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ARMY SUBJECT SCHEDULE }  
No. 27-1

HEADQUARTERS  
DEPARTMENT OF THE ARMY  
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## THE GENEVA CONVENTIONS OF 1949

AND

## HAGUE CONVENTION NO. IV OF 1907

(Published in support of AR 350-216 for use in all components of the Army)

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### SECTION I

#### GENERAL

1. **Purpose.** This subject schedule is issued to insure maximum uniformity of training in all components of the Army. It is a *guide* for the instructor in preparing lesson plans and scheduling periods of instruction.

2. **Training Objective.** The objective of this subject schedule is to familiarize military personnel with their rights, duties and obligations under the Hague Conventions of 1907, the Geneva Convention of 1949, and the customary law of war regarding:

a. Enemy and other personnel, to include enemy

prisoners of war, other captured or detained personnel, and civilians.

b. Property.

c. Obedience to superior orders.

d. Their responsibilities and courses of action, if captured or detained by a foreign power or force.

3. **Scope of Instruction.** a. The principles, spirit and intent of the Hague and Geneva Conventions.

b. The law of war prohibiting unnecessary destruction.

\*Supersedes ASubjScd 21-18, 20 April 1967, and ASubjScd 27-1, 20 April 1967.

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c. The law of war requiring humane treatment of prisoners of war, other captured and detained personnel, and civilians.

d. The obligation not to commit war crimes.

e. The obligation to report all violations of the law of war.

f. The significant provisions of the Geneva Convention Relative to the Treatment of Prisoners of War.

**4. Training Notes.** This subject schedule outlines the subject matter to be presented and the references to be used. However, the manner of presentation is left to the judgment and resourcefulness of the instructors since success in training depends largely upon their preparation and presentation. See appendix III, The Instructor Training Course.

Instruction will be presented by a Judge Advocate officer (or other legally qualified personnel) and a combat-experienced commander as a team, thereby demonstrating the compatibility of the law of war and the realities of actual warfare.

The refresher course for battalion and brigade commanders should be presented by field grade officers. The team members must insure coordination prior to their presentation. Instruction on the legal aspects of this subject schedule is most appropriate for the Judge Advocate officer, while instruction on the realities of the soldier in combat is most appropriate for the combat-experienced officer. This instruction must be tailored to the particular audience.

Initial instruction in this subject must be separate from any other instruction. Thereafter, instruction should be integrated into training wherever possible. Each hour of instruction reflects 50 minutes of training time.

Users of this publication are encouraged to submit recommended changes and comments to improve the publication. Comments should be keyed to the specific page, paragraph, and line of the text in which the change is recommended. Reasons will be provided for each comment to insure understanding and complete evaluation. Comments should be prepared using DA Form 2028 (Recommended Changes to Publications) and forwarded direct to The Judge Advocate General, DA, Washington, D.C. 20310, ATTN: JAGW.

**SECTION II**

**MASTER SCHEDULE**

**5. The Geneva Conventions of 1949 and Hague Convention No. IV of 1907.**

Period	Hour	Lesson	Text references	Area	Training aids and equipment
1	1	Principles, spirit and intent of The Geneva Conventions of 1949 and Hague Convention No. IV of 1907.	DA Pam 27-161-2; DA Pam 27-1;	Classroom.	Discretionary.
2	1	Application of the Geneva Conventions of 1949 and Hague Convention No. IV of 1907.	FM 27-10.		

**6. Refresher Instruction.**

Period	Hour	Lesson	Text references	Area	Training aids and equipment
1	1	Refresher instruction in the Geneva Conventions of 1949 and Hague Convention No. IV of 1907.	DA Pam 27-161-2; DA Pam 27-1.	Classroom.	Discretionary.

## SECTION III

### LESSON OUTLINES

#### 7. The Hague and Geneva Conventions (2 Hr).

*a. Period 1; hours: 1.* Principles, spirit and intent of the Geneva Conventions of 1949 and Hague Convention No. IV of 1907.

(1) *Lesson objective.* To explain that American soldiers will not inflict unnecessary destruction or suffering in accomplishing their military mission; and that American soldiers will treat prisoners of war, other captured and detained personnel, and civilians humanely.

(2) Lesson outline.

(a) Introduction.

(b) Explain briefly the origin of the customary law of war and its formalization in the Hague and Geneva Conventions.

(c) Discuss the rules of engagement and prohibitions on targets under the Hague Regulations.

(d) Explain illegal tricks and methods.

(e) Discuss the Hague prohibitions on weapons.

(f) Outline the general requirement under the Geneva Conventions to treat all non-combatants humanely.

(g) Explain treatment during interrogation.

(h) Discuss how a PW must be treated.

(i) Discuss how civilians must be treated.

(j) Summarize.

*b. Period 2; hours: 1.* Application of the Geneva Conventions of 1949 and Hague Convention No. IV of 1907.

(1) *Lesson objective.* To explain that the American soldier must not obey an order which would require him to commit a crime in violation of the law of war, and that he is obligated to report any violation of the law of war; and that the American soldier is entitled to humane treatment when he is captured or detained by the enemy.

(2) Lesson outline.

(a) Introduction.

(b) Explain the responsibilities of the American soldier to obey the law of war.

(c) Discuss the commander's responsibility to see that his men obey the law of war.

(d) Give examples of orders which would require acts in violation of the law of war and would therefore be illegal.

(e) Explain the obligation to report all violations of the law of war.

(f) Outline specific procedures to follow in reporting a violation of the law of war.

(3) Outline the rights and obligations of a PW.

(a) Explain right to adequate food and housing.

(b) Explain right to adequate medical care.

(c) Explain right to religious freedom.

(d) Explain right to retain personal property.

(e) Discuss other PW rights.

(f) Explain what information a PW is required to give.

(g) Discuss obligation to observe camp regulations.

(h) Explain work conditions in PW camp.

(i) Summarize.

#### 8. Refresher Instruction in The Geneva Conventions of 1949 and Hague Convention No. IV of 1907.

*a. Period 1; hours: 1.* Refresher instruction in the Law of War.

(1) *Lesson objective.* To explain the intermediate commander's responsibility for insuring that his troops observe the law of war and to explain the policy reasons for adhering to the law of war.

(2) Lesson outline.

(a) Introduction.

(b) Discuss the commander's responsibility for the conduct of his troops.

(c) Explain the soldier's obligation to disobey an order which would require him to commit a crime in violation of the law of war.

(d) Discuss the importance of winning public support through obedience of the law of war.

(e) Explain how adherence to the law of war encourages reciprocal respect by the enemy.

(f) Explain that following the law of war facilitates command and control over troops.

(g) Discuss how abiding by these rules is consistent with the long-term goals of the United States.

(h) Discuss how the law of war facilitates the restoration of peace.

(i) Explain that the law of war does not prevent the effective waging of war.

(j) Summarize.

Appendix I

Basic Course in the Geneva Conventions of 1949 and Hague Convention  
No. IV of 1907  
Lesson Plan—First Hour

SUBJECT: Hague and Geneva Conventions.  
 COURSE:  
 LESSON TITLE: The Geneva Conventions of 1949 and Hague Convention No. IV of 1907, and Their Application to U.S. Forces.  
 LESSON OBJECTIVE: To familiarize students with the basic provisions of the Conventions and their dictates as they affect military forces.  
 PRESENTATION: Lecture—Conference.  
 HOUR: One.

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REFERENCES: Department of the Army Pamphlet 27-1.  
 Department of the Army Pamphlet 27-161-2.  
 Department of the Army Field Manual 27-10.

TRAINING AIDS: Discretionary.  
 TIME REQUIRED: 50 minutes.

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1. **Introduction.** *a. Purpose.* The purpose of this two-hour block of instruction is to explain that the Hague and Geneva Conventions and the customary law of war require that we, as American soldiers:

(1) Will not inflict unnecessary destruction or suffering in accomplishing our military mission.

(2) Will treat prisoners of war, other captured and detained personnel, and civilians humanely.

(3) Will not obey an order whose execution is a crime in violation of the law of war.

(4) Are personally responsible for unlawful acts committed by ourselves.

(5) Are entitled to humane treatment if we are captured or detained by the enemy.

*b. Scope.* We will discuss the history and background of these Conventions, some of their specific provisions, and how these rules of warfare apply to the armed forces. In our first hour together we will learn the legal rules which (1) limit the ways in which we can fight wars; and

(2) tell us how we are required to treat captured or detained persons. As we shall see, these rules protect both those who are fighting and those who are not fighting by safeguarding certain basic rights. Observing these rules will encourage the enemy to do the same, increase the chances that he will surrender, and make the return to peace easier.

In the second hour we shall explain (1) the specific responsibilities of the soldier to obey these rules and to report violations; and (2) the rights of the captured or detained American soldier. Each of us has a personal stake in knowing about these conventions and in understanding how they work, for we are required to obey these, as well as other rules of international law, just as we must obey the Uniform Code of Military Justice. International treaties, no less than Congressional statutes like the UCMJ, are under our Constitution the supreme law of the land. If we fail to comply with these Conventions, we may face trial and punishment or other disciplinary action.

2. **Customary Law of War and the Hague and**

**Geneva Conventions.** *a.* As a result of centuries of warfare between various nations, unwritten laws and rules governing the conduct of war developed. These unwritten laws are known as the customary law of war. The customary law of war is firmly based on the lessons of history, which have shown that the purpose and result of these rules is to allow the military force to accomplish its mission without causing unnecessary suffering or destruction. The general purpose of these rules is to limit the suffering or destruction to military targets and to provide humane treatment for all persons who are taken out of the fight.

It has been so clearly recognized that any commander can accomplish his mission without violating the law of war that the United States and most other nations, including the Communist nations, consider themselves bound by it.

*b.* In the last one hundred years, however, nations have also adopted specific rules concerning the treatment of all persons who fall into the hands of a military force. We can be proud that the United States was a leader in adopting for our military forces rules which recognized that the enemy was also a human being, that unnecessary destruction or suffering must not occur, and that captured persons are entitled to certain fundamental human rights regardless of their prior conduct or beliefs. During the Civil War President Lincoln issued General Order 100 which provided for humane treatment of captured enemy soldiers. This order had been written by Dr. Francis Lieber and became known as the Lieber Code. Since then, these principles have been expanded and incorporated in other national and international bodies of law. The Hague Conventions of 1907 and the Geneva Conventions of 1949 represent the major efforts by the countries of the world to reduce to written form certain basic concepts of the law of war. These Conventions do not replace the customary, or unwritten, law of war, but merely reinforce and supplement that body of law. The United States has signed the Hague and Geneva Conventions. We have solemnly pledged to observe all the provisions of these treaties. As a matter of honor and self-respect, we must fulfill that pledge.

### 3. Prohibitions on Targets.

*a.* The customary law of war and Hague Convention No. IV, entitled Respecting the Laws and Customs of War on Land, established definite rules which limit the kinds of targets we can

attack and the weapons we can use. In accordance with these Hague provisions, appropriate military commanders issue rules of engagement which tell soldiers where, when and what they can shoot. These rules may differ from one combat zone to another. They are often classified, because they normally apply to the actual conduct of combat operations in a specific area. These rules of engagement will always embody as a minimum the requirements of the Hague Regulations. The Hague Regulations prohibit the destruction or the seizure of enemy property unless imperatively demanded by the necessities of war. Let us assume, for example, that you are conducting a search in a built-up area. As you go from one building to another, you discover only a few weapons. But in one home you see some interesting art objects—hand-carved figures, for instance—and you decide to take one. Would taking the hand-carved figure be a crime? Yes. By taking it you would violate the law of war and the Uniform Code of Military Justice. You have no right to take such property. If, during that same search, you deliberately smash dishes, burn books and scatter clothing, you would also violate the law of war by destroying property when not demanded by military necessity. Let's consider another example. During a search in a rural village, you dare your buddy to see who can shoot a farmer's water buffalo first, or who can shoot out a candle on an outdoor shrine. Neither of you can win those contests, because you would both be violating the law of war and the Uniform Code of Military Justice, and both of you could be prosecuted.

*b.* Under the provisions of the Hague Conventions, a military target or a place occupied by a combatant force can be attacked; however, the attack or shelling by any means whatsoever of undefended towns, villages, dwellings, or buildings is prohibited. This means that military targets can be attacked wherever they are located, but a town with no military targets must be spared. Furthermore, in attacking a military target the amount of suffering or destruction must be held to the minimum necessary to accomplish the mission, and any excessive destruction or suffering not required to accomplish the objective would be illegal as a violation of the law of war. Let's look at some examples which illustrate these rules. You are in a defensive position just outside a small village. You receive sniper fire from what appears to be a single building within the village. Before taking any other action and

without checking with a higher commander, you call in all available artillery and destroy the entire village. You have used excessive force not required to accomplish the mission of neutralizing the sniper fire. You have caused unnecessary suffering by destroying much more than the military target, and have violated the law of war. You might have accomplished your mission by calling for a direct fire weapon such as a tank or an antitank gun, or by using small arms or automatic weapons within your resources to neutralize the sniper. Or consider the pilot returning from a mission with some unused bombs. Not wanting to land with the bombs, he decides to drop them on a village which he believes to be undefended but sympathetic to the enemy. Again, the pilot also has used force indiscriminately, without any military necessity, and violated the law of war.

c. We should also remember that in attacks and shellings all necessary measures must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes. The same applies to historic monuments, hospitals or other places where the sick and wounded are collected—even if enemy soldiers are the sick and wounded inside of those areas, provided these buildings and places are not being used for military purposes. You cannot, for instance, loot or ransack a pagoda during a search.

d. In summary, then, what are the rules governing targets?

(1) We can never destroy or seize enemy property unless military necessity requires seizure or destruction.

(2) Regardless of military necessity, we can never destroy undefended towns, villages, or dwellings.

(3) While we can attack defended places or military targets, we must spare if possible schools, churches, hospitals, and similar institutions from destruction; and we must avoid causing suffering out of proportion to the performance of the military mission.

**4. Illegal Tricks and Methods.** The law of war prohibits certain treacherous acts. For instance, there were occasions in World War II when the Nazis improperly identified buildings as hospitals and certain areas as protected areas, but really used the buildings or areas for direct military purposes such as observation posts, troop billets, defensive positions, or ammunition storage. Another example of an illegal trick would be pre-

tending to surrender in order to facilitate an attack upon an unsuspecting enemy. Such tactics are prohibited because they destroy the basis for the restoration of peace short of the complete destruction of one side or the other. Buildings being used for military purposes, but improperly marked, may be attacked. Moreover, buildings such as hospitals may often be located close to legitimate military targets. An attack on a legitimate target which unavoidably causes incidental damage to other facilities is not a violation of the Conventions or customary law. Nevertheless, we should always keep in mind the principle that one should cause no greater destruction of enemy property than necessary to accomplish the military mission.

**5. Prohibitions on Weapons.** a. The customary law of war and the Hague Regulations limit the weapons that we can use. Under the Hague Regulations, the employment of arms, materiel, or projectiles designed to cause unnecessary suffering is prohibited. Field Manual 27-10 states, in paragraph 34, that whether weapons cause unnecessary injury "can only be determined in light of the practice of States in refraining from the use of a given weapon because it is believed to have that effect." Many new weapons can only be judged upon the basis of extensive tests conducted to determine just what effect they actually have. The information produced by such testing must then be examined in light of such questions as:

(1) Would the weapon needlessly aggravate or cause unnecessary suffering?

(2) Does the weapon violate any specific or implied prohibition contained in any treaty?

It is only upon the basis of this type of searching analysis that an informed decision can be made as to the compatibility of a particular weapon with treaties and customary international law.

These principles have established the illegality of the use of irregular-shaped bullets such as dum-dum bullets, projectiles filled with glass, and the use of any substances or projectiles that would tend to inflame a wound. Use of these weapons is always illegal. Our government conducts extensive tests on all weapons to insure compliance with the law of war, and no weapon which is illegal is issued to any American soldier.

b. It is possible, however, for a soldier to violate the law of war by using an issued weapon

at the wrong time or in the wrong place. Remember that the law of war prohibits the use of weapons calculated to cause unnecessary suffering. Here is an example of how you can misuse a legitimate weapon. You cut off the tip of a bullet. When the bullet hits a man, it expands and leaves a gaping wound. Such bullets cause unnecessary suffering and are forbidden. Their use violates the law of war. This misuse of a legitimate weapon is a crime for which you can be prosecuted.

**6. Humane Treatment of Non-Combatants.** *a.* The customary law of war and the Geneva Conventions of 1949 also establish rules governing treatment of non-combatants; prisoners of war, sick and wounded, and other (detained) civilians. Although we shall presently discuss the most important of the many specific rules set out in these Conventions, you should always keep in mind that these rules are embodied in one general principle: treat all prisoners of war, civilians, or other detained personnel *humanely*. You can fulfill your military mission, such as the requirement to search, segregate, silence, speed to the rear and safeguard prisoners of war and detainees and still treat these people in a humane manner. Many of these people will be the victims of war, and some may be the enemy soldier himself, but once captured they are all entitled to the same humane treatment.

*b.* But, you ask, what does it mean to treat someone humanely? If you treat such people as you would like to be treated were you captured or detained, you will be treating them humanely. Remember that a PW is in your protective custody, and you cannot harm him. While this is a good rule of thumb to remember, the Conventions, provide as a minimum that persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those who can no longer fight because of sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. The wounded and sick must be collected and cared for. Furthermore, certain acts are and shall remain prohibited at any time and in any place whatsoever. These include: (1) violation to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (2) taking of hostages; (3) outrages upon personal dignity, in particular,

humiliating and degrading treatment; (4) the passing of sentences and the carrying out of execution without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

**7. Illegal Means of Interrogation.** *a.* Now let's look at some examples which illustrate the meaning of humane treatment. Suppose you capture a wounded and hungry enemy soldier who you think knows the location of enemy units in the area. Can you deny him food and medical treatment until he tells you what you want? The answer is "no." The Geneva Convention Protecting Prisoners of War prohibits forcing the prisoner into giving "information of any kind whatever." If we cannot withhold food or medical care from the prisoner, it follows that we cannot torture information out of him in any other way. Here again the Convention is explicit and the language provides:

"No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantaged treatment of any kind." (Article 17.)

In the past, people have violated these rules and have been tried and sentenced for such violations as beating a prisoner or applying electric shocks, dunking his head into a barrel of water, or putting a plastic bag over his head to make him talk. No American soldier can commit these brutal acts, nor will he permit his fellow soldiers to do so; and if he sees anyone commit such an act he will report it.

*b.* The humane reasons for prohibiting such acts are clear enough. There is a practical reason as well. You cannot get information from a dead man. Combat experience proves that intelligence secured by torture is unreliable. Furthermore, torture makes it difficult for the trained interrogator to secure accurate intelligence later, and a trained interrogator can obtain more complete and accurate information through legitimate, skillful questioning. That is the practical reason why it is important to send the man you suspect of having valuable intelligence back to the detainee collecting point so that a professional interrogator can begin questioning him as quickly as possible. Indeed, the Conventions specifically demand that captured war prisoners be promptly evacuated to the rear.

8. **Humane Treatment of PW.** Let's now look at another situation in which we are likely to find ourselves and see what the general principle of humane treatment requires. Our patrol is operating in an area believed to be heavily infested with enemy soldiers. We discover a young man hiding in a shallow hole. Though dressed as a farmer and unarmed, we think he is an enemy soldier and fear his presence may jeopardize our security. May we kill him? The answer is "no." Consider the following provisions of paragraph 85 of FM 27-10, which has the effect of an order of the Secretary of the Army:

"A commander may not put his prisoners to death because their presence retards his movements or diminishes his power of resistance by necessitating a large guard, or by reason of their consuming supplies, or because it appears certain that they will regain their liberty through the impending success of their forces. It is likewise unlawful for a commander to kill his prisoners on grounds of self-preservation, even in the case of airborne or commando operations, although the circumstances of the operation may make necessary rigorous supervision of and restraint upon the movement of prisoners of war."

We cannot harm or kill anyone who, in the language of the Convention, has "fallen into our hands." Though we suspect the man is an enemy soldier, we do not know that he is; we do not make that determination. Furthermore, even if the individual is an enemy soldier we cannot kill or harm him. Even if he is a spy the same rule applies. All captured persons are entitled to be treated as prisoners of war until their actual status is determined. Combat soldiers do not determine the status of any captured person. All persons captured or detained should be evacuated to the detainee collecting point, where proper authorities can then classify them. Once a man is under our control we must treat him humanely. Murder or physical abuse never is, has been, or will be humane treatment. It is strictly prohibited. Furthermore, under the Uniform Code of Military Justice murder is a capital offense.

9. **Humane Treatment of Civilians.** While conducting a sweep operation through an enemy village we round up men, women and children whom we suspect of being the parents, wives and children of enemy soldiers or enemy sympathizers. Can we execute them and burn their homes (1) as a warning to other enemy sympathizers and

(2) in retaliation for their suspected participation in the enemy war effort? No. Under Article 27 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, the civilian population of the country in conflict is entitled to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They must be protected especially against all acts or threats of violence and against insults and public curiosity. Women should be especially protected against any attack on their honor, in particular against enforced prostitution, rape, or any other form of sexual assault. Under the UCMJ, a soldier convicted of rape may be sentenced to death.

a. All persons are to be treated with consideration and without any adverse distinction based on race, religion, or political opinion. While the occupying force may enforce control and security measures, it may not abridge any of these rights. To repeat, we must insure that all persons are treated humanely. These persons may not be subjected to murder, torture, corporal punishment, mutilation, or any form of physical or mental coercion. No person can be subjected to medical or scientific experiments. They may not be made the object of collective penalties, reprisals, or held as hostages. Their property must be protected from pillage or looting. Article 103 of the Uniform Code of Military Justice makes pillage a crime. Only the death penalty is excluded as a permissible sentence for this crime.

b. Members of the civilian population cannot be brutalized or executed. As the military tribunal at Nuremberg concluded in the *List* case:

"[The law of war] permits the destruction of life of armed enemies and other persons whose destruction is incidentally unavoidable by the armed conflicts of the war; it allows the capturing of armed enemies and others of peculiar danger; but it does not permit the killing of innocent inhabitants for purposes of revenge or the satisfaction of a lust to kill."

It is the intent of the United States to follow the Geneva Conventions of 1949 regardless of whether or not the treaty is legally binding upon or followed by the enemy nation. We set our own standards of humanitarian consideration for the welfare of others.



## Lesson Plan—Second Hour

SUBJECT:	Hague and Geneva Conventions.
COURSE:	
LESSON TITLE:	The Geneva Conventions of 1949 and Hague Convention No. IV of 1907 and their Application to U.S. Forces.
LESSON OBJECTIVES:	To familiarize students with the basic provisions of the conventions and their dictates as they affect military forces.
PRESENTATION:	LECTURE—Conference.
HOUR:	Two.
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REFERENCES:	Department of the Army Pamphlet 27-1. Department of the Army Pamphlet 27-161-2. Department of the Army Field Manual 27-10.
TRAINING AIDS:	Discretionary.
TIME REQUIRED:	50 Minutes.

**1. Introduction.** *a. Purpose.* In this second hour we shall explain that the American soldier must not obey an order whose execution is a crime in violation of the law of war; and that he is obligated to report any violation of the law of war. The American soldier is, of course, personally responsible for unlawful acts committed by himself. Just as the American soldier must treat enemy PWs humanely, the American soldier himself is also entitled to humane treatment when he is captured or detained by the enemy.

**2. Responsibilities of U.S. Soldiers to Obey the Law of War.** As we have already emphasized, the American soldier is bound to obey all the rules of the customary law of war and the Hague and Geneva Conventions. According to our Constitution, treaties, such as the Hague and Geneva Conventions, are the supreme law of the land. We are bound by them just the same as we are by the Constitution or any law enacted by the U.S. Congress. The Army Field Manual on the Law of Land Warfare makes clear that we are equally bound to obey the rules of the customary law of war. Everyone of us is required to respect and to obey these rules, which are designed to make warfare more humane. If the soldier violates these basic humanitarian rules, he can be court-martialed under the appropriate provisions of the Uniform Code of Military Justice. The Uniform Code forbids acts such as assault, pillage, rape and murder. These acts are no less criminal when committed against a prisoner of war or some

other detained or captured person. Some less grave but still brutal acts which are not explicitly condemned in the Code nevertheless reflect discredit on our military forces and may therefore be prosecuted under the general Article 134.

### 3. Criminal Violations of the Law of War.

*a.* Since these acts also violate the law of war, the soldier may be prosecuted for committing a war crime. Under the Geneva Conventions the most serious offenses are called grave breaches of the law of war, and include murder, torture, inhumane treatment and improper destruction of property. They are capital offenses. This means that a person who commits a grave breach may be tried and executed. There is no statute of limitations on the prosecution of a war crime. Nearly all nations have signed the Geneva Conventions, and agreed in doing so to search out, bring to trial and to punish all persons who commit a grave breach of the Conventions. You may be tried and convicted even after you have left the service.

*b.* In addition to the grave breaches of the Geneva Conventions, the following acts are also war crimes:

- (1) Using poisoned or otherwise forbidden arms or ammunition such as dum-dum bullets;
- (2) Pretending to surrender as a trick;
- (3) Mutilation of dead bodies such as cutting off ears;

(4) Firing on localities which are undefended and without military significance such as churches or hospitals;

(5) Abuse of or firing on the flag of truce;

(6) Misuse of the Red Cross emblem such as using a medical evacuation helicopter to transport combat troops;

(7) Use of civilian clothing by troops to conceal their military identity during battle;

(8) Improper use of privileged buildings for military purpose such as using a church steeple as an observation post;

(9) Poisoning of wells or streams;

(10) Pillage, looting, or purposeless burning of homes.

(11) Compelling prisoners of war to perform prohibited labor such as removing mines or digging defensive positions;

(12) Killing without proper legal trial spies or other captured persons who have committed hostile acts;

(13) Compelling civilians to perform prohibited labor such as carrying mortars;

(14) Violation of surrender terms; and

(15) Taking and keeping a captured enemy soldier's personal property like a wallet or watch as a war trophy.

(16) Use of an enemy prisoner of war as point man on patrol. We have discussed many of these acts before. We know that they are prohibited. Furthermore, this list is not complete, it only contains examples. According to our FM 27-10, every violation of the law of war is technically a war crime for which the violator may be punished.

**4. Responsibility of the Commander.** *a.* The legal responsibility for the commission of war crimes frequently can be placed on the military commander as well as his subordinates who may have actually committed the crime. Since a commander is responsible for the actions of those he commands, he can be held as a guilty party if his troops commit crimes pursuant to his command, or if he knew the acts were going to be committed even though he did not order them. The commander is also responsible if he should have known, through reports or by other means, that those under his command are about to commit or have committed war crimes, and he fails to take reasonable steps to prevent such crimes or to punish those guilty of a violation. As a minimum, such a commander is guilty of dereliction of duty.

#### **5. Illegal Orders and Individual Responsibility.**

In all cases, the person who actually commits a crime is subject to punishment, even if he acted pursuant to the orders of a superior. The man who pulls the trigger, killing a prisoner of war who has just surrendered cannot excuse his act by claiming that his commander told him "to take care of the prisoner," which he understood to be an order to execute him. Acting under superior orders is no defense to criminal charges when the order is clearly illegal as is an order to kill a prisoner of war. While an American soldier must obey promptly all legal orders, he also must disobey an order which requires him to commit a criminal act in violation of the law of war. An order to commit a criminal act is illegal.

*a.* An order to execute a prisoner or detainee is clearly illegal. An order to torture or abuse a prisoner to get him to talk is clearly illegal. An order to torture anyone is obviously illegal. These are orders whose illegality is very clear. Is an order to dump a dead body into a well also illegal? Yes. The order is illegal for two reasons. A dead body in a well poisons the water and the poisoning of wells and streams is a war crime. Also it is mistreatment of a body which act is a war crime. What about an order to cut ears off the enemy dead to prove a body count? This order is illegal, too. As we have seen, the mutilation of bodies is a war crime, and an order to cut off ears would therefore be illegal. Equally illegal would be permission to take as souvenirs valuables from dead bodies or from any prisoner. The law of war requires that valuables of dead soldiers be collected, safeguarded, and forwarded to the Central Prisoners of War Agency. If you steal watches or money off the dead and keep them, you are violating this law; and no order or permission can make your action lawful.

There is always the question of what to do if it seems to be a situation of "my life or his." For example, you are on patrol with six men and capture an enemy soldier. It's burdensome to take him with you. To turn him loose would jeopardize the lives of all the patrol. Your patrol leader orders you to execute him. Do you do it? No. In an emergency, a helicopter can and frequently does carry "one more body." If the prisoner is important enough, you leave a couple of the patrol members and evacuate the prisoner first. If you are leaving the area on foot rather than by air, and if the prisoner is willing, he can be given the job of carrying medical or food supplies, or assisting your own wounded. He can be tied,

gagged and forcibly taken along with the patrol, especially if the patrol is on its way back from a mission. He can be tied, gagged and left where his own forces can find him after the patrol moves out of the area. If you are going to come back by the same general route, he can be hidden and picked up on your return.

The first point is that in this fact situation you must consider many factors such as: How close is friendly support? How important is the prisoner? What is the condition of the patrol? How long has the patrol been out and what is its mission? Does the presence of that individual indicate that your mission has already been compromised by the enemy? These are only some of the other factors which you need to know before you make a decision. The decision to execute, to murder the prisoner is an easy one. It is the wrong decision. It is also a war crime and a violation of the UCMJ and under no circumstances will such an act be tolerated.\* Even carrying out an order is not a defense to a charge of murder. If you murder a prisoner you can be tried and executed. There are always, in actual combat, effective alternatives, which are legal, humane and which fit the military situation. The alternatives to murder are limited only by our imagination and generally will be a better aid in accomplishing your mission. Any prisoner is important for intelligence purposes. The prisoner who is murdered to make life a little easier for six men, may have been a supply officer, who could have disclosed the location of a large ammunition cache, the seizure of which would save the lives of hundreds of U.S. soldiers. So far we have discussed orders which could never be justified. They would always be illegal, and an American soldier should always disregard such orders. If you obey an illegal order you can be tried and punished.

In some cases, orders which would be legal in some situations may be illegal in others. The rules of engagement will guide your actions. These rules set out those targets which you may attack. By knowing these rules you will be able to act properly in different situations. If you disobey the rules of engagement, you can be tried and punished for disobedience of orders. The disobedience may also be a war crime for which you can be tried and punished. Let's look at an example. An order to shell enemy soldiers located in a village is legal even though some civilians may be injured and their homes and livestock

destroyed. Suppose, however, that we are conducting a cordon and search operation in the same village. Orders to burn down all the buildings in the village; to kill off all the livestock; to shoot everything that moves—are illegal orders. You must disregard such illegal orders.

b. You should not presume that an order is illegal. If you think it is illegal, it is probably because the order is unclear. For example, while on patrol we capture a prisoner. On our return the patrol leader questions him. When the patrol leader finishes the questioning he tells you "get rid of that man." That order is not clear. The patrol leader undoubtedly means to take the man to the Detainee Collection Point. Similarly, an order to clear an area of the enemy is not one to kill everyone and destroy everything you see. Rather it means to find the enemy soldier and to destroy his ability and will to resist. Such an order obviously does not include looting a store, burning a farmer's house or murdering the women and children. Rather than presume that an unclear order directs you to commit a crime, ask your superior for a clarification of the order. Above all, remember that if you are the leader, make your order clear and understandable. Don't put your subordinates in the position where they may think you are giving an illegal order.

But just suppose you are given an illegal order: "Shoot every man, woman and child in sight." Obviously that is an illegal order. What do you do? First and most important you should try to get the order rescinded by informing the person who gave it that the order violates the law of war. If he persists, you must disregard such an illegal order. This takes courage, but if you fail to do so you can be tried and punished for committing a criminal act in violation of the law of war. No one can force you to commit a crime, and you cannot be court-martialed or given any other form of punishment for your refusal to obey. The lack of courage to disregard an illegal order, or a mistaken fear that you could be court-martialed for disobedience of orders is not a defense to a charge of murder, pillage or any other war crime. The Code of Conduct states, "I am an American fighting man, responsible for my actions, and dedicated to the principles which made my country free." The American soldier who follows that Code, should have no problem with illegal orders. Further, you have a second step to take if an illegal order results in a violation of the law of war. You must report such

\*See para 85, FM 27-10, quoted on page 22.

that all prisoners of war shall enjoy complete freedom in the exercise and observance of their religious faith. Chaplains or others with ministerial training who are captured must be allowed to minister freely among prisoners.

*d. Personal Property.* We are entitled to retain most of our personal property. The Convention provides that all effects and articles of personal use, except arms, military equipment, and military documents must remain in the possession of the prisoner unless he could use them to harm himself or others. Articles issued for the prisoner's personal protection, such as gas masks, metal helmets, and similar articles, may also be retained by him.

*e. Other Privileges.* We are entitled to send and receive mail. Each prisoner must be allowed to write a minimum of two letters and four postal cards per month. We may also receive parcels containing foodstuffs, clothing, educational, religious or recreational material. We are also allowed to have a prisoners' representative. The Geneva Prisoner of War Convention provides that in camps containing officer prisoners the senior officer shall be recognized as the prisoners representative. Indeed, it is the responsibility of the senior U.S. military person present to assume command of all U.S. personnel confined within a particular camp unless otherwise provided by pertinent service directives. In camps that do not contain officers the prisoners' representative is elected by the prisoners, by secret ballot, every six months. It is the duty of such a prisoners' representative to further the physical, spiritual, and intellectual well-being of those he represents. In addition, he supervises their welfare and represents the prisoners before the military authorities, the Protecting Power, the International Red Cross, and similar organizations.

If captured or detained by the enemy, we are entitled to humane treatment. Specifically, the Geneva Prisoner of War Convention requires our captors to feed, shelter, and care for us. Furthermore, we can—even while held as prisoners of war—practice our religion and send and receive mail and other items. These are our basic rights as prisoners of war. Now, what are your obligations as a prisoner of war?

*f. Interrogation.* What information must we give to our captor? The 1949 Geneva Prisoner of War Convention provides that a prisoner of war must give only his full name, rank, date of

birth and service number. This is all the information our captor may demand. No method of torture, mental or physical, may be used to obtain even this information from us, and certainly may not be used to obtain any additional information.

*g. Observance of Camp Regulations.* So long as we are held as prisoners of war, we must obey all the lawful camp rules. We may be punished for violating these rules, but the punishment must not endanger our health.

*h. Work.* Our captor may require us to work in limited circumstances. Prisoners of war who are not officers or non-commissioned officers may be compelled to perform labor which is neither military in character or purpose, nor humiliating, dangerous, or unhealthy. The removal of mines or similar devices is considered by the Convention to be dangerous work. Non-commissioned officers may only be compelled to do supervisory work. Commissioned officers may volunteer but may not be compelled to work.

Now, I have covered a lot of points, and although you remember them now, you may not if you are ever captured and held as a prisoner of war. Let me point out here that Article 41 of the Convention on Prisoners of War provides for the posting of a copy of the Convention and its Annexes, including any special agreements, all to be in the prisoner's own language, at places where all may read them. In addition, copies are to be supplied, on request, to prisoners who cannot have access to the copy which is posted. This should make it possible to clear up many doubts as to provisions which you cannot remember from instruction.

**8. Conclusion.** For part of this instruction we have talked about your rights as a prisoner of war. This part should make clear to you the basic principle of the Hague and Geneva Conventions. That principle is humanity. While nations may engage in war, those same nations have established rules to make warfare more humane, to lessen the terrible sufferings caused by war. The rules are designed to protect you as an individual human being. Most important, they recognize that every individual involved in war is a human being with certain basic human rights and human dignity. You can put any name on the individual, he may be an enemy prisoner of war, an American prisoner of war, a detained civilian, a captured person. All are entitled to be treated in a humane manner. The humanitarian provisions of the law

violation to the appropriate authorities. Let us discuss this obligation to report in more detail.

**6. Obligation to Report Violations of the Law of War.** It is important to know that you, the American soldier, are obligated to report any violations of the law of war. To whom do you report? Usually, the soldier will report any known or suspected violations of the law of war through his chain of command. One purpose of the chain of command is to insure that reports reach appropriate authorities so that proper action can be taken. You should use your chain of command for this purpose. Most commanders have established reporting procedures by local regulations and directives which require prompt, initial reports through the chain of command. Failure to comply with these regulations and directives may subject you to prosecution under the UCMJ.

While a soldier should normally report through his chain of command, you may hesitate to do so if someone in the chain above you was involved in the alleged crime, or if for some other reason you feel that such channels would not be effective. At such times, there are other officers to whom you can report or with whom you may properly discuss any possible violation of the law of war. You can always, for example, file a report with the local office of the Inspector General, or with the Inspector General himself. The Inspector General can effectively investigate such reports. You can always report suspected crimes to the office of the Provost Marshal, the military police. Like the IG, the PM has an organization whose members have the knowledge and skill to investigate reports alleging a violation of the law of war. You may also discuss the problem with a Judge Advocate, a military lawyer who knows the law of war and how it applies. Many soldiers prefer to discuss problems with the Chaplain, and this is an accepted way to report violations of the law of war. Your Chaplain can assist you in properly giving your information to appropriate authority. The staff officer who receives a report alleging a violation of the law of war must, of course, take appropriate steps to report or investigate. While staff officers may have different internal procedures by which they process reports of alleged war crimes, each must insure at a minimum that the commander he serves is advised of the allegation and that the next higher command is also advised of the report and the actions taken. To whomever the soldier decides to go, he should

report any suspected violation immediately. Evidence is lost and witnesses disappear unless an investigation is begun promptly. Moreover, an early investigation will quickly dispel any mistaken charges.

Let us review the steps which you should take if you know or suspect that a violation of the law of war has been committed. First, you report to your immediate superior, who, like you, is obliged to report to his commander. Normally, then, the problem can be solved through appropriate action within the chain of command. If, however, you prefer not to use the chain of command or feel that you cannot use it in a particular situation, you may report through other channels. You can make a report to the Inspector General, the Provost Marshal, the Chaplain or to the Staff Judge Advocate.

**7. Rights to Which PWs are Entitled.** We now turn our attention to the final area which we want to cover today: our rights and obligations if we are ever captured or detained by the enemy. It is important to know our rights under customary law and the Conventions because our past experience in the Second World War and Korea has shown that prisoners who know their rights are treated better and given more of the protections to which they are entitled. It is important to know our rights as prisoners of war, because the enemy prisoner is entitled to the same rights; and if we understand our rights, we will also understand our legal duty to an enemy prisoner. It is also important to know our obligations as prisoners of war. What are our rights and obligations as prisoners of war?

*a. Food and Housing.* Even though prisoners, we must be fed sufficient daily rations to insure our good health. In addition, we must be given living quarters which are sanitary and protect us from the weather.

*b. Medical Care.* If we are sick or injured when captured, or become ill while held prisoner, we are entitled to medical care. In addition to providing necessary facilities to insure proper hygiene, such as soap, water, baths, and showers, our captor must provide adequate infirmary and isolation wards if required, and treat any prisoner suffering from disease or injury. Medical personnel who are captured should be allowed to care for their fellow prisoners.

*c. Religious Freedom.* We are entitled to practice our religious faith. The Convention provides

**ASubjScd 27-1**

of war protect *all* those caught up in the conflict: the friend, the foe, and the innocent bystander.

As American soldiers it is our duty not to inflict any unnecessary suffering or destruction. We must treat all prisoners of war, other captured or detained persons and all civilians humanely. We will not obey any order which requires us to commit a criminal act in violation of the law of war. Any violation of the law of war will be reported to the appropriate authorities. Above all we must

not forget that we will be held personally responsible for any unlawful act we commit.

By knowing our responsibilities as American soldiers, by reporting all suspected war crimes to the proper authorities, by knowing our rights, the rights of our enemy and the rights of the civilian population, by respecting our law and honoring our Code as American fighting men, we will play an important part in achieving the success of our military mission and a return to peace.

## APPENDIX II

## REFRESHER COURSE FOR BATTALION AND BRIGADE COMMANDERS

**1. Introduction.** *a. Purpose.* The purpose of this lecture is to detail your command responsibilities to enforce and observe the law of war and to explain the importance of observing the law of war.

*b. Scope.* We will discuss your duty to see that your troops observe the law of war; your obligation to report violations of the law of war; and your criminal liability for obeying an illegal order. We shall then explore the many reasons we should adhere to the law of war.

**2. Review of Previous Instruction.** Like any other American soldier—whether he be a private or a general officer—you are obligated to follow the rules of the customary law of war and all the provisions of the Hague and Geneva Conventions. From your previous instruction in these subjects, you should be familiar with these fundamental humanitarian rules. You will recall that:

*a.* American soldiers must not inflict any unnecessary destruction or suffering in accomplishing the military mission;

*b.* American soldiers must treat all prisoners of war, other captured and detained personnel, and civilians humanely;

*c.* American soldiers must disregard any orders which would require criminal acts in violation of the law of war, and will be held personally responsible for unlawful acts which they commit.

If you violate these general principles of humanitarian law, you can be court-martialed for violating the Uniform Code of Military Justice, or tried for committing a war crime, since Army Field Manual 27-10, declares that any violation of the law of war is a war crime.

**3. The Commanders' Responsibility to See that His Troops Obey The Law of War.** *a.* You are also a commander, however, and you are therefore responsible for the conduct of your troops. You thus have the responsibility not only to observe all these rules yourself but to insure that all those in your command also observe the law of

war. You must require instruction in the law of war. You should insure that your troops know the applicable rules of engagement. You must insure that both your own orders and those of your subordinate commanders are clear and unmistakable. An example will illustrate the importance of clear and concise orders. You capture a prisoner of war and tell one of your men to "take care of him." You mean for the man to take the prisoner to the rear for evaluation and interrogation, but as your order was not clear and unmistakable, he may think you mean to kill him. A soldier could therefore commit a war crime because you did not give a clear, explicit order.

One of the first things that you learned as an officer is that you are responsible for all your unit does or fails to do. This is true both in garrison and in the field, and continues to be true in combat. As an officer and commander, you must take positive steps to keep fully informed of what your men are doing or failing to do. This may be done in any number of ways: by personal inspections and inquiries; reports from subordinate commanders; investigations by members of your staff, the Inspector General, or the Provost Marshal; information received during commander's "open door" periods; information relayed by Judge Advocates, Chaplains or others with whom soldiers may discuss problems troubling them. As a commander, you should use your special staff as your eyes and ears. You should insure that your men are aware of the law of war, of their duty to disobey orders that would require them to commit acts in violation of that law, and of their obligation to report any such violation of which they become aware. You should make clear to your staff that you want them to report any suspected violations of the law of war to you. You should further prepare directives on how the men under you are to handle suspected violations of the law of war, and establish procedures that insure that reports of violations are promptly brought to your attention. You should also realize that your staff officers are required to insure that reports of violations of the law of war are forwarded to the next higher headquarters.

b. After you have discovered a problem or shortcoming, you must follow up with further inquiries and investigations, if necessary, until you have the true facts available to you. As a commander, you are responsible for the reliability of the information on which you act. You must aggressively find out the truth even if you must personally conduct the investigation. Faulty staff procedures do not excuse you as a commander from ultimate responsibility. After you have the true facts at hand, you must take necessary and effective corrective action.

We can summarize this point by quoting from the judgment of the United States Military Tribunal at Nuremberg in the *List* case. General List was a German General in command of occupied territory in Europe in which thousands of innocent civilians were killed. General List claimed that he did not know about the killings because Hitler continually summoned him to Berlin for reports and meetings. The Court said:

"The defendant List also asserts that he had no knowledge of many of the unlawful killings of innocent inhabitants which took place because he was absent from his headquarters where the reports came in and that he gained no knowledge of the acts. A commanding general of occupied territory is charged with the duty of [obeying the law of war]. His responsibility is coextensive with his area of command. He is charged with notice of occurrences taking place within that territory."

The Court then points out that if the officer fails to inform himself, he is derelict in his duty. It concludes:

". . . the dereliction of duty rests upon him and he is in no position to plead his own dereliction as a defense."

In short, the officer who sees no evil and hears no evil may nevertheless be charged with the knowledge of evil. Thus, the Japanese General Yamashita was charged, convicted, and executed for the brutal acts which troops under his command committed, even though he pled ignorance of their specific acts.

c. We do not prosecute only enemy officers for failing to control their troops. We also prosecute our own officers whose dereliction contributes to violations of the law of war on the part of their men. Your immense responsibility for establishing control over your troops is illustrated by an event that took place in 1902, after a group of American soldiers were savagely massacred in the Philippines. In response to this massacre, Brigadier General Jacob Smith ordered his troops to attack the responsible insurgents in the interior

of Samar. While instructing a Major Waller, who led one element of the American troops, General Smith stated, "I want no prisoners. The more you kill and burn, the more it will please me. Make the interior of Samar a howling wilderness. Kill every person capable of bearing arms." Although General Smith was known to use language extravagantly, and although his orders were not taken literally, the utterance of those words led to his court-martial. The resulting conviction was reviewed by President Roosevelt, who made the following statements in his order approving the court-martial action:

"The findings and sentence of the court are approved. I am well aware of the danger and great difficulty of the task our Army has had in the Philippine Islands, and of the well-nigh intolerable provocations it has received from the cruelty, treachery and total disregard of the rules and customs of civilized warfare on the part of its foes. I also heartily approve the employment of the sternest measures necessary to put a stop to such atrocities, and to bring this war to a close. It would be culpable to show weakness in dealing with such foes or to fail to use all legitimate and honorable methods to overcome them. But the very fact that warfare is of such character as to afford infinite provocation for the commission of acts of cruelty by junior officers and enlisted men must make the officers in high and responsible positions peculiarly careful in their bearing and conduct so as to keep a moral check over any acts of an improper character by their subordinates.

"Almost universally the higher officers have so borne themselves as to supply this necessary check; and with but few exceptions the officers and soldiers of the Army have shown wonderful kindness and forbearance in dealing with their foes. But there have been exceptions; there have been instances of the use of torture and of improper heartlessness in warfare on the part of the individuals or small detachments.

"It is impossible to tell exactly how much influence language like that used by General Smith may have had in preparing the minds of those under him for the commission of the deeds which we regret. Loose and violent talk by an officer of high rank is always likely to excite wrongdoing by those among his subordinates whose wills are weak or whose passions are strong."

Similarly, paragraph 501 of our FM 27-10 states:

"In some cases, military commanders may be responsible for war crimes committed by subordinate members of the armed forces, or other persons subject to their control. Thus, for instance, when troops commit massacres and atrocities against the civilian population of occupied territory or against prisoners of war, the responsibility may rest not only with the actual perpetrators but also with the commander. Such a



responsibility arises directly when the acts in question have been committed in pursuance of an order of the commander concerned. The commander is also responsible if he has actual knowledge, or should have knowledge, through reports received by him or through other means, that troops or other persons subject to his control are about to commit or have committed a war crime and he fails to take the necessary and reasonable steps to insure compliance with the law of war or to punish violators thereof."

*d.* As a commander confronted with evidence of misconduct by your troops, you are therefore obliged to investigate. If your troops have acted, for example, on the illegal order of a subordinate officer, you as the commander must rescind the order if time permits. Otherwise, you are required to take steps to prevent a recurrence of the misconduct. These steps may include punishing where appropriate those responsible for violating the law of war. In all cases you must report these incidents to your superiors. In war theaters the highest command will normally issue regulations and/or directives which establish guidelines for the required investigation and reporting of war crimes. Failure to comply with these investigations and report procedures is an offense under the Uniform Code of Military Justice.

#### 4. The Obligation to Disobey an Illegal Order.

As an intermediate commander you receive, as well as issue, orders. Just as you cannot explain away your responsibility for the illegal actions of your troops by claiming ignorance, you cannot explain away complicity in war crimes by claiming you acted pursuant to superior orders. Again, we find a simple, direct statement of this rule in the *List* case:

"An officer is duty bound to carry out only the lawful orders he receives. One who distributes, issues, or carries out a criminal order becomes a criminal if he knew or should have known of its criminal character."

As the just quoted statement makes clear, a subordinate officer is not guilty if he did not know or should not have known that the order was illegal. Thus our own Field Manual 27-10, The Law of Land Warfare echoes the judgment in the *List* opinion:

"[The defense of superior orders] does not constitute a defense . . . unless [the accused] did not know and could not reasonably have been expected to know that the act ordered was unlawful."

The men who were prosecuted at the end of World War II and the men who have been charged subsequently with the commission of war crimes

knew or should have known that the orders which they received were illegal. No American soldier, for example, can reasonably believe he has the right, or that his superior officer has the right, to order the execution or torture of an innocent civilian or prisoner of war. When an order is obviously illegal, the defense of superior orders is no defense at all.

**5. Reasons for Observing the Law of War.** Your personal duty to obey the law is sufficient reason to adhere strictly to the law of war. As an officer, however, you should also understand the many policy reasons why you and your men should follow all these rules.

**6. Public Support.** Violations of the law of war erode public support of, and confidence in, our military efforts. Brutalities inflicted upon non-combatants and the unnecessary destruction of their homes and goods generate adverse world opinion which impedes the effective conduct of a war. Traditional allies, for example, may be unwilling to aid us if their own citizens believe our fighting forces ignore the humanitarian requirements of the Hague and Geneva Conventions. It is even more important to maintain domestic support of the war. Americans expect their soldiers to obey the laws of war, and would be understandably shocked to learn that some do not. Shock could give way to revulsion at the infliction of unnecessary suffering or destruction, and many Americans would then refuse to support any military effort. There is yet a third public whose support is vital to military success, particularly in guerrilla wars. The local population must be won over, as they are the key to a successful counter-insurgency operation. That is a major purpose of psychological operations. But no matter how loudly we proclaim our concern for their welfare, the indigenous population will not believe us if our soldiers kill their animals, burn their crops, and rape their daughters. To insure maximum public support—throughout the world, at home, and within the country in which we are fighting—we must obey all the laws of war.

**7. Reciprocal Conduct by the Enemy.** *a.* Another major reason for adhering to the laws of war is that it encourages reciprocal treatment by the enemy. This reason is particularly important in the area of treatment of prisoners of war. While our enemies have regrettably not always complied with all the provisions of the Prisoner of War Convention, evidence indicates that they

would have treated captured American personnel even more poorly but for the fact that we did extend the Convention protections to their soldiers held in our prisoner of war camps. For example, the North Vietnamese government once threatened to try captured American pilots as war criminals. In the face of a world-wide outcry against the proposal, the North Vietnamese government changed its mind and did not subject our soldiers to trial as war criminals. Because we had treated North Vietnamese PWs correctly, we were able to demand in good faith that our foes fulfill their Convention responsibilities to American prisoners of war.

b. The reciprocity effect of obeying the law of war is not limited to encouraging proper treatment of prisoners of war, important as that is. Bombing hospitals, churches, and museums, for instance, would probably cause the enemy to conduct the same or similar strikes. Indeed, the enemy could justify otherwise illegal acts as reprisals; that is, as a response to a prior illegal act. While a reprisal is intended to coerce the enemy into obeying the law of war, the sad history of reprisals is that they escalate, intensify and brutalize the war. It is therefore in our interest to do nothing which would give the enemy grounds for taking reprisals against us.

**8. Control Over Troops.** Observing the law of war facilitates your control over your troops. Soldiers who loot and pillage are undisciplined; and undisciplined troops may ignore or refuse to obey orders. Under the stresses of combat, soldiers may lose their sense of self-control and may act irrationally. You cannot risk losing control over your men at the very time when the whole unit must operate carefully and effectively. Discussing this situation in the classroom is one thing; correctly dealing with it under the strain of actual combat is something else. Your men, scared, tired and having seen their comrades killed, may not respond entirely rationally unless you, by your bearing and conduct, have previously established the control essential to assure their proper response at the moment of testing.

**9. Promotion of Long-Term Goals.** Adherence to the law of war also promotes the end we seek in our military efforts, particularly in limited guerilla conflicts. Our purpose is not to lay waste to the country as the Romans did to Carthage, and bury its people forever beneath the salted earth.

If we wantonly burn farms, destroy industries, and kill off local civilian leaders, we only prolong the country's period of instability and dependency. If we bear, as we are likely to, a large part of the cost of reconstruction and modernization, we reduce the ultimate cost to ourselves by conducting our operations in accordance with the law of war; that is, by avoiding unnecessary destruction.

**10. Restoration of Peace.** We can now understand why observance of the law of war facilitates the restoration of peace. By reducing the brutalities of war and tempering the viciousness of the conflict, these laws make it more likely that the parties will be willing to negotiate a settlement rather than to fight on until one side or the other is annihilated. Complying with the law of war thus facilitates the restoration of peace, and that alone would be reason enough to obey them. One of our most illustrious generals, General of the Army Douglas MacArthur, once observed that no one wants peace more than the soldier.

**11. Conclusion.** The law of war, which we should observe for the reasons just reviewed, does not prohibit us from fighting effectively and well. The men who drafted the Hague and Geneva Conventions knew that war could not be transformed into a polite parlor chess game. In war people suffer and property is destroyed. The law of war forbids only unnecessary suffering and destruction. The Hague and Geneva Conventions were drafted by men who understood the requirements of military necessity. In war one must attack enemy supply lines and other targets like munitions factories. The law of war does not preclude an attack on any such legitimate military target. But it does ask both sides to spare where possible non-military targets like schools, churches, and museums. Nowhere in the law of war will you find a prohibition on shooting—and shooting to kill—the enemy in a firefight. On the battlefield the regrettable but necessary reality is kill or be killed. Once the enemy has surrendered, however, or otherwise fallen into your hands, there is no need to kill him. And the Geneva Conventions and FM 27-10 thus explicitly require us to treat captured and detained personnel humanely. In short, the law of war only demands that we observe the minimum standards of humanity. History has shown that this observance is consistent with the effective conduct of hostilities.

## APPENDIX III

## INSTRUCTOR TRAINING COURSE

1. **Purpose.** The purpose of this course is to provide materials and guidance for the preparation of instructors in troops units, training centers and in the service schools.

2. **Scope.** This course provides reference and suggestions to the instructors, one of whom will be a Judge Advocate officer and the other a combat experienced commander. Because of the diversity in levels of classes for which the lesson plans will be used, they are not intended as a verbatim text for any particular class. It is, however, a complete text of all information to be presented. They should be required to prepare their own instruction tailored to a particular audience. For example, they might be asked to present a two hour block of instruction to a group of troops in basic training. Or, they could be asked to talk to senior commanders about their obligations under the Hague and Geneva Conventions.

3. **Suggestions.** *a. General.* It is suggested that the instructors introduce each period of instruction in a manner that will establish contact between them and the class, arouse interest, secure attention, disclose the nature of the subject, and clarify its importance and objective. Close each period of instruction with a brief summary containing at least a recapitulation of the main points of the lesson, a reemphasis of important ideas, and a closing statement which will emphasize the pertinence of the Conventions to each soldier.

*b.* Instructors must insure that the students understand that the law of war and the applicable rules of engagement are rigidly enforced during field and combat operations and that soldiers who violate these laws and rules are, and have been in the past, vigorously prosecuted. Instructors should also be aware that some students may not accept the instruction as representing reality in the field. This attitude is usually based on rumor, speculation, conjecture and lack of knowledge on the part of the student. This points out the need for instructors to make their instruction realistic in order to defeat this attitude.

*c. Team Teaching.* There is no single method of instruction which is properly identified as "team-teaching." Basically, the team-teaching approach requires that two or more instructors be present and participate in the instruction; but they may organize their joint effort in many different ways. They may, for example, conduct a panel discussion between themselves, asking other questions. They could stage a debate in which obviously erroneous arguments are put forward and effectively answered. Each officer could analyze the same material from his professional perspective: the Judge Advocate could state and explain a legal provision after which the combat arms officer would demonstrate how the soldier could observe the rule while still completing his military mission. For example, the Judge Advocate officer could state the rule forbidding execution of a PW. The combat arms officer could then explain that a soldier on a long range patrol need not execute a PW but can bind and gag him or take him along. These suggested methods, which are only illustrative and not exhaustive, could, of course, all be used in the same bloc of instruction. That method should be used which will present the greatest realism to a particular audience.

*d. Teaching Aids.* The instructors should use teaching aids which will enliven their instruction. He may wish, for instance, to stage a skit demonstrating proper treatment of PWs. The preparation of slides, which may be used, for example, to impress upon the audience key provisions of the Conventions should also be considered. A variety of films are available and should be used. The instructors may wish to intersperse filmed instruction with their own.

*e. Relevant Illustrations.* The instructors should wherever possible illustrate the major teaching points outlined in the lesson plan with examples drawn from combat experience and relevant to the problems the particular audience is likely to face. For example, the instructors addressing a class of artillery officers should discuss the law of war problems that an artillery officer normally encounters.

*f. Emphasis.* The following major teaching points should be considered:

(1) American soldiers will not inflict any unnecessary destruction or suffering in accomplishing the military mission.

(2) American soldiers will treat prisoners of war, other captured and detained personnel, and civilians humanely.

(3) American soldiers will not obey an order whose execution would require a criminal act in violation of the law of war.

(4) American soldiers are obligated to report any violation of the law of war.

(5) American soldiers are personally responsible for unlawful acts committed by themselves.

(6) American soldiers are entitled to humane treatment when they are captured or detained by the enemy.

Instructors should stress those aspects of the subject most relevant to their audience. For example, instructors should devote considerable attention to the reporting and investigating responsibilities of staff officers when addressing a group of staff officers. Such instruction should include references to pertinent regulations used by staff officers in processing complaints or reports of crimes. Similarly, instruction to an audience of junior officers of the combat arms should stress the importance that orders be clear, concise and understandable. An audience of basic trainees should have emphasized the personal responsibility for committing an unlawful act and the alternate channels of reporting a suspected war crime. All audiences should receive emphasis on the importance of reporting all suspected war crimes.

*g. Questions.* The instructors should anticipate questions from their audience and frame possible answers. Questions addressed to legal concepts or problems should be answered by the JAG officer. Questions seeking a practical alternative or example should be answered by the combat arms officer. The most common questions which students ask are listed below with suggested answers.

(1) *Question:* Why should we obey the Hague and Geneva Conventions when the enemy does not obey them?

*Answer:* As soldiers we obey these rules because our Commander-in-Chief requires us to obey them. And it is well that we should obey them. We believe in the rule of law, and we therefore obey it whether others do or do not. We set our own standards and do not lower ourselves by

accepting a reprehensible standard of our enemies. In our country, we would consider a murder indefensible even though the murderer proved to us that his victim had also killed someone. Another person's violation of the law does not justify our breaking the law. Moreover, our strict adherence to these rules may pressure the enemy into complying with the requirements of the Conventions.

(2) *Question:* May we circumvent the prohibitions of the Hague and Geneva Conventions by turning PWs over to allies?

*Answer:* We are responsible for seeing that anyone we capture or detain is treated humanely—as the Conventions require. Paragraph 88 of FM 27-10 restates Article 12 of the PW Convention and requires:

“Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

“Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.”

We cannot escape our responsibility to treat PWs humanely by turning them over to allies who may not observe the Conventions.

(3) *Question:* Should we report violations of the law of war by our allies even though this destroys the advisory relationship?

*Answer:* Yes. You should first try to dissuade the allied officer from committing the violation. Do not use physical force, however. To use physical force against the soldier of another sovereign is to commit a belligerent act against that sovereign. The appropriate response to make to the host country is a matter to be determined at the highest level. It would be improper to simply “standby” in this case since your apparent acquiescence as a U.S. soldier would create the impression that the U.S. approves of the illegal action. The proper response is to report the violation to your commander.

(4) *Question:* Suppose we are receiving fire from the enemy, and they are using unarmed civilians as shields. May we fire back, knowing that

we will be killing many of these unarmed civilians?

*Answer:* Yes. We may fire since we have the right to defend ourselves. The responsibility for innocent casualties falls upon those who would violate the law of war by using innocents as shields.

(5) *Question:* Where the only alternatives existing are to abandon your mission or kill your prisoner, which must take priority?

*Answer:* The Secretary of the Army has stated that you may never kill a prisoner. Paragraph 85 of FM 27-10 states:

"A commander may not put his prisoners to death because their presence retards his movements or diminishes his power of resistance by necessitating a large guard, or by reason of their consuming supplies, or because it appears certain that they will regain their liberty through the impending success of their forces. It is likewise unlawful for a commander to kill his prisoners on grounds of self-preservation, even in the case of airborne or commando operations, although circumstances of the operation may make necessary rigorous supervision of and restraint upon the movement of prisoners of war."

Your responsibility to treat the PW humanely therefore takes priority over accomplishment of your mission.

(6) *Question:* Where does the law of war come from and who says it is law?

*Answer:* The Geneva and Hague Conventions are international treaties which our country has signed. Under the Constitution they are the "supreme law of the land" and must be obeyed. Thus, the Secretary of the Army has promulgated Field Manual 27-10, The Law of Land Warfare, which sets out these rules and requires that the American soldier observe them. Many of the prohibitions in these Conventions are also crimes under the Uniform Code of Military Justice to which every soldier is subject.

(7) *Question:* Is the use of napalm legal?

*Answer:* Fire weapons are legal, but they may be used illegally. Napalm, for example, should not normally be used as an anti-personnel weapon because it causes such great suffering. Nevertheless, napalm may be used against enemy soldiers if you have no other effective weapon which would disable them. Weapons which are *per se* illegal such dum-dum bullets can never be used, of course.

(8) *Question:* Can we take reprisals?

*Answer:* The individual soldier may never decide himself to take a reprisal. The decision to

take a reprisal must be made at the highest command levels.

(9) *Question:* What should you do if you receive an order that would require you to commit a criminal act in violation of the law of war?

*Answer:* First, attempt to get the order rescinded. Second, if this is not accomplished, don't obey the order. Third, you report the order through your chain of command or to the Inspector General, Provost Marshal, Chaplain, or a Judge Advocate officer.

4. **Glossary of Terms.** *a. Belligerent*—any person, group, or nation engaged in war or fighting.

*b. Cordon and search*—a military operation whereby an area is enclosed by troops and a search of the area is conducted to locate enemy property and enemy personnel.

*c. Dereliction of duty*—failure to perform a prescribed task to which one has been assigned.

*d. Detainee collecting point*—the place to which persons picked up or captured in combat operations are returned for classification.

*e. Detaining power*—the country holding captured personnel.

*f. Enemy property*—property being held or used by the forces of a military adversary.

*g. Hostage*—a person held as a pledge or security that certain terms of agreements will be kept.

*h. Military necessity*—those measures not forbidden by international law which are indispensable for securing the complete submission of the enemy as soon as possible.

*i. Occupying force*—the belligerent force which has established its authority over territory previously held by another force.

*j. Pillage*—to loot; to deprive of money or property by violence.

*k. Protecting power*—a state instructed by another state to safeguard its interests and those of its nationals in relation to a third state.

*l. Sanction*—a penalty for breaking the law; a coercive measure.

*m. Shelling*—an attack with artillery.

*n. Siege*—the encirclement of a fortified place by an opposing armed force intending to take it, usually by blockade and bombardment.

*o. Truce*—a temporary cessation of active hostilities by agreement between the belligerents.

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*p. Unnecessary suffering*—the infliction of any human injury not strictly necessary to accomplish the military mission.

**5. References.** The instructors will find the following references helpful in preparing their instruction:

*a. Text Preferences.*

(1) *Field Manuals (FM).*

(a) 27-10, The Law of Land Warfare.

(b) 19-40, Enemy Prisoners of War and Civilian Internees.

(c) 19-4, Military Police Support Theater of Operations.

(2) Department of the Army Pamphlets (DA Pam).

(a) 27-1, Treaties Governing Land Warfare.

(b) 27-161-2, International Law, Volume II.

(c) 360-229, Barbed Wire Command.

(d) 360-230, Prisoners of War.

(3) *Army Regulations (AR).*

(a) 633-50 Prisoners of War—Administration, Employment, and Compensation.

(b) 633-51 Civilian Internee Administration, Employment and Compensation.

(c) 190-25 Captured, Missing or Detained U.S. Army Personnel: Administrative Return and Processing.

(d) 350-30 Code of Conduct.

(e) 350-225 Survival, Evasion and Escape Training.

*b. Other Publications.* The following publications are excellent media for reference and back-

ground information on the subject and many of them may be found in public, post or Judge Advocate libraries.

(1) Pictet, Commentary on the III Geneva Convention Relative to the Treatment of Prisoners of War (1960).

(2) Pictet, Commentary on the I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1952).

(3) Pictet, Commentary on the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1958).

(4) Stone, Legal Controls of International Conflicts (1954).

(5) Oppenheim, International Law, Volume II (7th ed., Lauterpacht, 1952).

(6) Westerman, International Law Protects PWs, Vol. 22 (No. 2), Army Digest (February 1967), p. 32.

*c. Films.* The following films are excellent for background and reference purposes or for supplemental instruction but are not to be used as a substitute for regular instruction.

(1) The Geneva Conventions and the Soldier (when issued).

(2) TF 19-2749, Geneva Prisoner of War Convention (Feb. 60).

(3) TF 27-3616, The Geneva Conventions and Counterinsurgency (October 1965).

(4) TF 19-3678, Handling of Prisoners of War.

(5) TF 19-3679, Handling of Civilian Internees.

(6) VTR 29-30, Detainee Operations—Vietnam.

(7) FB 19-193, Evacuation of Civilians.

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## APPENDIX IV

## EXAMINATION

Tests and examinations, when utilized, are a media for determining deficiencies for which re-training might be needed or additional emphasis given in order to achieve adequate knowledge of the subject.

The following exam will require less than thirty minutes to administer. The instructor will review the answers immediately after the examination as a means of emphasizing the most important concepts in his prior instruction. The test and review would thus constitute an additional third hour of instruction in the law of war.

1. The leader of your patrol comes upon three dead enemy with their hands tied behind their backs and bullet holes in their heads. No one in the patrol knows who committed this act. Must the incident be reported to superiors?

- A. Yes.  
 B. No.

2. May a dead enemy's ears be cut off?

- A. Yes.  
 B. No.

3. An enemy soldier has just surrendered to your unit. May any property found on him be kept as a war trophy?

- A. Yes.  
 B. No.

4. An order was given to remove the ears from every enemy killed and to bring the ears back as proof of the kill. Must the order be disobeyed?

- A. Yes.  
 B. No.

5. May prisoners under control of your unit be killed if it is certain that they have been engaged in combat against your unit?

- A. Yes.  
 B. No.

6. After a fire fight a wounded enemy soldier is found by your unit. Must he be provided with medical aid and removed from the battlefield?

- A. Yes.  
 B. No.

7. A prisoner being held by your unit is believed to be responsible for the death of a disarmed and helpless buddy. May this prisoner be killed to discourage further acts of atrocity by the enemy?

- A. Yes.  
 B. No.

8. Is it justifiable to withhold food and water from a prisoner of war or deprive him of sleep in order to obtain military information from him?

- A. Yes.  
 B. No.

9. May you score a bullet to make it leave a larger wound?

- A. Yes.  
 B. No.

10. If your unit is receiving sniper fire from a village, may enemy soldiers be used as a shield to enter the village?

- A. Yes.  
 B. No.

11. May civilians captured in the act of spying or laying booby traps for the enemy be shot on the spot?

- A. Yes.  
 B. No.

READ THE FOLLOWING STATEMENT BEFORE ANSWERING QUESTIONS 12 AND 13.

Your patrol is operating in enemy territory. An enemy soldier is captured by your unit. You hear your platoon leader, LT X, contacting the company commander by radio. The company commander tells LT X: "take care of the prisoner." LT X orders the captive shot.

12. Can the individual who does the shooting be court-martialed for killing the prisoner?

- A. Yes.  
 B. No.

13. If the prisoner is shot, can LT X be court-martialed even though he did not personally do the shooting?

- A. Yes.  
 B. No.

READ THE FOLLOWING SITUATION STATEMENT BEFORE ANSWERING QUESTIONS 14 AND 15.

After a fire fight your unit captures a suspected enemy in civilian clothes. The captive is approximately 50 years old and has a bullet wound in the leg.

14. Must this man be treated as a prisoner of war until his status is determined by the proper authorities?

- A. Yes.
- B. No.

15. May medical treatment be withheld from this man until he gives his name, rank, service number, and date of birth?

- A. Yes.
- B. No.

READ THE FOLLOWING SITUATION STATEMENT BEFORE ANSWERING QUESTIONS 16 THRU 19.

Your unit has taken a number of casualties from sniper fire and booby traps in the area of a particular village. Your unit occupies the village and assembles all of the villagers found into a central area. The group consists mainly of women and children.

16. May one villager be shot for each member of your unit who was killed by sniper fire or booby traps in the area of the village?

- A. Yes.
- B. No.

17. May whatever force is necessary, short of causing death or serious bodily harm, be applied to get the women or children to disclose where the village men are?

- A. Yes.
- B. No.

18. Must humane treatment be given *only* to the old people, children under 18, and pregnant women?

- A. Yes.
- B. No.

19. Assuming that most or all of the villagers are enemies, must they, nevertheless, be treated in a humane manner?

- A. Yes.
- B. No.

READ THE FOLLOWING SITUATION STATE-

MENT BEFORE ANSWERING QUESTIONS 20 THROUGH 22.

Your patrol is operating in an area believed to be heavily infested with enemy soldiers. You come across a teenage girl who is carrying a kit of medical supplies and find she is an unwanted captive.

20. It is suspected that the girl has vital military information. May physical force be used to get her to talk?

- A. Yes.
- B. No.

21. Should she be killed if her presence jeopardizes your mission?

- A. Yes.
- B. No.

22. Can you put her on "point" to lead your unit through a suspected minefield?

- A. Yes.
- B. No.

23. May you threaten to throw a prisoner of war out of a helicopter if you believe that such threats will make him disclose important information about the enemy force?

- A. Yes.
- B. No.

24. May an enemy soldier who has just been captured in combat be forcibly detained in the battle area for the purpose of encouraging his fellow soldiers to surrender?

- A. Yes.
- B. No.

25. May a prisoner of war be forced to lead you to a weapon cache which he was hiding-

- A. Yes.
- B. No.

26. May a soldier in the U.S. Army remove money and valuables from prisoners and retain them for his personal use?

- A. Yes.
- B. No.

27. A prisoner of war is required to give:

- A. his name, rank, service number, and date of birth
- B. whatever information is requested from him, provided it has legitimate military significance.
- C. whatever information is requested from him provided it has no military significance.



D. no information whatsoever.

28. Three suspected enemy soldiers have just been captured by your unit. Your unit leader is responsible for seeing that they are not abused by:

- A. himself only.
- B. members of his unit only.
- C. U.S. soldiers only.
- D. anyone, if it is within his power to prevent the abuse.

29. Must an American soldier detained in a PW camp follow the orders of the senior American officer in the camp?

- A. Yes.
- B. No.

30. May a captured American soldier be required to work in an enemy munitions factory to pay for the cost of his food?

- A. Yes.
- B. No.

ANSWERS TO EXAMINATION

- 1. Yes. Art. 92, U.C.M.J.; *e.g.*, MACV DIR
- 2. No. Para 304, FM 27-10.
- 3. No. Para 94, FM 27-10.

- 4. Yes. Para 509, FM 27-10.
- 5. No. Para 85 and 89, FM 27-10.
- 6. Yes. Para 215, FM 27-10.
- 7. No. Para 497, FM 27-10.
- 8. No. Para 93, FM 27-10.
- 9. No. Para 34 and 504, FM 27-10.
- 10. No. Para 99, FM 27-10.
- 11. No. Para 248, FM 27-10.
- 12. Yes. Para 507 and 509, FM 27-10.
- 13. Yes. Para 501, FM 27-10.
- 14. Yes. Para 71, FM 27-10.
- 15. No. Para 93, FM 27-10.
- 16. No. Para 272, FM 27-10.
- 17. No. Para 270, FM 27-10.
- 18. No. Para 247, FM 27-10.
- 19. Yes. Para 11 and 252, FM 27-10.
- 20. No. Para 93, FM 27-10.
- 21. No. Para 85, FM 27-10.
- 22. No. Para 128, FM 27-10.
- 23. No. Para 93, FM 27-10.
- 24. No. Para 95, FM 27-10.
- 25. No. Para 93, FM 27-10.
- 26. No. Para 94, FM 27-10.
- 27. "A" Para 93, FM 27-10.
- 28. "D" Para 88, 247, 252, FM 27-10.
- 29. Yes. Para 155, FM 27-10.
- 30. No. Para 126, FM 27-10.

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By Order of the Secretary of the Army:

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