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Chapter 34

The 1977 Protocols to the Geneva Convention of 1949*

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On 12 December 1977, a decade of international negotiation was culminated when the Government of Switzerland opened for signature the Protocols Additional to the Geneva Conventions of 12 August 1949. The United States was one of 46 nations participating in the signing ceremony in Bern.[1]

Modern law regulating the conduct of armed conflict—commonly referred to as the "law of war"—dates from the mid-19th century. Commencing with the Geneva Convention of 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field and the U.S. Lieber Code of 1865, "Instructions for Government of Armies of the United States in the Field," the law of war is intended to:

Protect both combatants and non-combatants from unnecessary suffering;

Safeguard certain fundamental rights of civilians, prisoners of war, and wounded, sick, and shipwrecked members of armed forces; and thereby to

Facilitate the restoration of peace.

Before the Geneva Convention of 1864, agreements providing protection to noncombatants were sporadic, limited to a particular conflict and the parties concerned, and based upon strict reciprocity. Agreements commencing with the 1864 Geneva Convention, negotiated in the aftermath of war rather than the heat of battle, seek universal agreement, application at all times and under all circumstances, and rely upon their consistency with the principles of war, tactical considerations, and leadership principles rather than reciprocity exclusively for their success.

Law of war conventions of this century reflect the evolutionary development of warfare as well as the slow but steady definition of the rights of individuals not engaged in battle. The principal treaty of the 14 Hague Conventions of 1907, Hague Convention IV Respecting the Laws and Customs of War on Land,[2] is in large measure a codification of those principles governing the conduct of warfare that had evolved through the customary practice of States to that time. An acknowledgement of the premise that the right of belligerents to adopt means

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of injuring one another is not unlimited, it is primarily a statement of the obligations of the combatants toward each other.

In contrast, the four Geneva Conventions of 1949 for the Protection of War Victims[3] serve to delineate minimum standards of protection and respect to be afforded persons placed *hors de combat* or taking no direct part in hostilities. This protection covers members of the armed forces no longer capable of carrying on the battle because of wounds, sickness, shipwreck, capture or surrender, and civilians who have no direct influence on the war-making potential of the enemy.

As often is said of tactics, law of war conventions stem from and reflect the conflict or conflicts most recently concluded. The Hague Conventions of 1907 address problems which arose during the Franco-Prussian and Russo-Japanese wars, while the Geneva Protocol of 1925 banning the use of poisonous gas[4] and the two Geneva Conventions of 1929[5] evolved as a direct result of the experience of the belligerents in World War I. Similarly, the Geneva Conventions of 1949 are based upon abuses committed by the Axis Powers during World War II and other law of war issues surrounding a European-style international conflict between conventional forces in occupied territory. Only Article 3, common to all four of the 1949 Geneva Conventions, anticipated the then-developing problem of wars of a noninternational character fought by or against unconventional forces. The resultant problem may be illustrated by the incident at My Lai where U.S. Army Forces on 16 March 1968 assembled and executed several hundred unarmed, unresisting men, women, and children. Despite the heinousness of the offense there was no violation of the Geneva Conventions inasmuch as the victims were citizens of the host country and U.S. Forces were present as an ally rather than as an occupying power. This experience and others in the more than 100 conflicts since the promulgation of the 1949 Conventions—the civil wars in the Dominican Republic, Nigeria, the Congo, and Angola, the Bangladesh war for independence, the British counterinsurgency campaign in Malaya, the chronic violence in Cyprus, the Arab-Israeli conflicts and their attendant guerrilla operations, to name a few—suggests that existing law is not fully attuned to the conflicts of the 1960s and the 1970s.

Moreover, as with all law, the law of war was in need of an overhaul to catch up with technological advances. Serious questions were being raised with regard to the lawfulness of a number of weapons. Medical evacuation by helicopter, developed by the United States in Korea and refined in Vietnam, went beyond the aerial evacuation methods contemplated in the 1949 Geneva Convention for the Wounded and Sick. New means for the protection of hospital ships were available and international acceptance was necessary in the over-the-horizon naval warfare of today. Finally, no specific agreement had been reached governing bombardment from the air as Hague Convention XIV of 1907 prohibited the "discharge of projectiles and explosives from balloons. . . ."[6]

While moves to update the law of war can be traced back as far as 1956, when the International Committee of the Red Cross (ICRC) unsuccessfully proposed its Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War, it was not until 1968 that there was any impetus behind the move. In that year the United Nations-sponsored Tehran Conference on Human Rights adopted a resolution requesting the General Assembly to invite the Secretary-General to examine the "need for additional humanitarian international conventions or of possible revision of existing conventions" to "ensure the better protection of civilians [and] prisoners [of war] . . . in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare."[7] General Assembly Resolution No. 2444, approved on 16 December 1968, made such a request.

This action by the General Assembly served to encourage a number of nations to direct their attention to ICRC initiatives to update the law of war. The ICRC is the traditional guardian of the humanitarian law of war, is possessed of a professional staff highly knowledgeable of the law of war and, above all else, is both neutral and apolitical. As a result, the ICRC sponsored conferences of government experts in 1971 and 1972 to discuss the draft Protocols that it had prepared. Forty-one nations sent delegations in 1971, 77 in 1972, with the United States playing a very active role at each session. In 1974, Switzerland, the depository of the 1949 Geneva Conventions, convened the first of what would be four annual sessions of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts to consider the draft Protocols. The fourth session, which concluded on 10 June 1977, produced the Protocols signed by the United States on 12 December 1977.

The Protocols reflect the experience of the last three decades, Protocol I serving to further the definition of the law of war as it relates to conflicts of an international character, Protocol II offering clarification and elaboration of the protection afforded noncombatants and the duties of combatants in internal or civil wars. They are intended to supplement rather than replace existing codifications of the law. Among the more significant measures there are considerations of means and methods of warfare, legality of weapons, protection of medical transportation, and internal warfare.

Means and Methods of Warfare. Traditionally the legality of the means and methods of warfare have been measured by a balancing of *military necessity* and *unnecessary suffering*. The former is defined as permitting "a belligerent to apply only that degree and kind of regulated force, not otherwise prohibited by the law of war, required for the partial or complete submission of the enemy with the least possible expenditure of time, life, and physical resources."[8] Article 35 of Protocol I reaffirms the longstanding principles of *unnecessary suffering* by declaring:

> (1) In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.
>
> (2) It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

The classic example of the balancing of these two considerations is that of an infantry unit delayed in its attack by a lone sniper hiding at the edge of a village. While incidental injuries are an unfortunate but not prohibited aspect of war, the calling in of an artillery barrage to take out this lone sniper potentially would cause greater damage to the village and its inhabitants than is warranted. Herein lies a third factor in the means and methods equation, that of *proportionality*. In weighing incidental injury to civilians, the degree of such injury must not be disproportionate to the military advantage to be gained.

During the Vietnam War, for example, the North Vietnamese installed substantial concentrations of antiaircraft guns and missiles on the earthware dikes and dams surrounding Haiphong and Hanoi. *Military necessity* warranted airstrikes against these positions. However, attack of the positions with conventional ordnance would destroy not only the enemy positions but the dams as well. This would result in massive flooding and in the probable deaths of several hundred thousand civilians, a cost U.S. authorities concluded was disproportionate to the military advantage to be gained. When the mission finally was approved by President Nixon, it was executed with a clear proviso that only antipersonnel bombs, capable of neutralization of the positions without substantial damage to the dikes, would be used.

While examples of this balancing of *military necessity, unnecessary suffering,* and *proportionality* are common-place in U.S. practice, the concept of *proportionality*, though part of customary international law, has not found its way into previous codifications of the law of war. This legislative lag has existed since 1911 when Italy conducted the first bombardment by aircraft (in the Libyan War against Turkey). As with other successful weapons, once the military efficiency of the airplane was realized, suggestions for the regulation of its use failed because of inadequate sponsorship. Thus attempts to codify the *proportionality* concept in the "Rules of Air Warfare" drafted by the Commission of Jurists meeting at The Hague in 1922-23 flew in the face of airpower arguments that "terror" bombing of the civilian population would destroy the morale of the enemy and hasten the end of any war. Although this theory was contradicted by the experience of both sides during World War II, legislation regulating aerial bombardment and codifying the rule of *proportionality* was not immediately forthcoming, prompting one expert to offer the following observation regarding the state of the law:[9]

> Here are two villages in an occupied country. Detachments of the enemy are going through them. Unidentified inhabitants shoot down some fifteen soldiers. A rapid

> police inquiry naturally produces nothing. To identify the assailants would require long interrogations and probably torture, since it is a matter of extracting information from patriots, conscious of serving a sacred cause. Moreover, other columns are arriving and there can be no question of conducting enquiries for weeks. The [division] commander will simply consider that "the enemy" is present in these two villages. He has a few planes at his disposal; he causes one of the villages to be bombed flat and several hundred people are killed. In the case of the other, he orders . . . the execution of twenty-five people.
>
> Faced with these two series of homicides, what will be the attitude of justice? There is no room for hypotheses: the law is perfectly clear. The pilots who wiped out the village, and their officers, will be charged with no crime. On the other hand, the soldiers, members of the firing squad and officers who took no part in the execution . . . of the twenty-five inhabitants of the second village, will be found guilty of homicide.
>
> From this state of the law there can be drawn only one precious, but amoral, axion: Never carry out executions or destructions with the care of a craftsman. But long live wholesale massacre!

Article 57 of Protocol I not only corrects this paradox by codifying the rule of *proportionality*, but also provides the military commander with uniformly recognized guidance with respect to his responsibility to the civilian population in executing attacks against military objectives. Simultaneously, Protocol I charges the military commander under attack with the duty to avoid civilian casualties by prohibiting "the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attack" (Article 51(7)) or the improper use of the red cross (Articles 28(1) and 38(1)). In requiring that a commander "do everything feasible" to identify a target as a military objective, Article 57 coincides with the rules of engagement used by U.S. forces in Vietnam,[10] traditional target intelligence requirements, principles of war such as economy of force, and practical political considerations arising from excessive collateral injury to civilians or civilian objects. While objective criteria are provided, the decision of the commander ultimately is based upon subjective factors, i.e., the best information available to him at the moment of decision.[11]

Weapons. Weapons also are judged by considerations of *military necessity* and *unnecessary suffering*, the latter phrase in the classic sense concerning itself with such weapons as barbed spears or dumdum bullets that "uselessly aggravate the sufferings of disabled men, or renders their death inevitable."[12] The rationale for this rule is twofold: (a) weapons which cause unnecessary suffering cause needless injury to the individual long after the conclusion of hostilities, as evidenced by the effects of poisonous gas in World War I; and (b) militarily, wounding generally is more effective than killing, diverting men from the battlefield to evacuate and care for their wounded.

While the concept may be simple, further definition is elusive. Concerted efforts at definition have been made by the Secretary-General of the United Nations and the ICRC during this decade without success. Considerations have hinged upon whether a weapon causes unnecessary suffering or superfluous injury, whether the weapon is indiscriminate in effect, or whether the weapon kills through treachery. Studies to date have concentrated on napalm and other incendiary weapons, small caliber projectiles, and mines and boobytraps in an effort to identify "illegal" weapons. Those studies have found, however, that few weapons are illegal per se, and that questions of illegality are more inclined to arise in a particular use of a weapon than design intent. Moreover, there is considerable difference between an arbitrary declaration by a social scientist or movie actress that a weapon is "illegal," "immoral," or causes unnecessary suffering, the establishment of empirically proved criteria by which to measure a weapon, and scientific support for an allegation against a particular weapon. Most certainly, efficiency in its task is not tantamount to illegality. To the contrary, the Geneva Protocol of 1925 banning poisonous gas was adopted in large measure because of the military inefficiency of gas.

Three conferences of government weapons experts sponsored by the ICRC in conjunction with the 1974, 1975, and 1976 sessions of the Diplomatic Conference generally were little more than battles of rhetoric between the "haves" and the "have nots," with at least one developing nation changing its position over the course of the sessions once it had acquired its own arsenal of the weapons it previously had condemned. Other ironies surrounded the negotiations. Sweden was in the forefront of the battle to condemn napalm while simultaneously being a world leader in its manufacture and export. On more than one occasion the intensity of its delegation's obligations to a particular weapon was directly proportional to the capabilities of its arms industry to develop and market its version of that weapon. The Soviet Union, long a supporter of the arguments of the underdeveloped nations and liberation movements, found its position as an arms developer outweighed the "humanitarian" arguments of those States opposing certain weapons, ultimately siding with the United States in asserting that the Diplomatic Conference was not the proper forum for consideration of the weapons issue.

Failing to achieve any new definition, Protocol I (Article 36) limits itself to the requirement that new weapons be reviewed to ensure their legality, a requirement the United States placed into effect by DOD Directive 5500.15 on 16 October 1974. However, Resolution 22 of the Diplomatic Conference recommends the convening of a conference in 1979 to endeavor to reach agreement regarding the issues raised by the previous conferences of government experts.

Protection of Medical Transportation. In 1910 two young Army doctors at Fort Barrancas, Florida, built and flew an aircraft with a view to using it to evacuate the wounded and sick from the battlefield. Although their experiment ended with the crash of their aerial ambulance on its maiden flight, the concept remained, with Marine 1st Lt. Christian F. Schilt performing one of the first aerial combat evacuations during the campaign against Nicaraguan bandit Augusto Sandino in January 1928. Briefly, technology and the law were almost parallel in their development. In 1923, at the XIth International Red Cross Conference, the French delegation placed on the agenda for the XIIth Conference (in 1927) a proposal to grant protection to medical aircraft. This proposal eventually became Article 18 of the 1929 Geneva Convention for the Wounded and Sick and provided protected status to aircraft dedicated exclusively to medical evacuation, painted white with red crosses,[13] and (absent special and express permission to the contrary) operating solely to the rear of medical clearing stations.

Although aerial evacuation became an essential means of medical transportation during World War II, it was limited primarily to theater evacuation rather than evacuation from the combat zone. Attempts to update the law at Geneva in 1949 were influenced by the experience of World War II and the fact that (unlike wheeled ambulances and hospital ships) seldom were aircraft dedicated to exclusive medical use. Moreover, government experts argued that Article 18 of the 1929 Convention had found only limited application during World War II, technical progress in fighter aircraft and antiaircraft having rendered unrealistic any justification for the development and wide-scale use of protected medical aircraft. It was anticipated that future conflicts would continue the practice of theater aerial evacuation with fighter escort. As a result, Article 36 of the 1949 Geneva Convention for the Wounded and Sick provided protected status to medical aircraft solely when "flying at heights, times, and on routes specifically agreed upon between the belligerents concerned."

In 1942 a civilian physician in Virginia wrote to the War Department suggesting the feasibility of using helicopters for frontline medical evacuation. Development of the concept lagged, however, and frontline medical evacuation received little consideration by the 1949 Diplomatic Conference. The outbreak of the Korean war the following year quickly changed regard for helicopter evacuations. As early as 17 August 1950, Marine HO3S-1 helicopters of VMO-6 operating within the Pusan perimeter were evacuating wounded from the 5th Marines' regimental aid station to the Army's 8076th Surgical Hospital at Miryang, 20 miles away. Helicopters evacuated more than 8,000 wounded in the first 16 months of the war alone. By the end of the war, as little as 43 minutes elapsed between the time a Marine was wounded and the time he was placed on board a hospital ship by helicopter, 30 minutes where delivery was to a land-based hospital.[14] Helicopter evacuation became the rule rather than the exception in

Vietnam, where experience taught that flights by medical aircraft within the combat zone were both a reality and a necessity.[15]

Recognizing this technological advancement and change in manner of operation, Protocol I significantly extends the areas in which medical aircraft may operate and be entitled to protection. Although guarantees of protection remain tied to communication to and acceptance of flight plans by the enemy, Protocol I recognizes the myriad situations in which medical evacuation by helicopter may occur by affording protection for flights over areas not controlled by an adverse party (communication not required but recommended, particularly when within range of enemy surface-to-air weapons systems), areas controlled by an adverse party (prior agreement required), and within that area identified in Protocol I as the "contact zone."[16] Medical aircraft operating in the contact zone without prior agreement do so at their own risk, but are entitled to respect after they have been recognized as medical aircraft. For military security reasons, medical aircraft continue to be prohibited from carrying out search and rescue missions over enemy-controlled areas or in the contact zone.

Substantial progress was made toward resolving the perpetual problem of identification of medical aircraft and hospital ships. Historically, attacks on each of these craft have occurred more as the result of failure of identification than through intentional acts of wrong-doing[17] The meter-and-a-half horizontal green hull band prescribed for hospital ships by Hague Convention X of 1907[18] was deleted from the provisions of the 1949 Geneva Convention for the Wounded and Sick after U.S. Navy tests determined that the band hindered rather than facilitated visual identification of those ships. Although other tests confirmed wartime experience that reliance upon visual identification exclusively was inadequate, efforts at the 1949 Diplomatic Conference to adopt modern means of communication and detection for identification of medical aircraft and hospital ships were unsuccessful.

In 1973 the ICRC convened a meeting of experts from 11 nations and 4 specialized international organizations to consider signalling and identification systems for medical transports. A system of distinctive visual and non-visual signals to supplement the emblem of the red cross was recommended and ultimately incorporated into Annex I to Protocol I for unilateral adoption by a party to a conflict if desired. These systems include: (a) use of a flashing blue light by medical aircraft; (b) a distinctive radio signal for medical units and transports; and (c) a designated Secondary Surveillance Radar (SSR) mode and code for medical aircraft. Further, the flashing blue light and SSR may be adopted for use by other forms of medical transportation upon special agreement between the parties to a conflict. Although technically feasible, efforts to establish a recognized underwater acoustic transmitter system as a means for identification of hospital ships by submerged submarines was placed in abeyance pending further study.[19]

Noninternational Wars. The Geneva Conventions of 1949 took a major step forward in adopting the article 3 common to all four conventions that in theory binds all parties to an internal conflict to certain minimum standards of conduct. The concept was and is not without difficulties in interpretation and implementation. A sovereign State, if a party to the conventions, is bound by the provisions of the article: its guerrilla opponent is not. The absence of reciprocity destroys what traditionally has been one of the more important forces for compliance with the laws of war. A government, fighting for its life against externally supported domestic foes committing acts of terrorism, is unlikely to take kindly the suggestion that these acts be responded to with humanity. Moreover, despite a provision to the contrary in common article 3, pronouncement by a government that it will apply the standards of conduct declared in common article 3 to a conflict has certain legal and political implications. Politically, it raises the dignity of an opponent from that of a mob of bandits to one of a legitimately recognized guerrilla force fighting for "national liberation" or "self-determination," inviting additional outside support in what otherwise would be purely a domestic affair. Legally, what ordinarily would be murder may become lawful killing by a "combatant" in wartime. For these reasons the Symbionese Liberation Army and the besieged Indians at Wounded Knee were quick to declare their intention to abide by the Geneva Conventions in their respective "wars" with the United States, while U.S. authorities were just as anxious to conclude that the level of conflict necessary for such recognition was not met.

Whatever the objections to common article 3, two decades of national liberation wars established that it did not go far enough in providing protection to the victims of noninternational conflicts. Protocol II is intended to offer additional delineation of this protection. The drafting and approval of its provisions were accomplished in an atmosphere frequently charged with emotion and political rhetoric, brought about in part by the participation for the first time of a number of national liberation movements. Nonetheless, Protocol II—18 substantive articles as compared to the 91 of Protocol I—states in greater detail than common article 3 both the minimum protection to be afforded the victims of noninternational conflicts and the responsibilities of the parties to a conflict. It specifically does not apply to riots, isolated and sporadic acts of violence, and other acts of a similar nature. Otherwise it does not attempt to establish a "threshold of violence" at which time Protocol II comes into effect, for that question only can be answered through analysis of a particular situation in light of myriad legal, historical, sociological, and political factors. Rather, it is an attempt to minimize violence in noninternational conflicts and to limit suffering by those not taking a direct part in the conflict. However, the history and nature of insurgent tactics suggests that Protocol II will face a plethora of difficulties in practical implementation.

Other Provisions. Other articles specify new areas of express protection. Article 56 of Protocol I and 15 of Protocol II, for example, prohibit making works or installations containing dangerous forces (such as dams or nuclear electrical generating stations) the object of attack, except where that facility offers regular, significant, and direct support of military operations and if such attack is the only feasible way that support may be terminated effectively. In order to facilitate the identification of such works or installations, Article 56(7) establishes a special sign—three bright orange circles placed on the same axis—to mark these facilities. Article 44 serves to neutralize those reservations by the Soviet Union and other Communist States to Article 85 of the 1949 Geneva Convention for Prisoners of War that have been used to deny prisoner-of-war status to captured combatants on the allegation that they have participated in aggressive war or committed war crimes (the argument of the Democratic Republic of Vietnam against U.S. prisoners of war during the Vietnam war). Paragraph 2 of Article 44 guarantees a combatant prisoner-of-war status notwithstanding his conduct (alleged or actual) prior to capture. Articles 32 through 34 recognize a new human right, the right of families to know the fate of their relatives, by setting forth a requirement for belligerents to search and account for the missing in action, and for the decent disposition and eventual repatriation of the remains of the dead.

Conclusion. The Protocols to the Geneva Conventions are the product of lengthy negotiation and a great deal of compromise between delegations representing diverse political views and geographic areas. They are evolutionary rather than revolutionary, constituting a codification of customary international law rather than embarking upon substantial change of that law. They are not without fault. In addition to some attempts at politicization of the law of war, there were the perennial efforts by moralists and idealists who, realizing the futility of any attempt to outlaw war, endeavored to interject language into the Protocols that could be interpreted as making the law governing combat operations so restrictive as to make the waging of war impossible. But the pages of history are strewn with moralistic documents which failed in their usefulness because they attempted to establish an unattainable standard of conduct.[20] In this regard the law of war is no different from domestic and other international legislation in achieving respect only to the extent it reflects the customary practice of those it seeks to govern.[21] Changes in limitations on the governing of military forces in combat can be particularly critical, for any change likely to be perceived as a threat to the survival of an individual, unit, or nation, or contrary to the Principles of War, tactical considerations, or reasonable means for the commander's accomplishment of his mission is likely to be honored more in its breach than in its adherence.

To avoid the imposition of unrealistic restraints upon its armed forces, the Protocols were the subject of detailed review by the Department of Defense and the Joint Chiefs of Staff prior to their signature by the United States. A more

detailed review is underway within the services, DOD, and other agencies of the U.S. Government to insure that U.S. interpretations of the Protocols are attuned to the realities and conditions of combat prior to submission of the Protocols by the President to the Senate for its advice and consent to ratification. The United States and its NATO allies are conducting a separate review of the Protocols to insure their common understanding of the Protocols' effect. If approved by the Senate, the Protocols will go into effect for the United States 6 months after deposit of its instrument of ratification with the Government of Switzerland, adding further definition to the law of war.

Major Parks was serving in the Office of the Judge Advocate General of the Navy, International Law Division when this article was first published. He was the senior U.S. representative to the Seminar on the Dissemination of the Geneva Conventions in Warsaw in 1977.

Notes

1. Participating in the signing ceremony on 12 December 1977 were Austria, Belgium, Canada, Chile, Ivory Coast, Denmark, Egypt, El Salvador, Ecuador, Finland, Ghana, Guatemala, Honduras, Hungary, Iran, Ireland, Iceland, Italy, Liechtenstein, Jordan, Luxembourg, Morocco, Mongolia, Nicaragua, Norway, Pakistan, Panama, Netherlands, Peru, Poland, Philippines (Protocol I only), Portugal, East Germany, Byelorussian SSR, Ukrainian SSR, U.S.S.R., United Kingdom, Holy See, Senegal, Sweden, Switzerland, Togo, Tunisia, Vietnam (Protocol I only), Yugoslavia, and the United States.

2. U.S. Laws, Statutes, etc., "*Convention on War on Land,*" 36, pt. 2 United States Statutes at Large 2277 (1970).

3. U.S. Treaties, etc., "*Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field,*" United States Treaties and Other International Agreements, T.I.A.S. 3362 (Washington: U.S. Dept. of State, 1949), v. 6, pt. 3, pp. 3115-3216; U.S. Treaties, etc., "*Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea,*" *United States Treaties and Other International Agreements*, T.I.A.S. 3363 (Washington: U.S. Dept. of State, 1949), v. 6, pt. 3, pp. 3217-3315; U.S. Treaties, etc., "Geneva Convention Relative to the Treatment of Prisoners of War," United States Treaties and Other International Agreements, T.I.A.S. 3364 (Washington: U.S. Dept. of State, 1949), pp. 3316-3315; U.S. Treaties, etc., "*Geneva Convention Relative to the Protection of Civilian Persons in Time of War,*" United States Treaties and Other International Agreements, T.I.A.S. 3365 (Washington: U.S. Dept. of State, 1949), pp. 3516-3695.

4. U.S. Treaties, etc., "*Geneva Protocol Prohibiting the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare,*" United States Treaties and Other International Agreements, T.I.A.S. 8061 (Washington: U.S. Dept. of State, 1975), v. 26, pt. 1, pp. 571-582.

5. U.S. Laws, Statutes, etc., "*Geneva Convention for the Amelioration of the Wounded and Sick of Armies in the Field,*" United States Statutes at Large (Washington: U.S. Govt. Print. Off., 1932), v. 47, pt. 2, p. 2074; U.S. Laws, Statutes, etc., "Geneva Convention Relative to the "Treatment of Prisoners of War," *United States Statutes at Large* (Washington: U.S. Govt. Print. Off., 1932), v. 47, pt. 2, p. 2021.

6. U.S. Laws, Statutes, etc., "*Hague Declaration Prohibiting the Discharge of Projectiles and Explosives from Balloons,*" United States Statutes at Large (Washington: U.S. Govt. Print. Off., 1910), v. 36, pt. 2, p. 2439.

7. Resolution XXIII, Final Act of the International Conference on Human Rights, U.N. Doc. A/CONF. 32/41, p. 18. (1968).

8. U.S. Office of Naval Operations, The Law of Naval Warfare para. 220b. (Washington: 1955).

9. BOISSIER, L'EPEE ET LA BALANCE 55-56. (1953). Prior to Protocol I, only air forces were without specific regulation. Naval and land forces are limited in their operations on land by Hague Convention (IX) *Concerning Bombardment by Naval Forces in Time of War,* United States Statutes at Large (Washington: U.S. Govt. Print. Off., 1932), p. 36, pt. 2, p. 2351 and Hague Convention IV.

10. Paragraph 6a of MACV Directive 525-13 (May 1971), as reprinted in Congressional Record, 6 June 1975, pp. S9897-9898 provided:

All possible means will be employed to limit the risk to the lives and property of friendly forces and civilians. In this respect, a target must be clearly identified as hostile prior to making a decision to place fire on it.

11. In the plenary sessions the United States offered the following understanding to Article 57:

Commanders and others responsible for planning, deciding upon or executing attacks necessarily have to reach decisions on the basis of their assessment of the information from all sources which is available to them at the relevant time.

This statement reflects customary international law. In 1948 charges against former German Gen. Lothar Rendulic alleging he had carried out wanton destruction in the Norwegian province of Finmark were dismissed by a Nuremburg tribunal, which declared that ". . . the conditions, as they appeared to the defendant at the time were sufficient upon which he could honestly conclude that urgent military necessity warranted the decision made (that is, . . . as a precautionary measure against an attack by superior [Russian] forces)." *U.S. v. List, et al.*, XI Trial of War Criminals 1113, pp. 1295-1297.

12. The Declaration of St. Petersburg, 1868, as found in Department of the Army Pamphlet 27-161-2, International Law, 1962, p. 227.

13. Or the red crescent or red lion and sun, the authorized distinctive signs of the medical services of the armed forces of some Moslem states (e.g, Egypt, Iraq, Jordan, Syria, and Turkey) and Iran, respectively. Israel uses a red shield of David, which has not gained international recognition.

14. In contrast, during the 1945 battle for Iwo Jima, Secretary of the Navy James V. Forrestal offered this praise of medical evacuation efforts: "I went aboard the [hospital ship] *Samaritan* [AH-10], where Navy surgeons and corpsmen were already dealing with the casualties from the day and the night before." MOREHOUSE, THE IWO JIMA CAMPAIGN 139 (1946).

15. The Army and Marine Corps estimate that virtually 100 percent of U.S. battlefield casualties in Vietnam requiring medical evacuation were removed from the battlefield by helicopter; 15 percent of battlefield casualties in Korea were removed by helicopter. The Army carried out 950,000 helicopter evacuations in Vietnam. During the Vietnam War, 1 percent of the personnel evacuated to hospitals died of wounds, as compared to 2.5 percent in Korea and 4.5 percent in World War II. While these advances are tied to improved medical facilities, they also relate to the increased use of the helicopter for battlefield evacuation.

16. Article 26(2) defined "contact zone" as "any area on land where the forward elements of opposing forces are in contact with each other, especially where they are exposed to direct fire from the ground."

17. Mossop, *Hospital Ships in the Second World War, 24* Brit. Y. B. Int'l L. 402 (1947); and *I Report of the International Committee of the Red Cross on Its Activities During the Second World War* 213 (Geneva: ICRC, 1948).

18. U.S. Laws, Statutes, etc., *"Hague Convention (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention,"* United States Statutes at Large (Washington: U.S. Govt. Print. Off., 1910), v. 36, pt 2, p. 2371.

19. Distinctive signals and communications necessary for the improved identification of medical transportation require implementation through the International Telecommunications Union (ITU), the International Civil Aviation Organization, and to some extent, the Intergovernmental Maritime Consultative Organization. This subject is on the agenda for the ITU 1979 World Administrative Radio Conference.

20. See e.g., Article 22 to the Treaty for the Limitation and Reduction of Naval Armaments, otherwise known as the London Treaty of 1930, which attempted to prohibit submarine warfare by placing unreasonable restrictions upon submarine operations. Although reaffirmed by a 1936 *Proces-Verbal* acceded to or signed by Great Britain, the United States, Germany, and Japan, the International Military Tribunal at Nuremberg in its proceedings against Grand Adm. Karl Doenitz, former Fuehrer der Unterseeboote, found that those limitations had not been followed by any of those parties during World War II.

21. Although degree of adherence is not the sole criteria for determining a law's effectiveness, the reader may consider the response of U.S. citizens to the 18th Amendment (prohibiting liquor) and the 55-mph speed limit as examples of legislating conduct beyond the perceived point of necessity or reality.