Mob 1983), art. 40, 1984 Int'l Rev. Red Cross 54-56; International Code of Signals, H.O. Pub. 102, at 137 (rev. 1981); GP I, Annex I, art. 7; Bothe, Partsch & Solf 586-88; Levie, 2 The Code of International Armed Conflict 704-06; Eberlin, Protective Signs 12-16; ICRC, Commentary (GP I) 1216-45.

⁹⁶ International Code of Signals, H.O. Pub. 102 (rev. 1981), change 136A, Notice to Mariners 52/85, at II-2.5; GP I, Annex I, art. 6. See Bothe, Partsch & Solf 585; Levie, 2 The Code of International Armed Conflict 703-04; Eberlin, The Identification of Medical Aircraft in Periods of Armed Conflict, 1982 Int'l Rev. Red Cross 207-09; Eberlin, Identification of Hospital Ships and Ships Protected by the Geneva Conventions of 12 August 1949, 1982 *id.* 315; Eberlin, The Protection of Rescue Craft in Periods of Armed Conflict, 1985 *id.* 140; ICRC, Commentary (GP I) 1206-11. Experiments conducted during the Falklands/Malvinas war by the British found the visibility of a flashing blue light was seven nautical miles, while normal visibility at sea was one mile. Junod, Protection of the Victims of Armed Conflict Falkland-Malvinas Islands (1982), at 25. Similar results are reported in Cauderay, Visibility of the Distinctive Emblem on Medical Establishments, Units, and Transports, 1990 Int'l Rev. Red Cross 295. Its use ashore poses difficulties caused by the extensive use by many European and Asian police, fire and emergency vehicles of the flashing blue light.

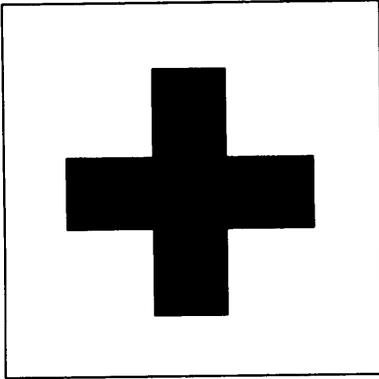
⁹⁷ Radio Regulations (Mob 1983), arts. 3219A & B; International Code of Signals, H.O. Pub. 102 (rev. 1981), change 136A, Notice to Mariners 52/85, at II-2.5; Eberlin, Amendments to the Radio Regulations Concerning Medical Means of Transport and Neutral Means of Transport, 1984 Int'l Rev. Red Cross 51; Eberlin, Underwater Acoustic Identification of Hospital Ships, 1988 Int'l Rev. Red Cross 505; GP I, Annex I, art. 8; Bothe, Partsch & Solf 589; Levie, 2 The Code of International Armed Conflict 706-07; ICRC, Commentary (GP I) 1248-55. The SSR is also known as IFF (identification friend or foe).

11.11 IDENTIFICATION OF NEUTRAL PLATFORMS

Ships and aircraft of nations not party to an armed conflict may adopt special signals for self-identification, location and establishing communications. Use of these signals does not confer or imply recognition of any special rights or duties of neutrals or belligerents, except as may otherwise be agreed between them.⁹⁸

⁹⁸ Resolution No. 18 (Mob 1983), World Administrative Radio Conference for Mobile Services, Geneva 1983, reprinted in 1984 Int'l Rev. Red Cross 58; ICRC, Commentary (GP I) 1244-45. See Eberlin, Amendments to the Radio Regulations Concerning Medical Means of Transport and Neutral Means of Transport, 1984 Int'l Rev. Red Cross 52.

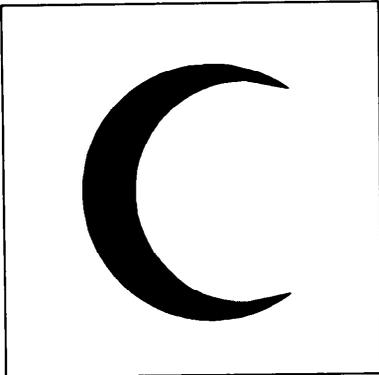
a.



The Red Cross

Symbol of medical and religious activities.

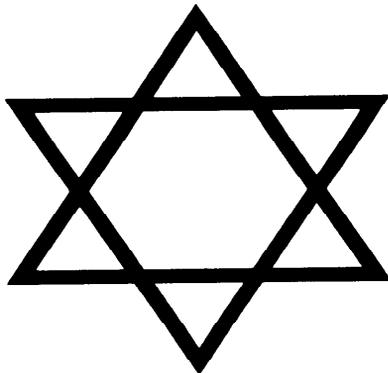
b.



The Red Crescent

Symbol of medical and religious activities.

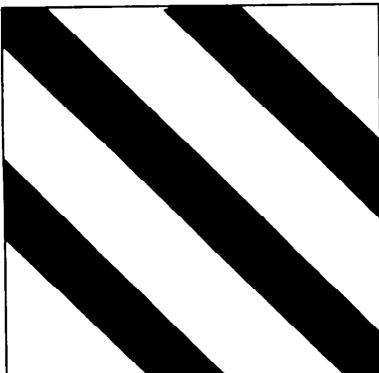
c.



The Red Star of David

Israeli emblem for medical and religious activities.
Israel reserved the right to use the Red Star of David when it ratified the 1949 Conventions.

d.

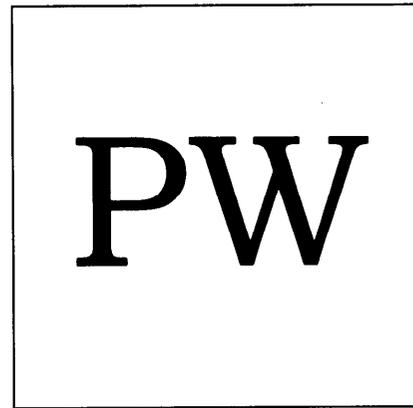
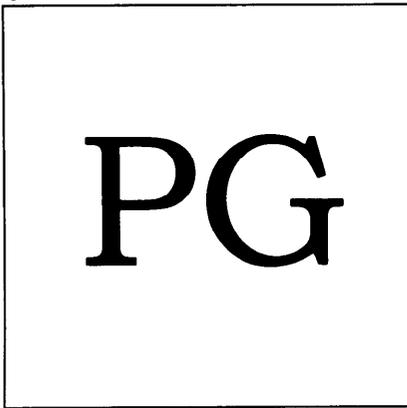


Marking for Hospital and Safety Zones for Civilians and Sick and Wounded (Three Red Stripes)

(Noncombatants)

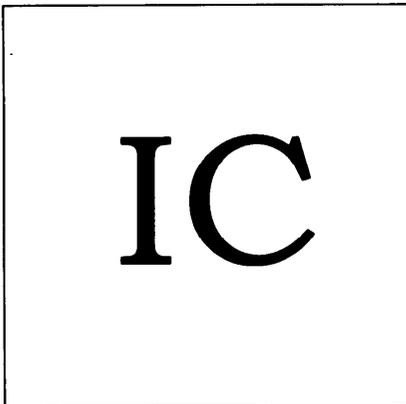
Figure 11-1. Protective Signs and Symbols (Sheet 1 of 3)

e.



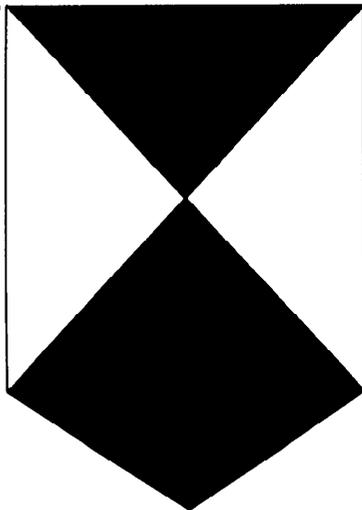
Symbols for Prisoner of War Camps

f.



Civilian Internment Camps

g.

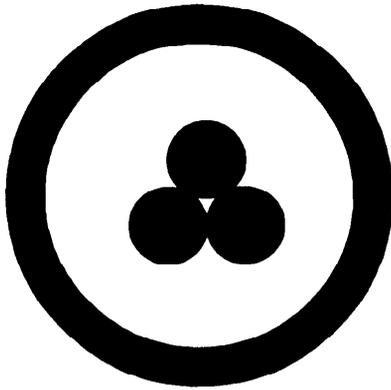


**Symbol for Cultural Property
Under the 1954 Hague
Convention (Blue and White)**

(Also used in a group of three
to indicate special protection.)

Figure 11-1. Protective Signs and Symbols (Sheet 2 of 3)

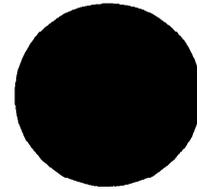
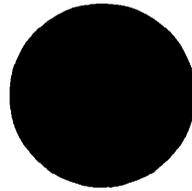
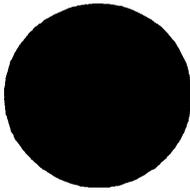
h.



Roerich Pact (Red and White)

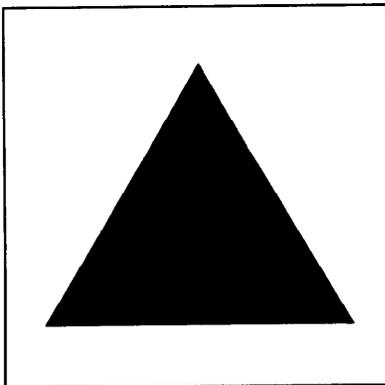
Symbol used for historical, artistic, education, and cultural institutions, among Western Hemisphere nations.

i.



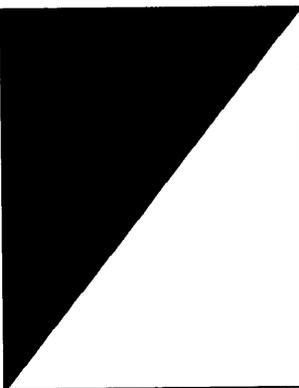
Special Symbol for Works and Installations Containing Dangerous Forces (Three Orange Circles)
(Dams, dikes, and nuclear power stations)

j.



Symbol designating Civil Defense Activities
(Blue triangle in an orange square)

k.



The 1907 Hague Sign

Naval bombardment symbol designating cultural, medical, and religious facilities.

Figure 11-1. Protective Signs and Symbols (Sheet 3 of 3)

ANNEX A11-1

CODE OF CONDUCT

I

I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am required to give name, rank, service number, and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in God and in the United States of America.

Sources: Executive Order 12633 (Mar. 1988); Code of the U.S. Fighting Force, American Forces Information Service, DOD (1988).