

SELECTED PROBLEMS

IN THE

**LAW
OF
WAR**



JUNE 1979

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PREFACE

Every soldier must understand the law of war and its significance. Both commanders and members of their command must secure this knowledge through formal instruction and field training exercises.

This text provides supplemental and follow-up instructional material on the Hague Convention No. IV and the Geneva Convention of 1949 (see AR 350-216 and ASUBJSCH 27-1).

These materials serve three purposes. First, they help the training manager to present a clearer explanation of the law of war. Second, they help to insure that an area of essential knowledge for the individual soldier has been thoroughly addressed. And, finally, they help the commander insure that members of his command have a basic knowledge of the law of war and its significance.

The guide is divided into three sections. Section I discusses the training requirements of AR 350-216 and gives general guidance on the use of the case studies in section II. It also discusses educational techniques, giving examples of how to train soldiers in the law of war (the most critical aspect of the training manager's task). Section II presents typical combat situations in which many of the laws of warfare are applied. The discussion of these situations supports understanding of the basic law of war. More important, though, discussion demonstrates the realistic applications and implementation of the rules in combat. Finally, section III contains an index to the case studies to help the training manager select material appropriate to his training objectives.

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Section I

TRAINING REQUIREMENTS, GENERAL GUIDANCE, AND TECHNIQUES OF FORMAL INSTRUCTION

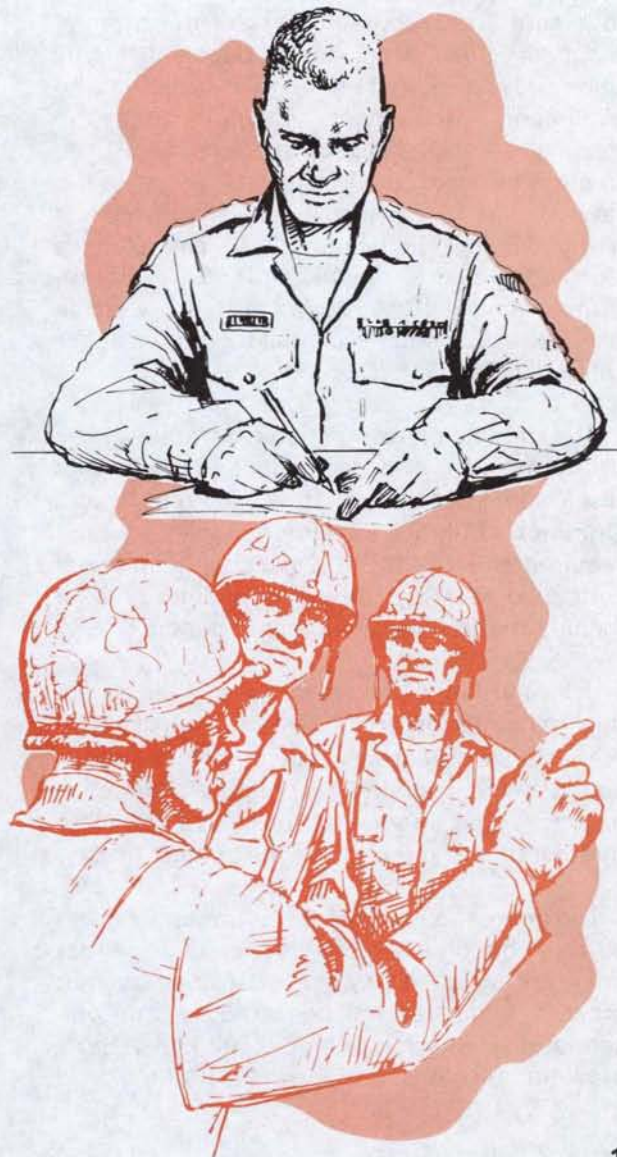
SCOPE. This section outlines formal training requirements in the law of war and provides general guidance on integrating the case studies in section II into training programs. It also explains many educational techniques that may be used to develop in the soldier the desired knowledge of the law of war and its impact on him.

TRAINING REQUIREMENTS.

Army Regulation 350-216 requires that formal training in the law of war be provided each soldier periodically and that a permanent record be kept of such training. This training is required at the training base and within the school system. Formal unit training is also required for soldiers not trained earlier. The training manager must become thoroughly familiar with these requirements.

The regulation further requires the commander to insure that each member of his command has a practical working knowledge of the Geneva and Hague Conventions and their significance. Practical training (which follows formal training and should be continuous) will be integrated in all tactical training and related subjects. Such practical training should be realistic within the bounds of safety.

Army Regulation 350-216 also requires that formal law of war instruction be presented by officers of The Judge Advocate General's Corps (JAGC) or other legally qualified personnel together with officers with command experience, preferably in combat. A legally qualified person is one graduated from an accredited law school and admitted to practice before a Federal court or the highest court of a state. Where legally qualified personnel are not available, AR 350-216 provides alternative methods of instruction.



GENERAL GUIDANCE.

This text is designed as a casebook and guide for the training manager in developing programs for practical application of the law of war. The case studies in section II can be integrated into those training programs. Because of the different levels of training for which the studies will be used, they are not intended as a verbatim text or lesson plan for any specific training program. The training manager will tailor his programs to the needs of his audience and to the training problems or requirements peculiar to a given unit, mission, or group. The case studies should be integrated into these programs wherever possible.

The manner of developing training programs using the case studies in section II is left to the judgment and resourcefulness of the training manager. Such development depends largely upon his requirements, preparation, and evaluation. Remember, though, that the material contained in section II is not to be used in place of basic or refresher instruction in the law of war. Such instruction is provided in Army Subject Schedule 27-1 (The Geneva Conventions of 1949 and The Hague Convention No. IV of 1907). This text should be used to supplement or follow up basic or refresher instruction.

The training manager should be familiar with the principles and techniques defined and discussed in FM 21-6, **How to Prepare and Conduct Military Training**, the training requirements of AR 350-216, and the material contained in Army Subject Schedule 27-1, to include the training course at appendix C.

If formal law of war training is given at the beginning of the training cycle, the training manager can integrate it with other training. He can use the teaching techniques of practice exercises and informal discussion to stimulate interest in and retention of the subject matter.

Too often, though, law of war training is given at the end of a training cycle. One cannot integrate what does not exist; one cannot practice what has not been taught; and one cannot discuss what one does not know. Early presentation of this training in the training cycle

provides a basis for effective integration and retention of the subject.

TECHNIQUES OF FORMAL INSTRUCTION.

The education techniques, as they apply to this discussion, are:

LECTURE

CONFERENCE

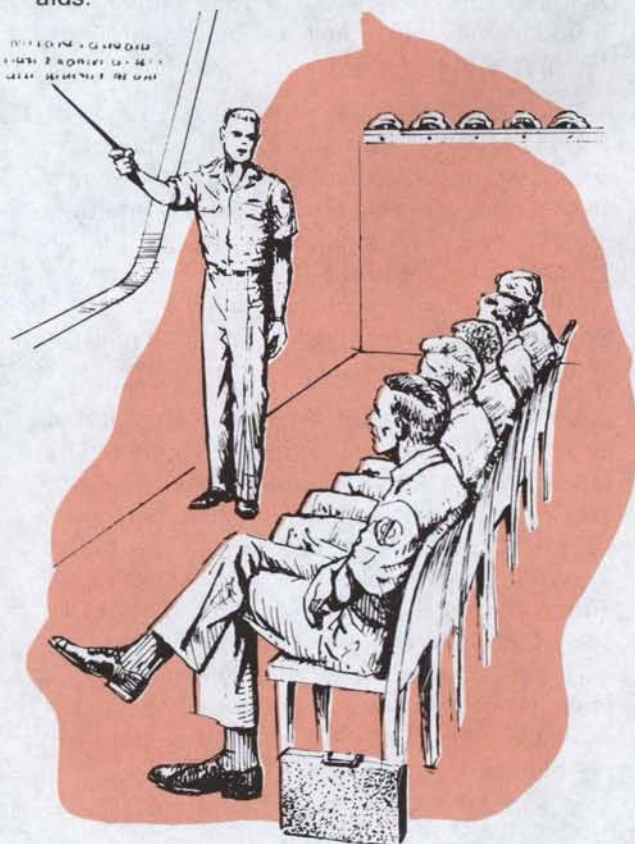
LECTURE WITH CONFERENCE

PRACTICAL EXERCISE

INFORMAL DISCUSSION

Formal instruction involves, at a minimum, lecture, conference, or lecture with conference, and should be supplemented with practical exercises and informal discussions.

Lecture. The lecture technique is appropriate for teaching new material to large groups. An effective lecture has a logical organization, illustrations and examples, specific and vivid expressions, relevant personal experiences, rhetorical questions, and appropriate training aids.



The lecture is effective for exposing a large number of soldiers to the law of war. Since the initial exposure most likely will occur during basic training, the speaker should make every effort to insure that trainees receive a positive first impression of the law of war. This can be accomplished by an interesting, effective presentation. If time and facilities permit, one of several short films dealing with the law of war can be used. Other training aids include skits or demonstrations, such as MPs searching and securing a group of PWs, and transparencies that highlight the major points of the lecture. Remember, an imaginative speaker can develop other means of making the presentation interesting without detracting from the subject matter.

Conference. The conference technique involves a leader and generally a small group (if the technique is to be effective). The leader directs and controls the group toward a predetermined goal, with most of the ideas developed by the group. The conference allows the soldier to participate directly by asking questions and answering those asked by the leader. The chief difference between conference and lecture is the emphasis on student participation in the former.

The conference can be particularly effective in teaching the law of war when soldiers have a basic knowledge of the subject. The conference should stimulate student thinking, make learning permanent, pool the knowledge of the students, and increase student interest by having the soldier answer the following questions with respect to the law of war:

What to do?

Why do it?

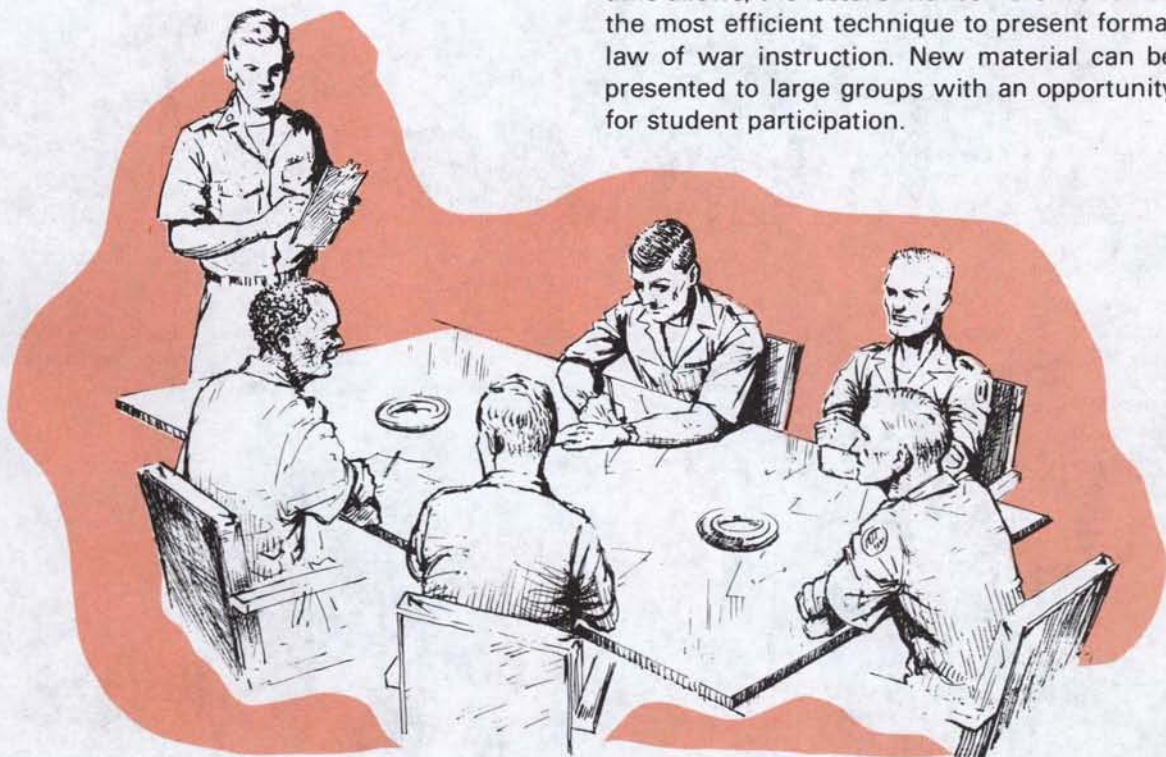
When to do it?

Where to do it?

How to do it?

Lecture with Conference. The lecture with conference encourages the soldier to participate in the presentation by asking questions when he doesn't understand the material presented. This technique combines the positive points of both the lecture and the conference.

One of the potential problems in presenting the law of war is maintaining student interest. The lecture and the conference may be inappropriate under some circumstances. If time allows, the lecture with conference can be the most efficient technique to present formal law of war instruction. New material can be presented to large groups with an opportunity for student participation.

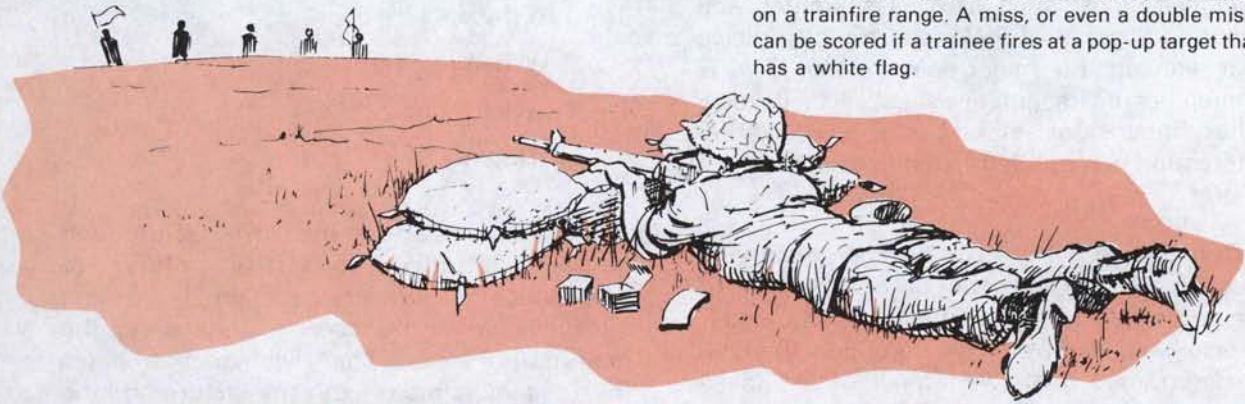


Practical Exercises. The practical exercise technique presents a real-life situation in which the soldier can apply knowledge gained through formal training.

The effectiveness and nature of practical exercises which demonstrate the law of war are limited only by the imagination and creativity of the training manager. Examples include:

DO NOT FIRE ON A WHITE FLAG.

A white flag can be attached to several pop-up targets on a trainfire range. A miss, or even a double miss, can be scored if a trainee fires at a pop-up target that has a white flag.



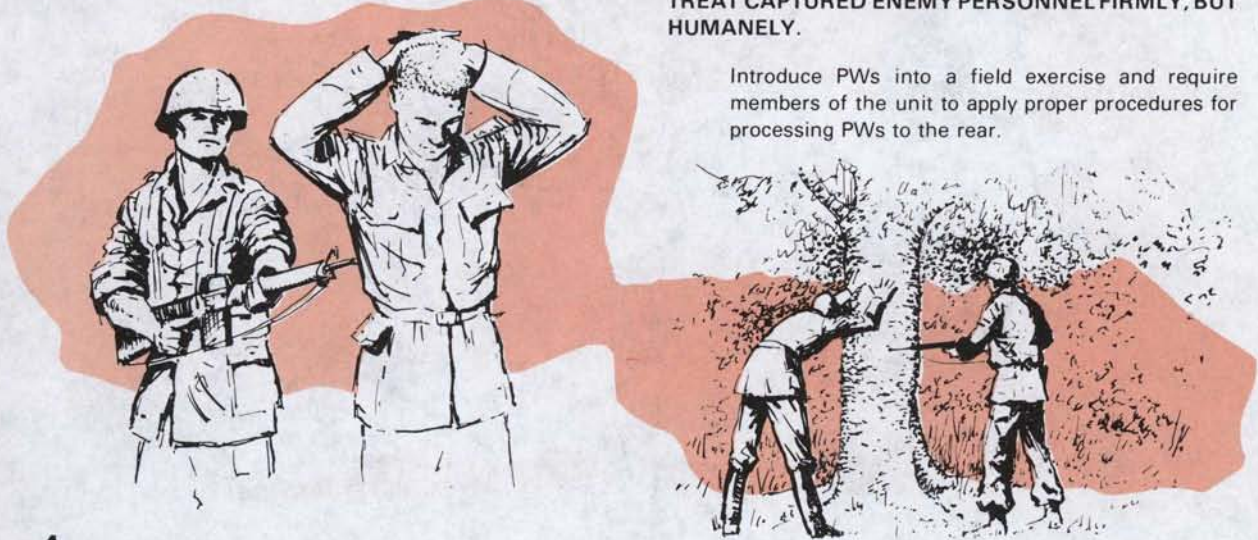
DO NOT FIRE ON NONCOMBATANTS.

During an exercise, a silhouette target or aggressor soldiers can be clearly marked as medical personnel.



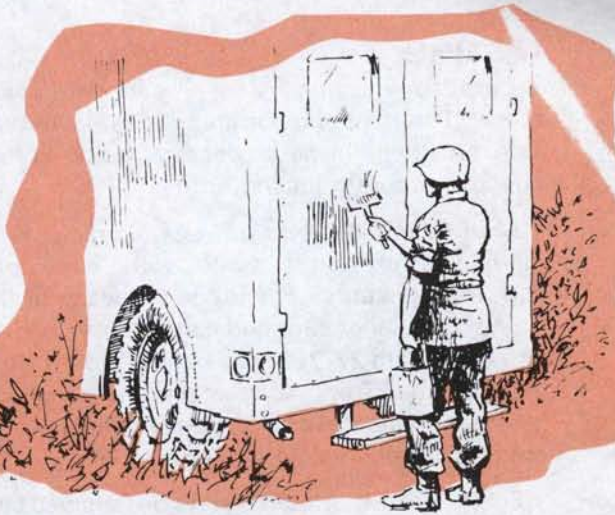
TREAT CAPTURED ENEMY PERSONNEL FIRMLY, BUT HUMANELY.

Introduce PWs into a field exercise and require members of the unit to apply proper procedures for processing PWs to the rear.



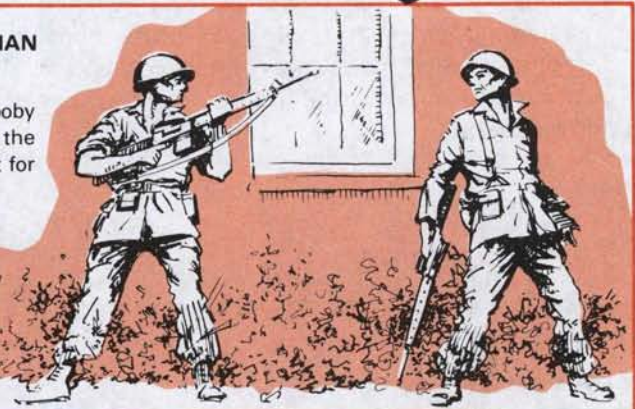
EXERCISE COMMAND DISCRETION ON USING THE RED CROSS EMBLEM.

When on a night exercise, instruct medical aid personnel to remove Red Cross armbands and camouflage the emblem on ambulances. This is not against the law of war. However, there is a danger that both the medical aid personnel and the ambulances will be attacked. Without distinctive protective markings, it is difficult to distinguish between legitimate military targets and protected objects and personnel.



DO NOT UNNECESSARILY DESTROY CIVILIAN PROPERTY.

Reconstruct a house that contains simulated booby traps. Then have trainees conduct a search of the house to learn and apply the concept of respect for property.



The case studies in section II cover the laws of warfare that are most pertinent to the combat soldier. The above examples of practical exercises were derived from the studies. A training manager must, of course, adapt and change the studies to fit the situation, the level of training, and the mission of the personnel involved.

Informal Discussion. Informal discussion between the commander and his soldiers is an important and effective technique of education. It is the best method of testing the effectiveness of prior training and determining future needs. Informal discussion includes "rap" sessions, discussion groups, commander's time, and simple random questions.

A commander can ask a few soldiers, on a random basis, their understanding of a particular rule of war. It could be a general question to determine what they remember from the formal instruction. For example, he could ask their opinion of a film that was shown, or what they recall best about the JA's talk on

the law of war. Such questions will readily reveal the points remembered. The questions could also be more specific. For example, an airborne soldier can be asked if he would shoot at a descending paratrooper; or a medic can be asked for what purposes he may use his weapon; or a demolition specialist can be asked if he is a saboteur when he goes out to blow up a bridge.

However, informal discussion does not have to be initiated by the commander. The opportunity can be created by the soldier himself. For example, a soldier may ask how he should determine if a female detainee is armed. This would prompt a demonstration of the law of war pertaining to female detainees.

TESTING.

Purpose. Testing is necessary to insure accomplishment of the training mission, as well as to provide information for developing a more effective program for the future.

Methods. The written examination is a method of formal testing. It can be developed with the assistance of a judge advocate, or the training manager can model questions on all or part of DA Pam 27-200, **The Law of War, A Self-Instructional Text**. Additionally, the questions in appendix III of Army Subject Schedule 27-1 are ready-made for a formal quiz.

Formal testing should always be followed by a thorough critique and discussion of correct responses. Practical exercises and random questioning are informal testing methods. Informal testing does not require as much administrative preparation and follow-up as formal testing.

KEY TO CITATIONS.

The following terms and abbreviations are used in this guide:

DA Pam 27-1

Department of the Army Pamphlet No. 27-1, **TREATIES GOVERNING LAND WARFARE**, 7 December 1956.

DA Pam 27-161-2

Department of the Army Pamphlet No. 27-161-2, **INTERNATIONAL LAW** Volume II, 23 October 1962.

FM 27-10

Department of the Army Field Manual No. 27-10, **THE LAW OF LAND WARFARE**, 18 July 1956.

GWS

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949.

GWS Sea

Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 12 August 1949.

GPW

Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949.

GC

Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

H.III

Hague Convention No. III Relative to the Opening of Hostilities, 18 October 1907.

H.IV

Hague Convention No. IV Respecting the Laws and Customs of War on Land, 18 October 1907.

H.R.

Annex to Hague Convention No. IV, 18 October 1907, embodying the Regulations Respecting the Laws and Customs of War on Land.

H.V

Hague Convention No. V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 18 October 1907.

UCMJ

UNIFORM CODE OF MILITARY JUSTICE.

Section

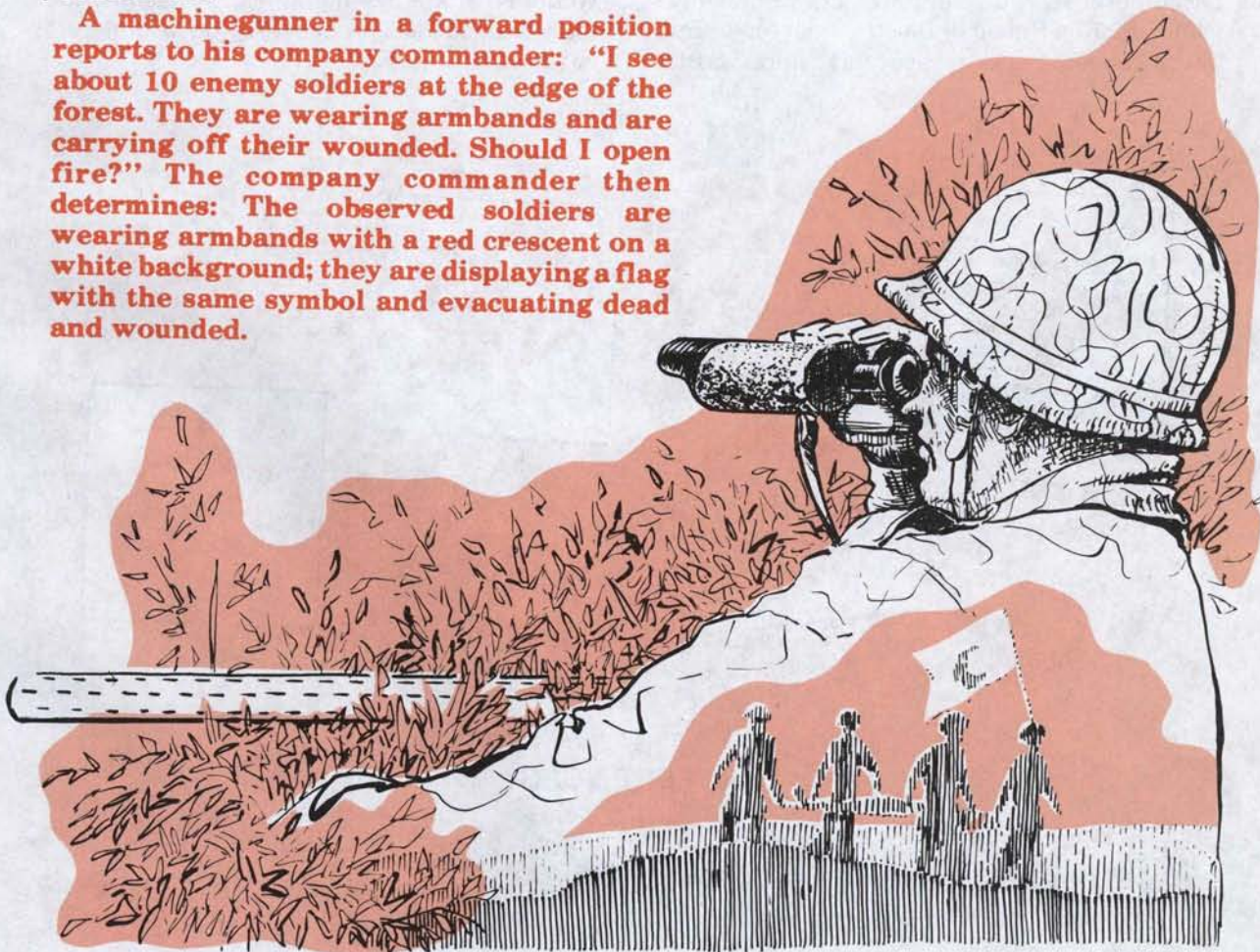
II

CASE STUDIES

1 PROTECTION OF WOUNDED AND MEDICAL PERSONNEL: PROTECTIVE INSIGNIA, RECOVERY OF WOUNDED

PROBLEM:

A machinegunner in a forward position reports to his company commander: "I see about 10 enemy soldiers at the edge of the forest. They are wearing armbands and are carrying off their wounded. Should I open fire?" The company commander then determines: The observed soldiers are wearing armbands with a red crescent on a white background; they are displaying a flag with the same symbol and evacuating dead and wounded.



What actions should the company commander take and why?

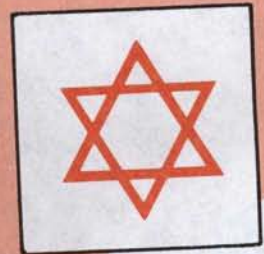
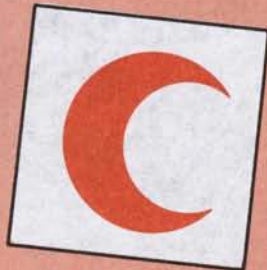
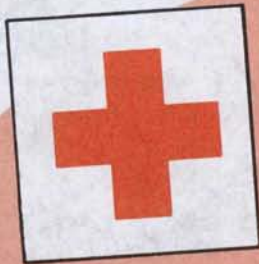
DISCUSSION:

The company commander should order the machinegunner not to fire on the enemy soldiers. If the situation permits, he should order a general cease-fire so long as the enemy is recovering dead and wounded and not trying to gain a tactical advantage or otherwise improve his position.

The enemy soldiers wearing armbands are medical personnel. The red crescent on a white background is recognized by the terms of the 1949 Geneva Convention on Wounded and Sick (GWS) as the protective emblem and distinctive sign of the medical service of an armed force. The Convention also recognizes both the red cross and the red lion and sun on a white background as equivalent protective emblems. While the Red Shield of David is not recognized by the Convention, Israel uses this symbol as the

emblem of its medical service. The protective symbol may be displayed on all medical service flags and equipment and may be worn by medical personnel as an armband.

Generally, medical personnel and the wounded they are assisting may not be attacked if they are recognized as such, even if the protective emblem is not displayed. However, a rescue effort does not normally require a general cease-fire. Military targets, (*i.e.*, *other enemy soldiers engaged in combat*) may be fired upon, even if recovery efforts are jeopardized. However, whenever circumstances permit, a cease-fire or truce should be agreed upon to allow the recovery, exchange, and evacuation of wounded from the battlefield. A commander may also declare a cease-fire on a unilateral basis.



REFERENCES :

DA Pam 27-1, pp. 31, 33 (GWS arts. 19, 24-25).

DA Pam 27-161-2, pp. 110-112.

FM 27-10, paras 220-225.

M. GREENSPAN, THE MODERN LAW OF LAND WARFARE 72-75, 88-90 (1959) (hereinafter cited as GREENSPAN).

TC 27-1, Your Conduct in Combat, pp. 8-9.

2

FEIGNING SURRENDER; TREATMENT OF WOUNDED: PUNISHING AND REPORTING LAW OF WAR VIOLATIONS

PROBLEM:

In close combat, infantryman C wounds an enemy soldier who falls to the ground and, by raising his hands slightly, indicates that he is incapable of fighting. C turns from the wounded soldier to find cover from hostile fire close to the wounded soldier. The latter suddenly fires on C, misses, and then raises his hands and surrenders. C determines that the captured soldier had only a minor grazing wound, had been capable of fighting, and had only feigned incapacity in order to continue fighting when a more favorable opportunity presented itself.



Did the enemy soldier violate the law of war? Explain. How should this soldier be treated if he violated the law of war? What action should infantryman C take in regard to the violation?

DISCUSSION:

The enemy soldier committed a violation of the law of war by pretending to be disabled and then continuing to fight when the opportunity arose. The Hague Convention on the laws and usages of land warfare does permit ruses. However, they may not take the form of trickery such as pretending to be defenseless while planning to make a surprise attack on someone, who, complying with the law of war, has stopped fighting. In the case above, the wounded soldier indicated, by raising his hands, that he had quit fighting and claimed protection from further injury under the law of war. Accordingly, he could no longer be fired upon by

infantryman C. In claiming this protection, however, he must refrain from further combat. If he continues the fight, he acts treacherously, provided the deception was intended from the outset.

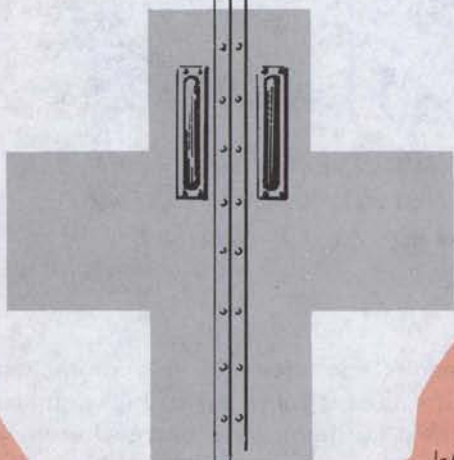
Although the wounded soldier apparently violated the law of war, he must be treated as a prisoner of war. He may be tried, however, under the Uniform Code of Military Justice (UCMJ) for violating the law of war. Infantryman C should follow routine PW procedures and report the incident as required.

REFERENCES:

- DA Pam 27-1, pp. 12, 97 (HR art. 23, GPW art. 82).
- DA Pam 27-161-2, pp. 56-57, 88-89.
- FM 27-10, para 50.
- GREENSPAN, pp. 320-322.

3

TREATMENT OF WOUNDED AND MEDICAL PERSONNEL; STATUS OF MEDICAL VEHICLES AND MATERIAL: MISUSE OF PROTECTED STATUS AND PROTECTIVE INSIGNIA, PUNISHMENT



PROBLEM:

A platoon leader reports to his commander: "As my platoon was moving down the road, we overtook an enemy medical convoy displaying the Red Cross emblem. The convoy suddenly fired on my platoon. We immediately overcame the resistance and then determined that in addition to the seriously wounded, the trucks in the convoy carried artillery ammunition. According to the captured medical personnel, they had attacked the platoon fearing that they would be punished if the ammunition was discovered."



How should the following be treated and why: (1) The enemy medical personnel; (2) The wounded; (3) The captured material from the medical convoy; (4) The medical vehicles?

DISCUSSION:

Medical personnel who participate in combat activities lose their protected status. In this case, they become prisoners of war with no claim to the special protection provided under the Geneva Convention on Wounded and Sick (GWS). This protection is given only to soldiers who are exclusively searching for, collecting,

transporting, or treating the sick and wounded. Participating in combat activities inconsistent with their medical duties nullifies this protection.

Medical personnel can also be punished for misusing the Red Cross symbol which, under

the GWS, signifies protected status. In the case above, there has been misuse of the Red Cross emblem both in the transporting of artillery ammunition by marked medical vehicles and in firing at the overtaking platoon. Thus, the captured medical personnel can be tried before a military court for both violations of the law of war.

The enemy wounded apparently have not participated either in the combat activities or in the transportation of ammunition. Consequently, they are not guilty of punishable conduct. As wounded, they must continue to be cared for and protected. They become prisoners of war, and their needs must be provided for by the capturing forces. Punishment based on the behavior of the medical personnel in violation of the law of war may not be directed against the wounded. The wounded should be taken under guard to the nearest aid station, given medical attention, and then evacuated from the battlefield.

Medical vehicles and other medical material in the convoy are protected from attack or misuse under the GWS. This protection is forfeited only if such property's use is inconsistent with its humanitarian purpose. Small quantities of small arms and ammunition taken from the wounded, but not yet removed from the medical convoy, would not cause a loss of protected status. In the case above, however, large quantities of artillery ammunition were deliberately being transported. This was not merely incidental to the evacuation of the enemy wounded.

When medical transport or facilities are being misused, it is usually necessary to issue a warning to stop such misuse and to set a reasonable deadline for compliance prior to

attacking the protected property. This requirement would ordinarily apply in the case of the transport of ammunition by medical vehicles before protection is forfeited. This protection, however, is lost immediately if, as in the present case, enemy fire is received from a protected facility, vehicle, or convoy. In such cases, a prior warning is impractical. Therefore, to promptly return the fire is permissible even though the nonparticipating wounded are thereby endangered. Responsibility for this risk lies with the party which has misused the protected property and protective emblem.

The material of mobile medical units will continue to be used to assist the sick and wounded. This applies even though a medical unit has forfeited its protection against attack. The ban on destroying or using such material for purposes other than originally intended has been declared in the interest of all sick and wounded and is not affected by the unit's forfeiture of its protection. Accordingly, the medical material which was found in the case above must continue to be used for the care of the enemy wounded until such time as their medical needs are adequately provided for from other sources.

On the other hand, the captured medical transport vehicles become property of the capturing forces and may be used by them for any purpose. But before they are employed for other purposes, the wounded found in the vehicles must either be taken to a military hospital or aid station, or be transferred to other vehicles. In the present case, since seriously wounded personnel are involved, their transfer to other vehicles is inadvisable. They should be transported directly to an aid station or hospital in the captured vehicles. These vehicles may then be used by the captor for his own purpose.

REFERENCES:

- DA Pam 27-1, pp. 12, 31-35 (HR art. 23(f), GWS arts. 19-22, 24-25, 28-29).
- DA Pam 27-161-2, pp. 53, 106-107.
- FM 27-10, paras 55, 215, 217, 222-223, 226, 230, 236.
- GREENSPAN, pp. 72-75, 82-90.

4

STATUS AND TREATMENT OF MEDICAL FACILITIES AND ARMED MEDICAL PERSONNEL: CONFISCATION OF WEAPONS

PROBLEM:

A company commander reports to his battalion commander: "One of my platoons overran an enemy medical clearing station. Terrain conditions caused them to assume positions near the clearing station. A number of armed enemy medical personnel asked my platoon leader to leave the vicinity of the clearing station. The platoon leader had the clearing station searched. Several small arms were found. Some belonged to the medical personnel and some apparently had been taken from the wounded. All weapons were confiscated. Can my platoon remain in position near the clearing station? What is the status of the armed enemy medical personnel?"



How should the battalion commander respond?

DISCUSSION:

A medical clearing station must be spared and protected by all parties involved in conflict. The placement of combat positions near the clearing station exposes it to the risk of being hit during combat operations. For this reason, a certain distance should be maintained between combat positions and the protected facility. Only for reasons of military necessity, (*i.e., closing a gap in the front lines or the tactical need to occupy a section of terrain*), may the vicinity of the medical clearing station be occupied for combat purposes. It is a violation of the law of war to take positions near a medical clearing station for protection from the enemy because of the station's protected status.

A medical clearing station does not lose its protected status because its personnel are armed or because weapons taken from the wounded have not yet been removed from the facility. Medical personnel do not forfeit their protected status because they carry weapons.

Such weapons may be used by the medical personnel to defend themselves, the wounded, and the medical facility against attack by anyone violating the law of war. They may not be used to resist capture by lawful combatants. However, any weapons found in a medical facility can be confiscated.

In the case above, it is apparent that there is a tactical need to occupy terrain near the clearing station. Therefore, unless the situation permits its relocation, it will be necessary to accept a risk that the clearing station may be hit during combat activities. The battalion commander should direct his platoon to remain in position near the clearing station so long as it is tactically necessary. He should direct that all confiscated weapons be retained by the capturing unit and that medical personnel be permitted to continue their duties. Finally, he should tell the company commander that a number of soldiers will be

assigned from the battalion to guard the clearing station and its occupants. Also, as soon as possible, arrangements will be made by the

battalion to remove the wounded through normal medical channels and the medical personnel through PW channels.

REFERENCES:

DA Pam 27-1, pp. 12, 31-33 (HR art. 23(f), GWS arts. 19, 22, 24).

FM 27-10, paras. 220, 223, 225.

GREENSPAN, pp. 83-84.

5 STATUS AND USE OF CAPTURED MEDICAL VEHICLES AND OTHER MATERIAL: REMOVAL OF PROTECTIVE AND NATIONAL INSIGNIA

PROBLEM:

A company occupies a village which contains an enemy military hospital. The company commander orders one platoon leader to reconnoiter beyond the village. The platoon leader takes an ambulance from the hospital, superficially covers its protective Red Cross emblems with mud, and uses the vehicle to carry out his mission.



How should the platoon leader's actions be judged under the law of war?

DISCUSSION:

Captured medical transport vehicles become the property of the captor and can be used at his discretion, provided he supplies the needs of any captured enemy sick and wounded. The use of such vehicles for combat purposes is only permissible if the protective emblem has first been removed. To do otherwise would be considered misuse of the protective emblem. The removal must be done so that no part of the protective emblem remains visible or can still be recognized under any camouflage. If not, the vehicle could be thought to be a medical

transport whose protective emblem has only been soiled during normal use. This impression would be supported by the usually distinctive design of such vehicles.

In the above case, it is apparent that the Red Cross emblems on the captured medical vehicle were not properly covered or eliminated before its use for a combat-related purpose. Therefore, the platoon leader could be found in violation of the law of war for misusing a protective emblem.

REFERENCES:

DA Pam 27-1, pp. 12, 41 (HR art. 23, GWS art. 53).

DA Pam 27-161-2, pp. 173, 176-177.

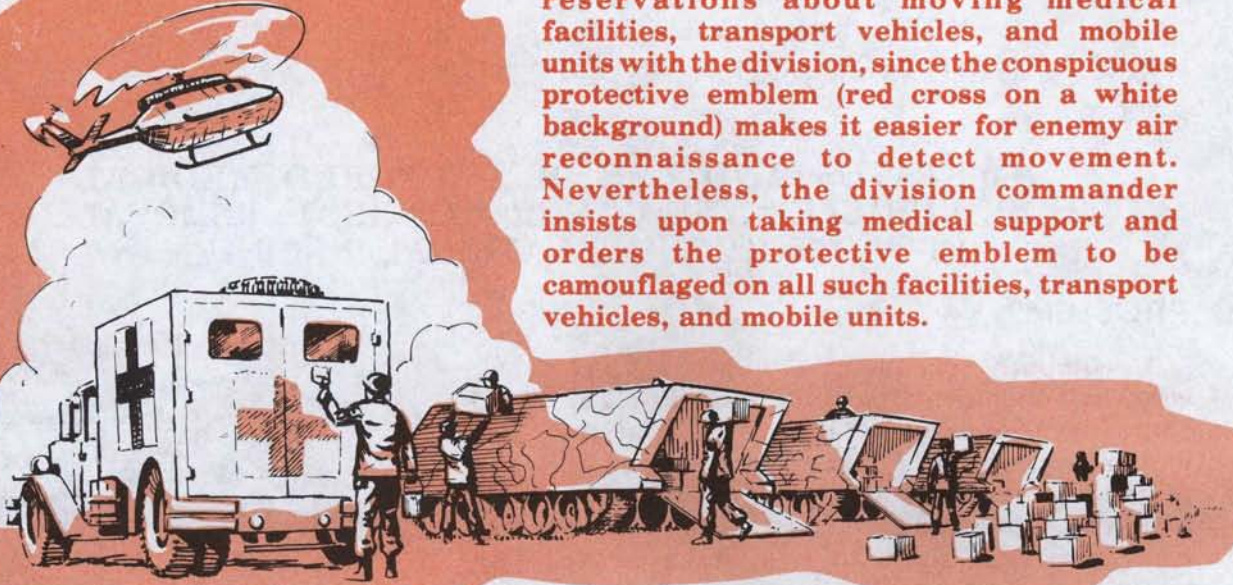
FM 27-10, paras. 234, 236.

GREENSPAN, pp. 85, 318-321.

CAMOUFLAGING PROTECTIVE EMBLEMS

PROBLEM:

A division is to be moved at night from the rear to a staging area. The chief of staff has reservations about moving medical facilities, transport vehicles, and mobile units with the division, since the conspicuous protective emblem (red cross on a white background) makes it easier for enemy air reconnaissance to detect movement. Nevertheless, the division commander insists upon taking medical support and orders the protective emblem to be camouflaged on all such facilities, transport vehicles, and mobile units.



Is the commander's action permissible under the law of war? If so, what, if any, risks are involved? Explain your answers.

DISCUSSION:

The division commander may camouflage the medical facilities, vehicles, and mobile units which will accompany the division. Normally, these objects are marked to indicate their protected status. However, if it is likely that the enemy will gain intelligence from the visible presence of medical facilities, equipment, and material, then camouflaging the protective emblem is permissible. In the case above, there is a reasonable chance that the division's movement to the staging area will be more easily detected if the protective emblems are not camouflaged.

Be aware, though, that the risk of attack on the medical facilities, equipment, and material may be increased. Medical facilities, equipment, material, and personnel recognized as such, may not be attacked even if not marked with a conspicuous protective emblem. However, this protection, as a rule, can only be achieved by the display of these distinctive markings. Without them, it is difficult to distinguish between legitimate military targets and protected objects. In the present case, there is a danger that the camouflaged medical convoy will be considered a combat unit subject to attack.

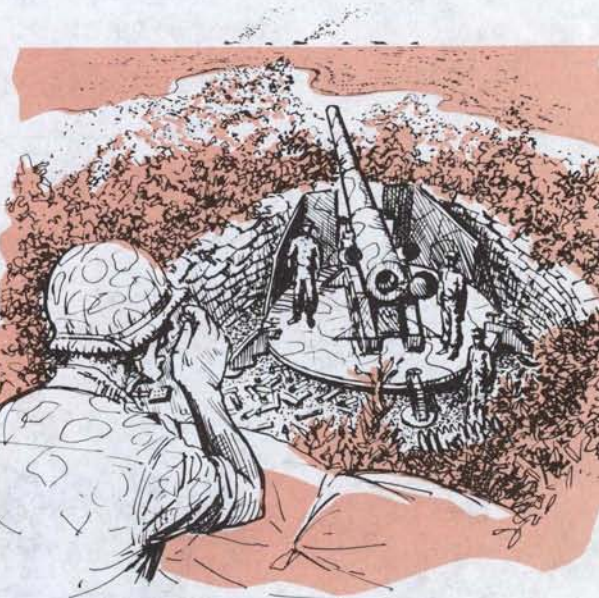
REFERENCES:

- DA Pam 27-1, pp. 37-39 (GWS arts. 39, 42).
- DA Pam 27-161-2, p. 109.
- FM 27-10, para 242.
- GREENSPAN, pp. 347-348n. 137.

7 CONCEPT, STATUS, AND TREATMENT OF SHIPWRECKED PERSONNEL: THE PERMISSIBILITY OF FIRING ON ENEMY PERSONNEL OF SUNKEN LANDING CRAFT

PROBLEM:

While engaging an enemy landing force, friendly coastal batteries sink two out of five landing craft about 200 yards from shore. The soldiers of the sunken craft swim toward the beachhead which has been secured by their forces. The commander of a friendly coastal battery orders his men to fire at the enemy soldiers swimming toward the beachhead. His executive officer questions the order because he believes that the soldiers of the sunken landing craft are shipwrecked personnel who may not be fired upon.



How should the lawfulness of the commander's order be adjudged under the law of war?

DISCUSSION:

The order to fire on the enemy swimming toward the beachhead from the sunken landing craft is lawful.

A shipwreck can result from any cause (*e.g., ocean conditions, enemy action*). It includes forced landings at sea by or from aircraft. The term "shipwrecked personnel" assumes that such personnel are helplessly exposed to the natural forces of the seas and that they require aid from others in order to overcome their defenseless state. Accordingly, shipwrecked personnel have a protected status and may not be attacked.

However, as in the case of wounded combatants, the protection given to shipwrecked soldiers depends on their stopping combat activities. The protected status is given only to soldiers who surrender or cease to fight because of wounds, illness, or shipwreck. If the soldier continues to fight, he loses his protected status and may be attacked.

In the present case, a decision must be made. Are the soldiers of the sunken landing craft swimming solely to rescue themselves? Or, like the enemy in the landing craft not sunk, are they attempting to continue their combat mission by reaching their beachhead? Enemy paratroops may be fired upon while descending during a combat operation, despite their relatively defenseless position; enemy soldiers may be engaged if they are trying to carry out their mission of reaching a beachhead by swimming ashore after their landing craft has been sunk.

The fact that the enemy soldiers were swimming towards the beachhead, instead of waiting to be rescued or swimming to vessels in the area, strongly indicates that they were trying to join their comrades already ashore and continue the fight. Moreover, the soldiers' proximity to, and advance toward, their beachhead demonstrates they were not defenseless.

and in need of help. On the contrary, it is very likely that they would resist any attempt by the enemy to rescue them considering their

closeness to the beachhead and their comrades. Under the law of war, therefore, these soldiers do not represent shipwrecked personnel.

REFERENCES:

DA Pam 27-1, pp 12, 48-49, 52 (HR art 23(c), GWS SEA arts 3, 12).

FM 27-10, paras 29, 31.

GREENSPAN, pp 72n. 24, 73.

8

STATUS AND TREATMENT OF OCCUPANTS OF DISABLED COMBAT VEHICLES

PROBLEM:

Sergeant K disabled an enemy tank. The tank crew climbed out and began running toward their own lines, taking with them a wounded soldier. Sergeant K fired on the fleeing enemy and inflicted casualties. As Sergeant K advanced on the enemy, the survivors raised their hands. Only then did Sergeant K cease firing.



Has Sergeant K acted in violation of the law of war? Why, or why not?

DISCUSSION:

Sergeant K has not violated the law of war. It is not apparent that Sergeant K directed his fire at the wounded soldier. The presence of the wounded soldier does not prevent one from firing on the unwounded enemy soldiers. A wounded soldier in a combat area continues to be exposed to the risks and effects of the fire directed at other enemy.

Unwounded soldiers are not protected from further attack merely because their vehicle became disabled. It is true that the enemy who becomes shipwrecked by the sinking of his

vessel during combat or one who parachutes from a disabled aircraft in an emergency may not be fired upon. However, until the contrary is indicated, a soldier may assume that the crew of a combat vehicle will continue to fight when outside their vehicle. The disabling of a military vehicle does not generally indicate that the crew is defenseless. Only the enemy who clearly indicates his desire to surrender is protected from further attack. In the present case, the tank crew continued to resist capture by trying to flee to their own lines. Therefore, they could be fired on until they raised their hands to surrender.

REFERENCES:

DA Pam 27-1, p 12 (HR art 23(c)).

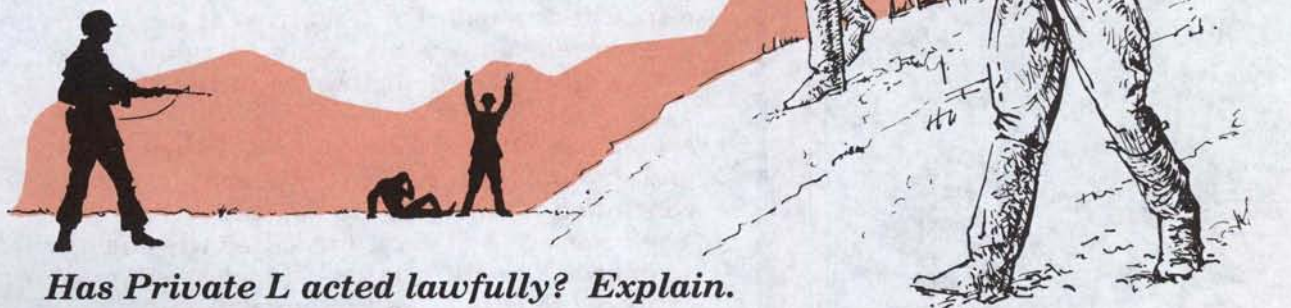
FM 27-10, para 225b.

GREENSPAN, pp 72-73.

9 SURRENDER OF ENEMY PERSONNEL: PRE-CAUTIONARY MEASURES IN THE SURRENDER OF APPROACHING ARMED ENEMY PERSONNEL

PROBLEM:

While on guard duty, Private L is approached by two armed enemy soldiers who wave pieces of white cloth and signal not to fire. He commands the enemy soldiers to throw away their weapons and raise their hands. They do not obey the command, although they evidently understand it. Private L then fires a warning shot and again gives the command. When the enemy soldiers do not obey but continue to advance, he fires and wounds one of the soldiers. Then the other obeys his command.



Has Private L acted lawfully? Explain.

DISCUSSION:

Private L has acted lawfully under the circumstances. The killing or wounding of an enemy who is trying to surrender is a serious violation of the law of war. Normally, the enemy may be fired on without warning. However, once a soldier has stopped fighting because of wounds, illness, or shipwreck, or has surrendered, he is protected. The soldier becomes a prisoner of war as soon as he surrenders or otherwise comes under the control of the enemy. As such, he acquires a special status which must be respected in all circumstances.

Surrender is not required to take any specific form. Usually, a surrendering soldier will discard his weapon and raise his hands.

Showing a white flag in conjunction with other acts (e.g., *throwing down weapons*) also indicates surrender.

In the present case, despite the display of a white flag, the intentions of the approaching enemy soldiers were not clear, as they did not discard their weapons. Private L acted correctly in commanding them to throw down their weapons and raise their hands. Since the enemy soldiers continued to advance with weapons in hand and then disregarded a warning shot and a second command, it may be reasonably assumed that they did not wish to surrender. Private L could, and did, use that amount of force necessary to stop their advance.

REFERENCES:

DA Pam 27-1, p 12 (HR art 23 (c, f)).

FM 27-10, paras 50, 52-53, 84, 467, 478.

10 KILLING OR WOUNDING OF SURRENDERING ENEMY PERSONNEL; THE DEFENSE OF SELF-DEFENSE: PUNISHMENT OF PRISONERS OF WAR FOR PRIOR CRIMINAL ACTS



PROBLEM:

A prisoner is accused by the detaining power of violating the law of war. An investigation revealed the following: The prisoner, a seaman, was stationed aboard a torpedo boat which had engaged an enemy minesweeper and disabled it. The captain of the minesweeper ordered his men to surrender and raised a white flag as a sign of the surrender. The enemy vessel was boarded by a party from the torpedo boat. The accused seaman, who was a member of the boarding party, was ordered to check the captured vessel's engine room. He discovered an enemy seaman who was attempting to scuttle the captured vessel. The accused twice ordered the enemy seaman to stop and surrender. Although he understood the orders, the enemy seaman continued his attempt to scuttle the vessel. The accused then shot and killed the enemy seaman. A month later the accused was captured during a landing operation.



Can the detaining power lawfully try the prisoner for a killing committed prior to his capture? If so, does the accused lose his prisoner of war status? Has the prisoner violated the law of war? Explain.

DISCUSSION:

If there is sufficient evidence, a prisoner can be tried by the detaining power for a criminal act committed before his capture. However, the prisoner does not lose his protected status. He must be treated as a prisoner of war, even if found guilty of a crime and punished.

In the present case the accused seaman has not violated the law of war. From the moment the captain of the minesweeper ordered

surrender and displayed the white flag, his crew was no longer authorized to engage in combat activities. The torpedo boat was under a corresponding obligation to cease combat activities against the enemy minesweeper. Nevertheless, the crew of the torpedo boat might defend against further combat activities carried out by the members of the crew of the minesweeper in spite of the surrender. The

enemy seaman's attempt to scuttle the minesweeper was such an activity. The attempt, whether authorized or not, may be suppressed by all lawful means, including the use of deadly

force, if necessary. Thus, the accused could fire on the enemy seaman, especially since the latter continued despite being twice warned to cease.

REFERENCES:

DA Pam 27-1, pp 12, 98 (HR art 23(f), GPW art 85).

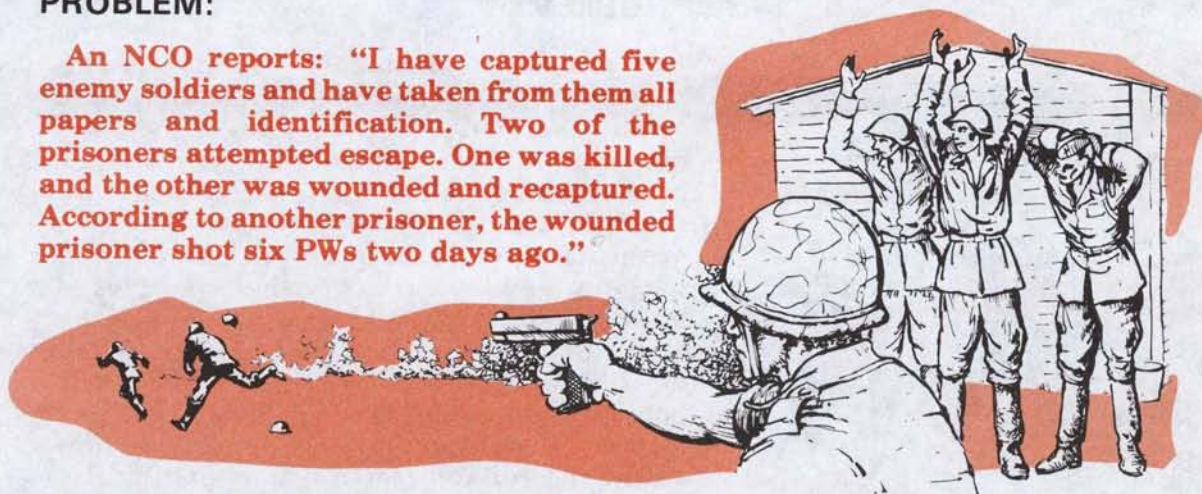
FM 27-10, para 50, 161c.

GREENSPAN, pp 320-321.

11 STATUS AND TREATMENT OF PRISONERS OF WAR: CONFISCATION OF PAPERS, PERSONAL EFFECTS, AND IDENTIFICATION, KILLING OR WOUNDING PRISONERS OF WAR, PREVENTING ATTEMPTED ESCAPES

PROBLEM:

An NCO reports: "I have captured five enemy soldiers and have taken from them all papers and identification. Two of the prisoners attempted escape. One was killed, and the other was wounded and recaptured. According to another prisoner, the wounded prisoner shot six PWs two days ago."



What measures should the commander take? Explain.

DISCUSSION:

The commander should have the prisoners' identification and personal papers returned to them after inspection. Purely personal effects may not be confiscated from prisoners of war. However, the seizure of documents and other papers having an intelligence value is permissible. In order to separate such material from purely personal effects, all items may be seized temporarily for inspection. A prisoner's identification may not be confiscated. Normally, he need only show it and should be in possession of it at all times. However, if an identity document is not simply an ID and contains additional information of an

intelligence value, it may be seized. In such a case, a replacement identity document must be prepared and issued to the prisoner as soon as possible.

The commander should also initiate an investigation into the attempted escape. Such an investigation must be conducted whenever a prisoner of war is killed or seriously wounded. The killing or wounding of prisoners of war, normally a serious violation of the laws of war, is justified when absolutely necessary to prevent escape, provided the force used is not excessive given the circumstances.

The commander should investigate the alleged killing of PWs by the recaptured wounded prisoner. Although this prisoner must be treated as a prisoner of war, he may be tried

by a court-martial for a war crime committed before his capture. A report of this investigation should then be forwarded through channels for action.

REFERENCES:

DA Pam 27-1, pp 9, 73-75, 98, 100, 110-111 (HR art 8, GPW arts 17-18, 85, 92-93, 120-121).

FM 27-10, paras 85, 94.

GREENSPAN, pp 105-106, 131-142.

12 TREATMENT OF PRISONERS OF WAR: CONFISCATION OF SUPPLIES AND EQUIPMENT FOR MILITARY PURPOSES, INTERROGATION BY THREAT, FORCED LABOR, EVACUATION OF PRISONERS

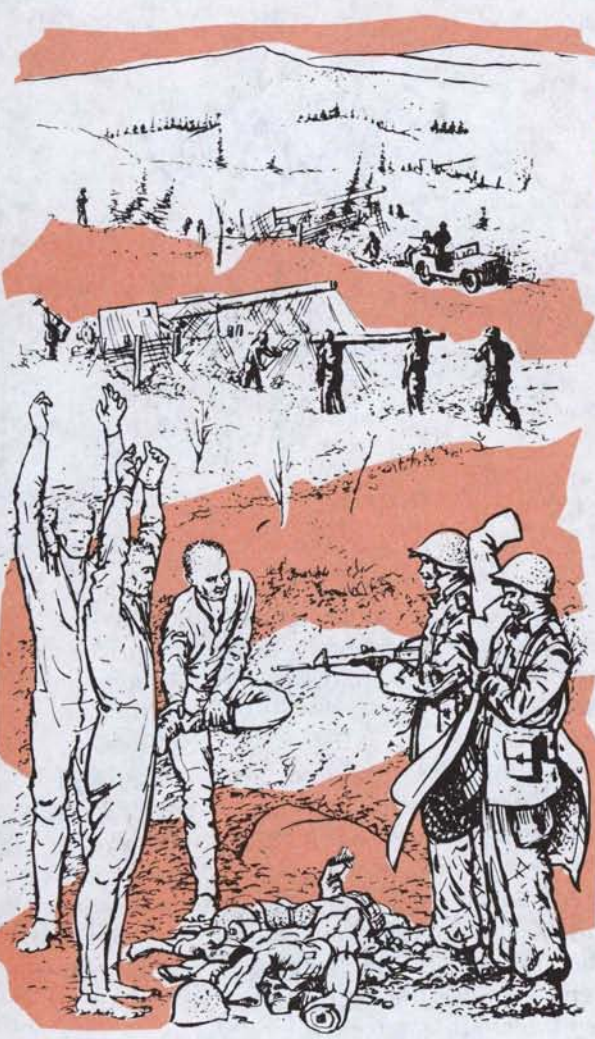
PROBLEM:

A company commander reports to battalion: "My company has captured 78 enemy soldiers. I intend to confiscate personal field rations, winter coats, shelter halves, and first-aid kits. These items are urgently needed by my troops. Our own medical and food supplies are exhausted, and we have no winter coats or shelter halves to protect us from the cold. The prisoners have ample food supplies and will soon be moved to the rear where they will have their housing and other needs provided by our forces. It seems that my company's situation could be eased without making the prisoners' condition appreciably more difficult.

"I also need information regarding troop strength in my sector. The prisoners are not willing to give any information beyond their name, rank, date of birth, and service number. The desired information might be obtained by threatening to send the prisoners back to their own forces, since the enemy threatens capital punishment for soldiers who allow themselves to be captured.

"I intend to use prisoners in constructing reserve fortifications in the rear of my defensive position.

"Request instructions on how to proceed in the above-mentioned matters."



How should the battalion commander respond?

DISCUSSION:

The battalion commander should prohibit the confiscation of winter coats from the prisoners at this time. He should prohibit the taking of shelter halves until the prisoners are actually moved to the rear and placed in housing. As a rule, prisoners of war must remain in possession of all effects and articles of personal use (e.g., *clothing, food, and personal protection*). This is true even though such articles are regularly issued military equipment. Although the captor may have a need for such items, confiscation is prohibited unless the prisoners have no need for the articles or satisfactory substitutes are provided.

The battalion commander may permit the taking of some of the first-aid kits. Normally, items of this nature cannot be confiscated because they are considered to be articles used for the personal protection of prisoners of war. However, if medical aid can be provided by other means, or if some lesser quantity of the first-aid kits would provide adequate protection under the circumstances, then it is permissible to use a number of the kits to attend to friendly wounded. In the present case, once evacuation of the prisoners to a camp outside the combat zone begins, only a supply of the kits which would be adequate to cover emergencies during the evacuation need be left with the prisoners. The excess may be used in the treatment of the captor's wounded.

The battalion commander should also only permit the confiscation of excess food supplies. An adequate supply of field rations must be left

with the prisoners until such time as these provisions are supplied from other sources.

The battalion commander should not allow any threats to be made against the prisoners to determine the size of the enemy force in the company's sector. Prisoners of war may not be forced by any means to give information to the enemy. They are required to give only their name, rank, service number, and date of birth. In the case above, a threat to send them back to their own forces if the desired information is not given would represent interrogation by Threat, which is unlawful.

Finally, the battalion commander should prohibit the use of a prisoner of war work force to construct the company's reserve fortification. Such employment would violate the law of war as prisoners of war must not be needlessly exposed to danger while awaiting evacuation from a fighting zone. They must be evacuated as soon as possible to camps situated in an area far enough from a combat zone for them to be out of danger. Moreover, digging fortifications (except shelters for their own protection) is not one of the classes of work which, under the provisions of GPW Article 50, prisoners of war may be compelled to perform. In no event may they be compelled to perform work of a military character or purpose against their own armed forces. Finally, a prisoner of war may not be employed in unhealthy or dangerous labor unless he volunteers for such work. In the present case, the construction of field fortifications in a combat zone would constitute dangerous work.

REFERENCES:

DA Pam 27-1, pp 72-76 (GPW arts 13, 15, 17-20, 23, 49, 50, and 53).

FM 27-10, paras 93-96, 125-138.

GREENSPAN, pp 102-107, 111-113.

13

TREATMENT OF PRISONERS OF WAR: QUARTERS, SEGREGATION, EVACUATION, INTERROGATION, BONDAGE

PROBLEM:

A platoon leader reports the following to his company commander: "My platoon captured four enemy soldiers. I had them placed in a basement under guard. A fight erupted among the prisoners, and I had to order the guards to break it up. One prisoner had accused another of being a 'major on a special mission' and insisted that the individual had recently been a prisoner of war. The accused prisoner carried no insignia of rank and refused to state his rank. In an attempt to get him to talk, I ordered that he be separated from the other prisoners, bound, and isolated in another part of the basement. I will shortly begin my interrogation of him. I also intend to evacuate the prisoners to the rear after dark. The route is under enemy observation by day, and any movement comes under immediate enemy fire."



Is the platoon leader's conduct proper according to the law of war?

DISCUSSION:

The temporary confinement of the prisoners is permissible. The laws of warfare concerning the housing of prisoners of war only apply to quartering in a prisoner of war camp. In the combat zone, immediately after capture, the primary consideration is to house the prisoners so they are protected from the effects of combat operations and cannot escape. As long as the type of temporary quarters does not endanger either the lives or the health of the prisoners, or represent a form of punishment, it is not objectionable under the law of war. In the above case, the quartering in a basement was both practical and lawful.

It was also permissible to detain the prisoners until dark, since moving them to the rear by day would expose them to great danger.

Fights among prisoners of war are to be prevented in order to maintain discipline and to preserve their health and safety. Prisoners of war can be isolated to prevent fights. In the present case, it is likely that such fights would occur.

No threat or force of any kind can be applied to prisoners to obtain information from them. This includes information which a prisoner is required to give under the law of war (*i.e.*, name, rank, service number, and date of birth). In the case above, the prisoner who refused to give his rank is only subject to the loss of advantages to which he would otherwise be entitled because of rank and position. Binding and interrogating him in order to obtain his rank

is an impermissible act of force. Since he had been identified as being a prior escapee, binding him temporarily would have been permissible if

it was necessary to prevent another escape. However, this was not the reason given for the restraint.

REFERENCES:

DA Pam 27-1, pp 72-75 (GPW arts 13, 17, 19, 20).

FM 27-10, paras 89, 93.

14 MISTREATMENT OF PRISONERS OF WAR: CONFISCATION OF PERSONAL ARTICLES AND EQUIPMENT, INTERROGATION BY FORCE, REPRISALS, SUMMARY PUNISHMENT

PROBLEM:

Soldier Jones was captured by the enemy. However, before being transported to a prisoner of war collecting point, he escaped and made his way back to his unit. He reported that he was mistreated by the enemy. In particular, all his personal possessions were confiscated, and he was beaten in an attempt to force him to yield information on troop strength and equipment. Later, when enemy soldiers are taken prisoner, members of Jones' unit take the following actions:

- Treat the prisoners with equal harshness,
- Confiscate the prisoners' personal possessions, food, and luxury items,
- Force the prisoners to yield information on enemy troop strength and equipment, using physical mistreatment when necessary.



What measures should the commander of Jones' unit take? Why? What further action, if any, should he take if the prisoners include those who had mistreated Jones?

DISCUSSION:

The commander should prohibit the members of his unit from carrying out the acts listed above against the prisoners and order the immediate evacuation of the prisoners to a collecting point in the rear. He should also initiate appropriate disciplinary action and report the incident to

higher headquarters. It is apparent that the enemy treated Jones in violation of the law of war. As a prisoner of war, Jones should have been allowed to retain those personal articles and effects which served to clothe, feed, and protect him. Moreover, no forcible measures

should have been taken against Jones to obtain information from him. Nevertheless, this conduct in violation of the law of war may not be retaliated against with one's own unlawful treatment of prisoners of war. Reprisals against prisoners of war are specifically prohibited.

If the prisoners include those who have mistreated Jones, then the commander should also prepare and forward through military

channels a detailed report of the violations. Prisoners who violate the law of war before capture may be tried for such violations by the detaining power before a court-martial. However, these prisoners continue to retain their protected status as prisoners of war, even if convicted and sentenced. Independent or summary actions directed against them by the captors are expressly prohibited by the law of war.

REFERENCES:

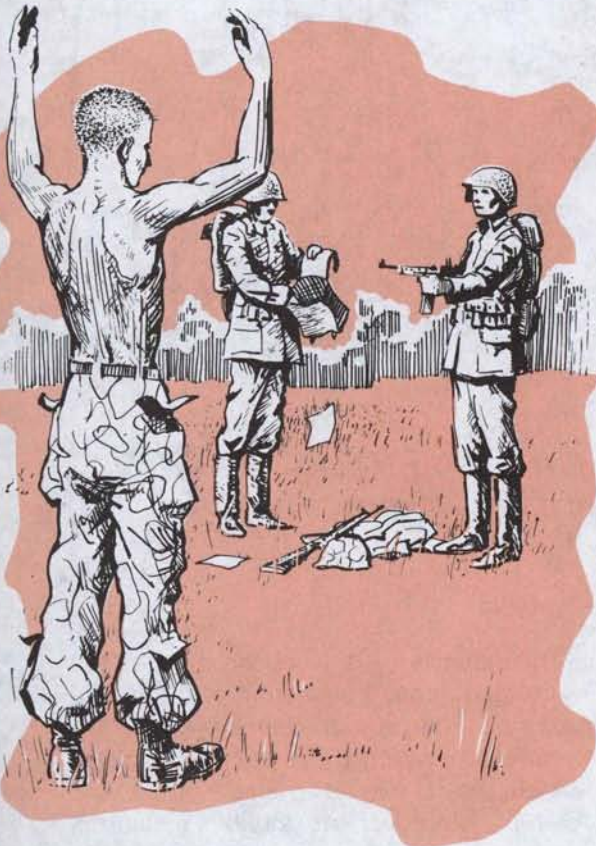
DA Pam 27-1, pp 72-75, 98 (GPW arts 13, 17-18, 85).

DA Pam 27-161-2, pp 85-90.

FM 27-10, paras 93, 161, 497c.

15

CONDUCT IN CAPTIVITY: DISPOSAL OF ITEMS POTENTIALLY USEFUL TO THE ENEMY WAR EFFORT, CONFISCATION OF EQUIPMENT, PAPERS, AND PERSONAL EFFECTS, INTERROGATION BY FORCE, PROTESTING MISTREATMENT



PROBLEM:

Lieutenant X is captured by the enemy. The following items are taken from him: weapons; binoculars; a message-form pouch containing mission orders, a number of messages and situation diagrams; personal correspondence; family photos, a private war diary; wristwatch; engagement ring; identification tags; and money. The prisoner is questioned about the designation, breakdown, strength, armament, and position of his unit. He is ordered to give information concerning his own mission and to state the names of his brigade and division commanders. The prisoner states that he is a member of the 24th Infantry Battalion and gives information on the breakdown and strength of his platoon. A threat is then made to chop off his fingers if he does not give the names of his brigade and division commanders. The threat is followed by several knife pricks to one of his arms, causing it to bleed. Lieutenant X then gives two wrong names and complains of his mistreatment.

Has Lieutenant X conducted himself properly under the circumstances? Explain. What protests, if any, should be made concerning the treatment he has received?

DISCUSSION:

Before being captured, Lieutenant X should have tried to destroy, or otherwise dispose of, his weapons and any equipment, documents, and papers (e.g., his mission orders, messages, situation diagrams, private war diary), or other items which would be useful to the enemy's war effort. When interrogated, he should have given only his name, rank, service number, and date of birth. Though the enemy acted unlawfully in forcing him to give additional information, Lieutenant X may have, by giving some of the additional information, violated the criminal laws of his own country. As such, he may be subject to punishment upon repatriation.

Lieutenant X should protest. As a prisoner of war, he may not be physically mistreated or forced in any way to yield any information,

including that which he is required to give under the laws of war (i.e., name, rank, service number, and date of birth). He should further protest that personal items and effects, such as his wristwatch, family photos, personal correspondence, and engagement ring, as well as his identification tags, may not be confiscated. Such items should have been returned to him after being inspected for any military intelligence which they might have contained.

On the other hand, to confiscate his weapons, binoculars, message-form pouch and its contents, the war diary, and his money was permissible. The money, however, should have been taken only when ordered by an officer and after receipt had been given for it.

REFERENCES:

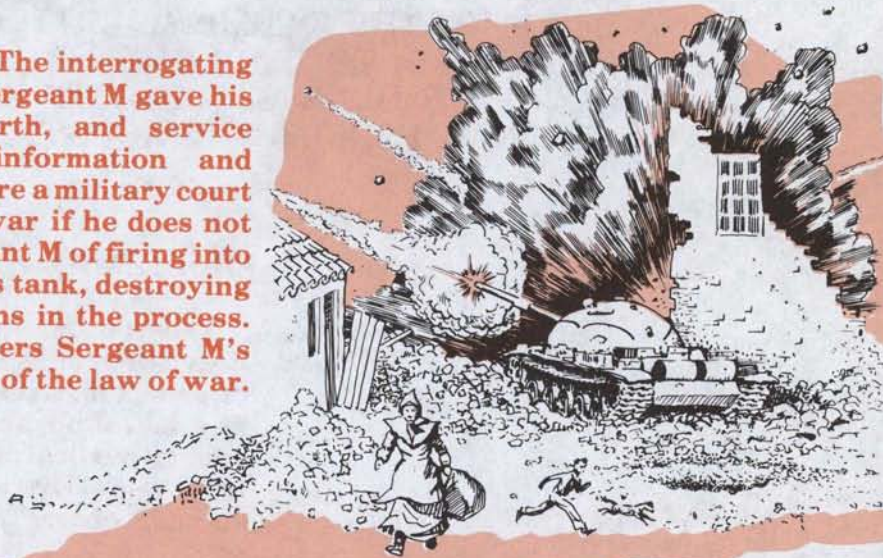
DA Pam 27-1, pp 72-75 (GPW arts 13, 17-18).

FM 27-10, paras 93-94a.

16 CONDUCT IN CAPTIVITY: RESISTING ENEMY INTERROGATION ATTEMPTS, PROVIDING INFORMATION TO THE ENEMY, BOMBARDMENT OF VILLAGES

PROBLEM:

Sergeant M is captured. The interrogating enemy officer, to whom Sergeant M gave his name, rank, date of birth, and service number, wants more information and threatens to send him before a military court for violating the law of war if he does not comply. He accuses Sergeant M of firing into a defended village with his tank, destroying houses and killing civilians in the process. The enemy officer considers Sergeant M's behavior to be in violation of the law of war.



Has the interrogating officer acted in accordance with the law of war? Has Sergeant M violated the law of war? How should Sergeant M conduct himself under the circumstances? Explain all answers.

DISCUSSION:

The interrogating officer has not acted in accordance with the laws of war. A prisoner of war only must give his name, rank, service number, and date of birth. Neither physical nor mental coercion may be used against him to obtain any information. In the present case, the threat of a criminal trial represents an attempt to force information and is prohibited. This is so even assuming the accused actually committed an act in violation of the law of war.

It does not appear that Sergeant M has acted in violation of the law of war. The village was defended and could therefore be fired upon. The killing of civilians and the destruction of their homes are generally unavoidable when military targets in towns are fired upon. Such killing or

destruction does not make the bombardment unlawful, provided the fire is directed at, and is intended for, military targets.

Sergeant M should not give any additional information to the enemy, regardless of the threats made against him. This obligation is not affected by any question concerning the lawfulness of the Sergeant's action against the village. For a US serviceman, any statements which provide the enemy with military information, or otherwise aid in their war effort, are offenses punishable under the Uniform Code of Military Justice. Sergeant M should only point out that he has acted in compliance with the law of war and is therefore not subject to prosecution.

REFERENCES:

DA Pam 27-1, pp 73-74, 153 (GPW art 17, GC art 53).

FM 27-10, paras 42, 93.

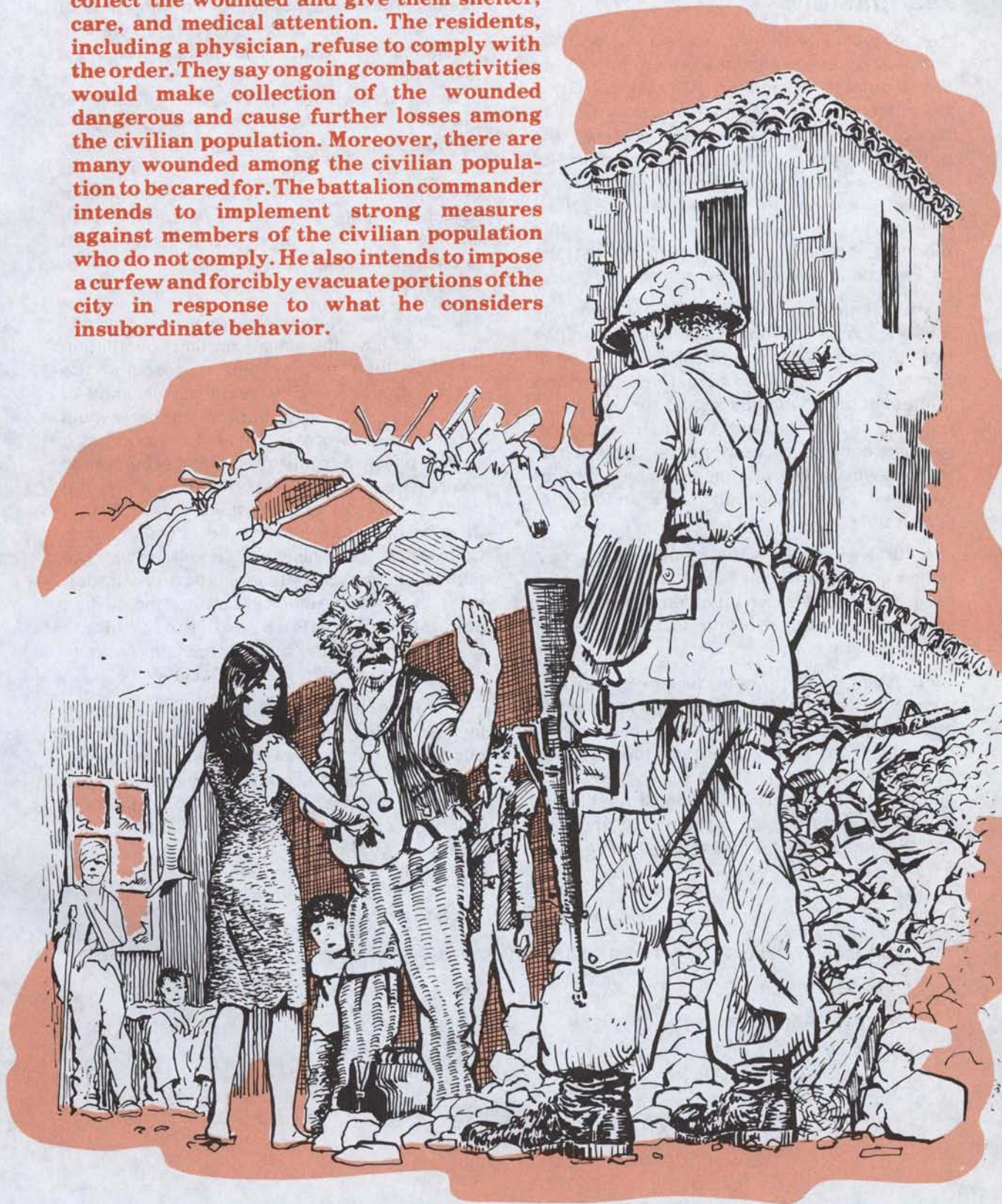
UCMJ art 104(2).

17 PROTECTED STATUS OF CIVILIANS: CIVILIAN PARTICIPATION IN RELIEF AND RESCUE EFFORTS, THE PERMISSIBILITY OF FORCEFUL MEASURES TO IMPLEMENT AND ENFORCE OCCUPANT ORDERS, COLLECTIVE PUNISHMENT, CURFEWS, FORCEFUL EVACUATION

PROBLEM:

A battalion penetrates a city during a heavy engagement. The enemy is still offering tough resistance in isolated pockets. The battalion has many wounded and not enough medical personnel or material to care for them. Therefore, the battalion commander orders the civilian population to

collect the wounded and give them shelter, care, and medical attention. The residents, including a physician, refuse to comply with the order. They say ongoing combat activities would make collection of the wounded dangerous and cause further losses among the civilian population. Moreover, there are many wounded among the civilian population to be cared for. The battalion commander intends to implement strong measures against members of the civilian population who do not comply. He also intends to impose a curfew and forcibly evacuate portions of the city in response to what he considers insubordinate behavior.



Are the battalion commander's actions legal under the law of war?

DISCUSSION:

In occupied territories, force may be used against civilian populations only to implement lawful orders of the military. Although the city in the present case is still contested and may not be considered an occupied territory, the principle applies to combat areas. Forceful measures that may be taken against insubordinate inhabitants include their internment or detention. However, like reprisals, collective punishment against the civilian population is not permitted.

The forceful evacuation of sections of the city must be excluded from the planned measures from the outset. Though forceful evacuation of portions of a city would be permissible in the interest of the population's safety or because of pressing military needs, neither of these reasons appears to exist in the case above. Instead, the measure is meant to be a form of collective punishment and is therefore not permissible.

A curfew likewise would be permissible as a temporary security measure. In the present case, however, it is also intended to be a form of collective punishment and is therefore not permissible.

Punishing insubordinate civilians or applying some other form of force presupposes that the order of the battalion commander was lawful. According to Article 18 of the Geneva Convention on Wounded and Sick in the Field, a military authority can call upon local inhabitants to voluntarily participate in the rescue and care of the wounded. Local inhabitants can be used

against their will, though, for certain types of work covered by provisions of the Geneva Civilians Convention. Under these provisions, it is permissible to employ civilians over 18 years of age in work which fulfills the medical needs of the military, provided it is not potentially dangerous to their health or safety. For example, the military can require civilians to serve in military hospitals and to participate in the rescue and care of wounded personnel. Such employment does not violate the rule which forbids civilians to take part in all combat or combat-related activities.

In the present case, however, the reasons presented by the local civilian population preclude their employment in rescuing the wounded soldiers. Employing the civilians to rescue the wounded during combat would expose them to great danger. Furthermore, if civilian physicians and other medical personnel are needed to care for the civilian wounded, the military may not prevent them from fulfilling their normal duties. Article 56 of the Civilians Convention specifically requires the military to allow such medical personnel to carry out their tasks in providing medical care for the civilian population. Article 57 of the Civilians Convention gives the civilian population priority in the use of civilian medical facilities.

Therefore, the forcible measures threatened by the battalion commander may not be carried out against members of the civilian population. His acts are not in accordance with the law of war, and he may only call upon the local inhabitants to voluntarily collect, shelter, and care for his wounded.

REFERENCES:

DA Pam 27-1, pp 31, 144-146, 150-153 (GWS art 18, GC arts 27, 31, 33, 49, 51, 55-57).

FM 27-10, paras 266, 270, 272.

GREENSPAN, pp 170-171, 267-268.

CIVILIAN EVACUATION FROM COMBAT AREAS: IMPLEMENTING ORDERS AND PROCEDURES, PUNISHMENT FOR NON-COMPLIANCE

PROBLEM:

In preparing to defend a heavily populated village, a brigade commander desires to clear the battle area of remaining civilians. The evacuation is necessary for urgent military reasons and for the safety of the local populace. The commander directs his S1 to draft a suitable order. The latter submits the following draft:

“A Company, 1st Bn, shall immediately dispatch five 2-man teams to announce the evacuation by means of posters. The A Company CO shall personally notify the mayor. Notification of the mayor and display of the announcement shall be completed by 2400 hours today. Evacuation shall begin at 0600 and be completed by 1800 hours tomorrow. The road to city D shall be kept clear for this purpose. Forcible transport shall be implemented if the civilian population refuses to be evacuated. In addition, the houses of individuals who refuse to be evacuated shall be destroyed. Special orders shall be issued at the proper time. Special detachments will be available after 0600 hours tomorrow to carry out punitive measures if necessary.”



What reservations should the company commander have concerning the order as drafted? How should the order be modified?

DISCUSSION:

Generally, all individual or mass evacuations of civilians by force and the displacement of protected individuals in a combat area are prohibited. However, the military can implement complete or partial evacuation of a specific region for urgent military reasons or for the safety of local inhabitants. The evacuation must be coordinated by major command authorities. In the case above, evacuation is necessary both for urgent military reasons (*i.e., combat preparations, maintenance of secrecy*), and for the safety of the local populace (*i.e., protection from anticipated combat operations*). Civilians and other protected persons may not be detained in an area which is particularly exposed to the dangers of war. In carrying out the evacuation, the military must also see that the needs of the evacuated are supplied and that they have suitable shelter.

A lawful evacuation can be implemented by force if the civilian populace does not obey implementing orders. Noncomplying inhabitants may also be punished for refusing to

abide by these orders. However, any punishment must be left to the judgment of a military court of the occupying forces.

Punishment for not obeying lawful implementing orders cannot be imposed summarily. Measures designed to intimidate or terrorize the civilian populace are prohibited. In the case above, it is therefore unlawful to threaten the destruction of houses for noncompliance. Moreover, the deliberate destruction of civilian homes itself is a violation of the law of war in the absence of a clear showing of a legitimate military necessity.

The draft order should be modified to eliminate all references to the threatened destruction of civilian homes. However, the local inhabitants should still be warned that individuals refusing to obey the evacuation order will be subject to judicial punishment. The question of evacuation should be coordinated with higher military authorities, and arrangements should be made for the care and relocation of all displaced persons.

REFERENCES:

DA Pam 27-1, pp 150-151 (GC arts 49, 53).

DA Pam 27-161-2, p 168.

FM 27-10, paras 382, 393.

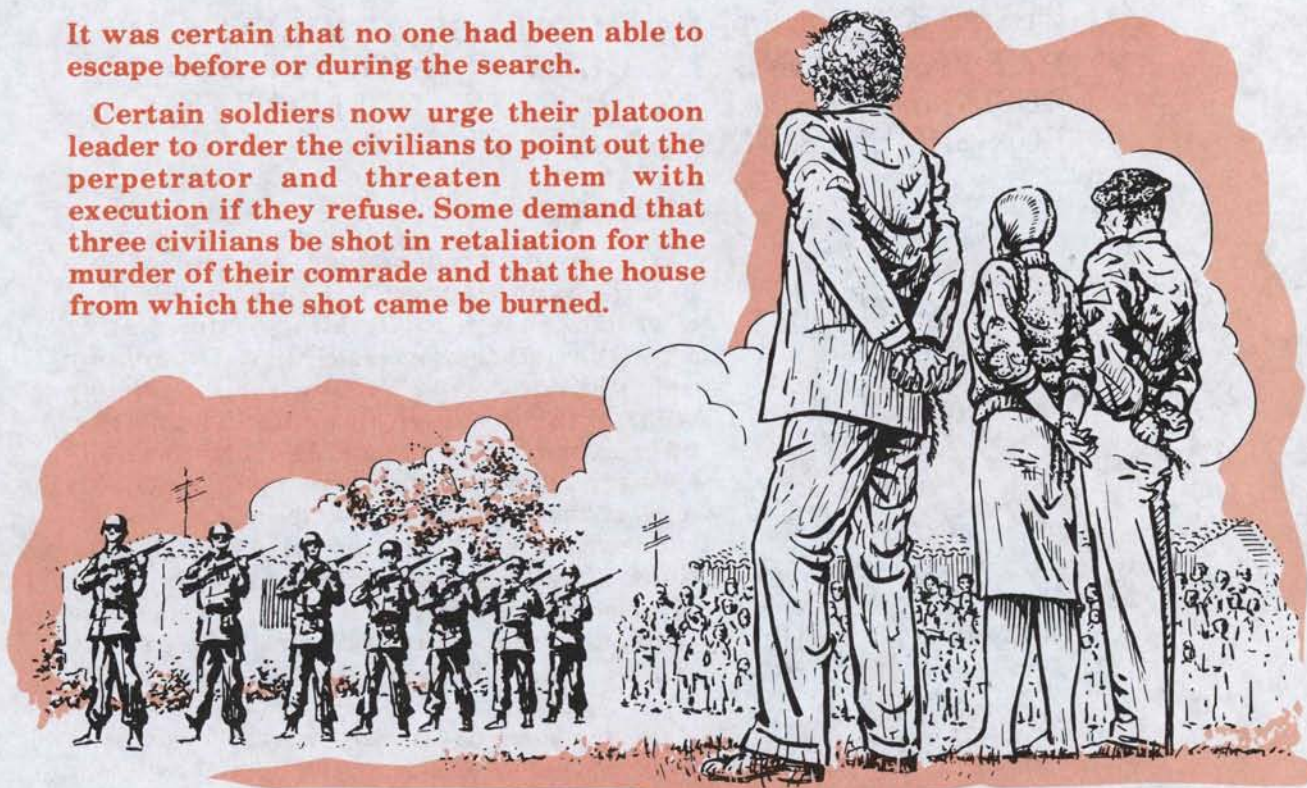
19 TREATMENT OF CIVILIAN POPULATION IN OCCUPIED AREAS: CIVILIAN RESPONSIBILITY FOR ACTS OF RESISTANCE FIGHTERS, COLLECTIVE PUNISHMENT, REPRISALS

PROBLEM:

A platoon occupied an enemy village. It found that the village contained no enemy soldiers. The populace was ordered to turn over all weapons. No weapons were turned over and none were found. Later, a squad leader was shot in the back, presumably by a resident of the village. Members of the platoon immediately conducted a house search and rounded up a number of civilians.

It was certain that no one had been able to escape before or during the search.

Certain soldiers now urge their platoon leader to order the civilians to point out the perpetrator and threaten them with execution if they refuse. Some demand that three civilians be shot in retaliation for the murder of their comrade and that the house from which the shot came be burned.



Are the demands of the soldiers lawful? What action should the platoon leader take?

DISCUSSION:

Even assuming the individual who killed the squad leader is among the civilians collected, punishing all for the act of the one is prohibited. Collective punishment violates the law of war. No one may be punished for an act for which he is not personally responsible. Only if it can be determined that all of the collected civilians were not only concealing the perpetrator but also involved in the killing could they all be held accountable. In any case, determining the guilty party and his punishment is the responsibility of a properly constituted military court. Executions without trial by a regularly constituted court are in violation of the law of war.

It is unlawful to apply physical or mental coercion to protected civilians to obtain

information from them. Just the threat of shooting the civilians who do not comply would be in violation of the law of war.

The execution of the three civilians in retaliation for the shooting of the soldier and the burning of the house from which the shot came would also be unlawful. Reprisals in occupied territory against civilians and their property are forbidden under the law of war.

The platoon leader should prohibit all demands and should deliver any persons suspected of committing or participating in the killing to a collecting point, along with a detailed report of the incident.

REFERENCES:

DA Pam 27-1, pp 137, 145-146 (GC arts 5, 31-33)

DA Pam 27-161-2, p 166.

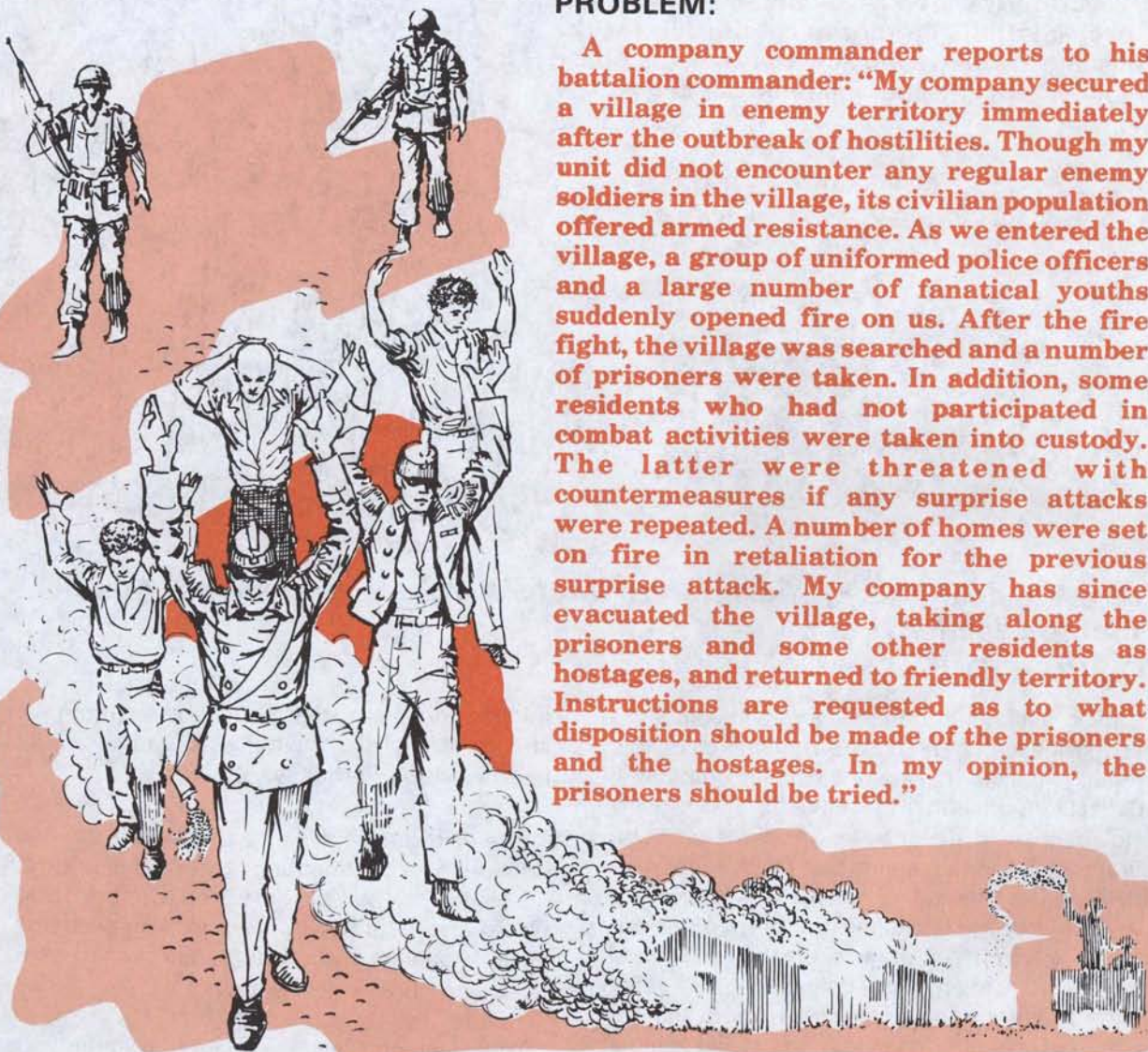
FM 27-10, para 248.

GREENSPAN, pp 168-171.

STATUS AND TREATMENT OF CIVILIANS PARTICIPATING IN COMBAT ACTIVITIES: RESISTING INVADING FORCES, COLLECTIVE PUNISHMENTS, REPRISALS, HOSTAGES

PROBLEM:

A company commander reports to his battalion commander: "My company secured a village in enemy territory immediately after the outbreak of hostilities. Though my unit did not encounter any regular enemy soldiers in the village, its civilian population offered armed resistance. As we entered the village, a group of uniformed police officers and a large number of fanatical youths suddenly opened fire on us. After the fire fight, the village was searched and a number of prisoners were taken. In addition, some residents who had not participated in combat activities were taken into custody. The latter were threatened with countermeasures if any surprise attacks were repeated. A number of homes were set on fire in retaliation for the previous surprise attack. My company has since evacuated the village, taking along the prisoners and some other residents as hostages, and returned to friendly territory. Instructions are requested as to what disposition should be made of the prisoners and the hostages. In my opinion, the prisoners should be tried."



Have the company commander and his men acted lawfully under circumstances? Explain. What action should the battalion commander take?

DISCUSSION:

The civilian populace of a nonoccupied territory may take up arms against an invading enemy if they have not had time to form regular armed forces, and if they carry their weapons openly and observe the laws and customs of

war. Members of a civilian police force can participate in combat activities, as lawful combatants under the conditions described above. Since these conditions were satisfied both for the police officers and for the youths,

their participation in combat activities was justified. They are not to be treated as partisans, who are underprivileged belligerents, but rather as prisoners of war.

Countermeasures, reprisals, collective punishment against civilians and their property, and the taking of hostages are prohibited. In the present case, the company has violated the law of war by burning down homes, taking hostages, and threatening civilians with reprisals.

The battalion commander should order the hostages returned to their village and the police and the youths who participated in combat activities delivered to a prisoner of war collecting point. He should report the actions of the company commander and other members of the company who were responsible for taking hostages, burning homes, and threatening reprisals to the proper military authorities for appropriate disciplinary action.

REFERENCES:

DA Pam 27-1, pp 68-70, 146 (GPW art 4, GC arts 33-34).

DA Pam 27-161-2, pp 166-167.

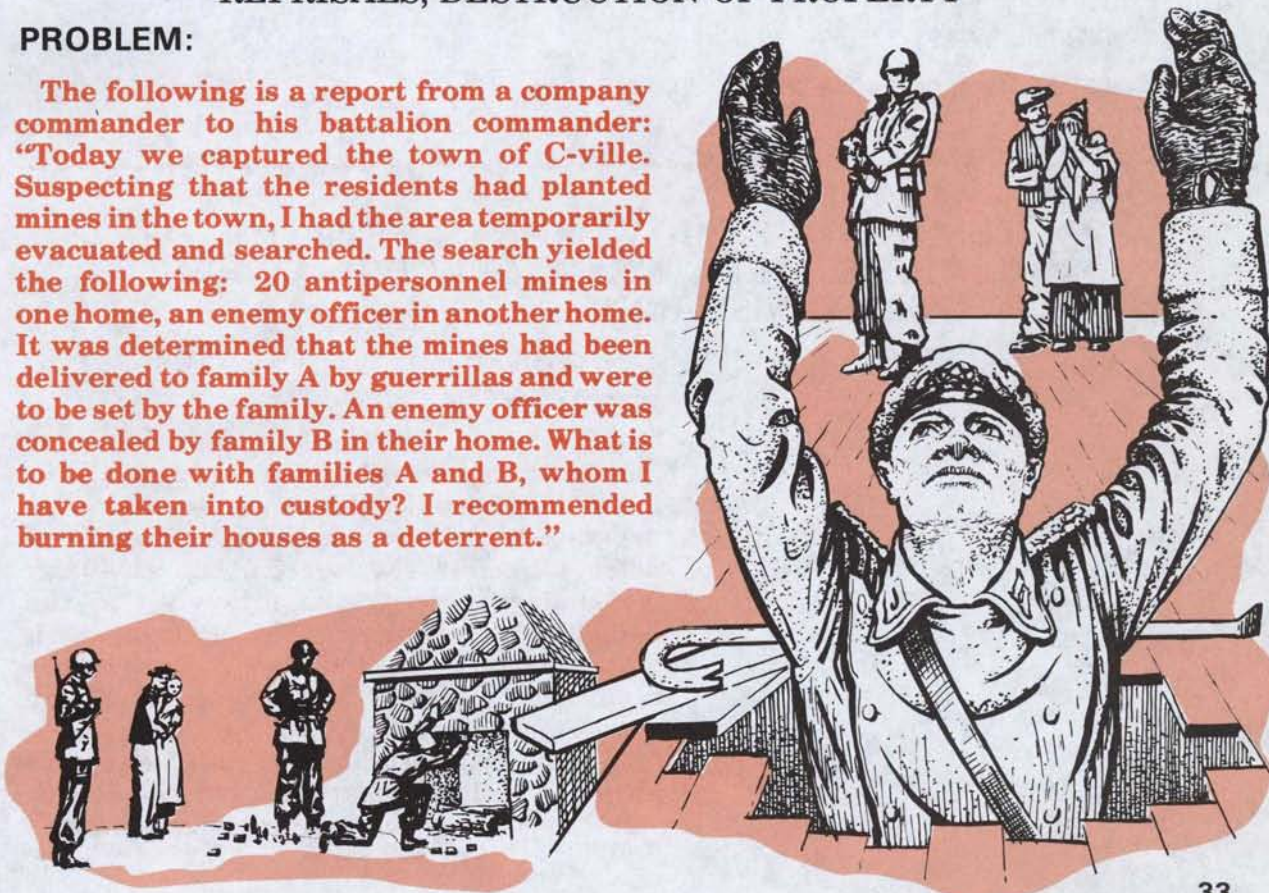
FM 27-10, paras 64-65, 272-273.

GREENSPAN, pp 407-417.

21 TREATMENT OF CIVILIANS IN OCCUPIED AREAS: CIVILIAN PARTICIPATION IN COMBAT ACTIVITIES, TEMPORARY FORCEFUL EVACUATION FOR SEARCH PURPOSES, HIDING ENEMY WEAPONS AND PERSONNEL, PUNISHMENT, REPRISALS, DESTRUCTION OF PROPERTY

PROBLEM:

The following is a report from a company commander to his battalion commander: "Today we captured the town of C-ville. Suspecting that the residents had planted mines in the town, I had the area temporarily evacuated and searched. The search yielded the following: 20 antipersonnel mines in one home, an enemy officer in another home. It was determined that the mines had been delivered to family A by guerrillas and were to be set by the family. An enemy officer was concealed by family B in their home. What is to be done with families A and B, whom I have taken into custody? I recommended burning their houses as a deterrent."



Did the company commander exercise proper conduct according to the law of war?

DISCUSSION:

Generally, any displacement of civilians is prohibited. However, the evacuation of a town for pressing military reasons is permissible. In the present case, the evacuation of C-ville was necessary in order to locate mines which may have been planted and to prevent similar acts from occurring in the future. Therefore, the temporary evacuation of C-ville was not in violation of the laws of war.

The arrest of families A and B was justified. Family A supported the guerrillas and participated in hostilities by storing the mines. The family has thus subjected itself to punishment and may be tried by a military court. Family B is subject to punishment for concealing the enemy officer. Such behavior is a form of active support of the enemy. Civilians must

refrain from active participation in combat activities to retain their protected status. The two families should therefore be delivered, along with a detailed report of their conduct, to the proper military authorities for prosecution.

Burning the homes of families A and B as a deterrent is prohibited. Civilian property in an occupied enemy area may be destroyed during military operations only if the destruction is for pressing military reasons (*e.g., to acquire a field of fire or to eliminate a concealed enemy route of approach*). No such reason is apparent in the present case. The burning of civilians' property, either as a reprisal or for purposes of intimidation or as punishment, is not permissible. Punishment may only be imposed by a regularly constituted court.

REFERENCES:

- DA Pam 27-1, pp 12, 137, 146, 150, 152 (HR art 23(g), GC arts 5, 33, 49, 53).
- DA Pam 27-161-2, pp 75-76.
- FM 27-10, paras 248, 272, 382, 393.

22 RESISTANCE MOVEMENTS: STATUS OF MEMBERS, TREATMENT OF CIVILIAN SUPPORTERS, PUNISHMENT

PROBLEM:

A battalion is ordered to search city C, located in occupied territory, in which an organized resistance movement has been detected. After the search, the company commander reports the following to the battalion commander: "The company took into custody 16 persons, presumably residents, wearing civilian clothing and enemy uniform jackets with broad, sewed-on armbands displaying the enemy's national emblem. All were equipped with small arms, but no resistance was offered.

They identified themselves as members of a resistance movement which was supposed to be directed by General Z from enemy territory. I placed the residents of the city under guard since they supported the resistance fighters. What is to be done with these individuals?"



What action should the battalion commander take?

DISCUSSION:

The battalion commander should order the resistance fighters to a collecting point for prisoners of war. The residents of the city supporting the resistance fighters should be sent, with a detailed report, to the responsible military authorities for prosecution.

Members of any organized resistance movement are lawful combatants provided they (1) are led by an individual responsible for his subordinates' actions and conduct, (2) wear a fixed, distinctive insignia which is recognizable at a distance, (3) carry their weapons openly, and (4) conduct their operations in accordance with the rules and customs of war. Resistance movements can lawfully operate in occupied territory even though they are being directed from elsewhere. In the present case, these conditions have apparently been met. Thus, the 16 who claimed to be resistance fighters must

be treated as lawful combatants and prisoners of war.

Members of the civilian population of an occupied territory who give aid to resistance fighters violate criminal regulations of the occupying power, regardless of whether the resisters are lawful combatants or mere terrorists. Only if the residents themselves belong to an organized resistance movement are they then treated as lawful combatants and not held criminally responsible for participation in combat activities. The facts in the case above do not indicate that the residents of the city were members of an organized resistance movement. Therefore, they may be punished if they have participated in aiding the resistance movement. However, punishment may not be summarily imposed. Only a competent court of the occupying power, after a fair and impartial hearing, may impose punishment.

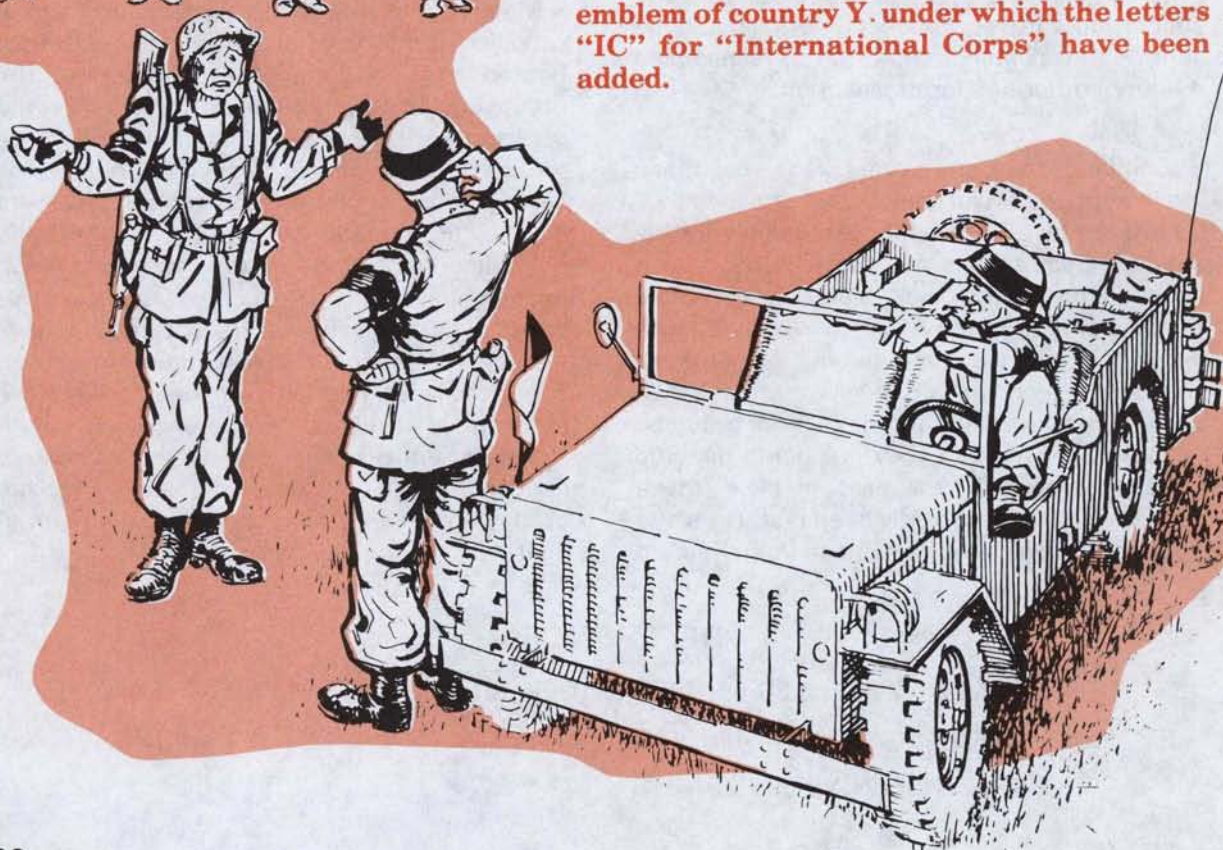
REFERENCES:

- DA Pam 27-1, pp 68-69, 155-156 (GPW art 4A(2), GC arts 66-68).
- FM 27-10, paras 64, 436, 428.
- GREENSPAN, pp 58-62.

LAWFUL COMBATANTS: THE STATUS AND TREATMENT OF THIRD COUNTRY NATIONALS AND CITIZENS WHO PARTICIPATE IN MILITARY ACTIVITIES

PROBLEM:

During an advance by troops of country X into enemy territory (country Y), 60 unusual prisoners are captured. Some are citizens of country Z (a nation which has already surrendered to country X and committed itself to ending all military activities). Some are citizens of country X itself. Some are citizens of country N, a neutral state. The prisoners state that they belong to the "International Corps," a combat unit which was incorporated into the armed forces of country Y, but consists only of citizens of foreign nations. As members of the "International Corps," the prisoners wear popular military headgear and jackets which deviate somewhat from the uniform of the armed forces of country Y. They are otherwise largely equipped with civilian items. All of the prisoners wear the national emblem of country Y, under which the letters "IC" for "International Corps" have been added.



How are the prisoners to be treated?

DISCUSSION:

The prerequisite for treatment as a lawful combatant is membership in a group whose participation in combat activities is authorized by the laws of war (*e.g., membership in the armed forces of a party to the conflict*). Citizenship is not, however, a necessary condition for such status. Individuals who are not citizens of the country on whose side they are fighting are authorized to participate in combat activities, provided they belong to a group which is authorized to participate in the hostilities. The "International Corps" represents a body of foreign volunteers which has been incorporated into the armed forces of country Y, the latter being authorized to participate in combat activities. As such, members of the "International Corps" are considered to be lawful combatants and, therefore, entitled initially to be treated as prisoners of war.

The ultimate disposition of some of these persons will be affected by the following considerations.

The citizenship of a neutral nation, possessed by several members of the "International Corps", does not negate their authorization to participate in military activities. However, membership in the armed forces of a party to the conflict does result in the loss of the privileged

position which the citizens of neutral countries otherwise enjoy.

Doubts might arise as to whether the citizens of country Z are still authorized to participate in combat activities after their country has surrendered. Its surrender does deprive them of the possibility of participating in combat activities as soldiers of their own country. However, it is not a violation of the law of war to continue fighting in the armed forces of an ally or an organization which is equivalent to an ally in this respect. If they belong to such an organization of a country which has not yet lost the right to wage war as the result of surrender or a cease-fire, they are entitled to be treated as prisoners of war, but may be subject to trial for their violation. The right of their homeland to punish them for continued participation in military activities is not affected by the above, but the detaining power may not convict those prisoners for violating the laws of their homeland.

Citizens of the detaining power (country X) need not be treated as prisoners of war after their status has been determined. They are subject to trial and punishment under the criminal law of their country (*e.g., treason, aiding the enemy*) if they voluntarily participated in combat in the armed forces of the enemy.

REFERENCES:

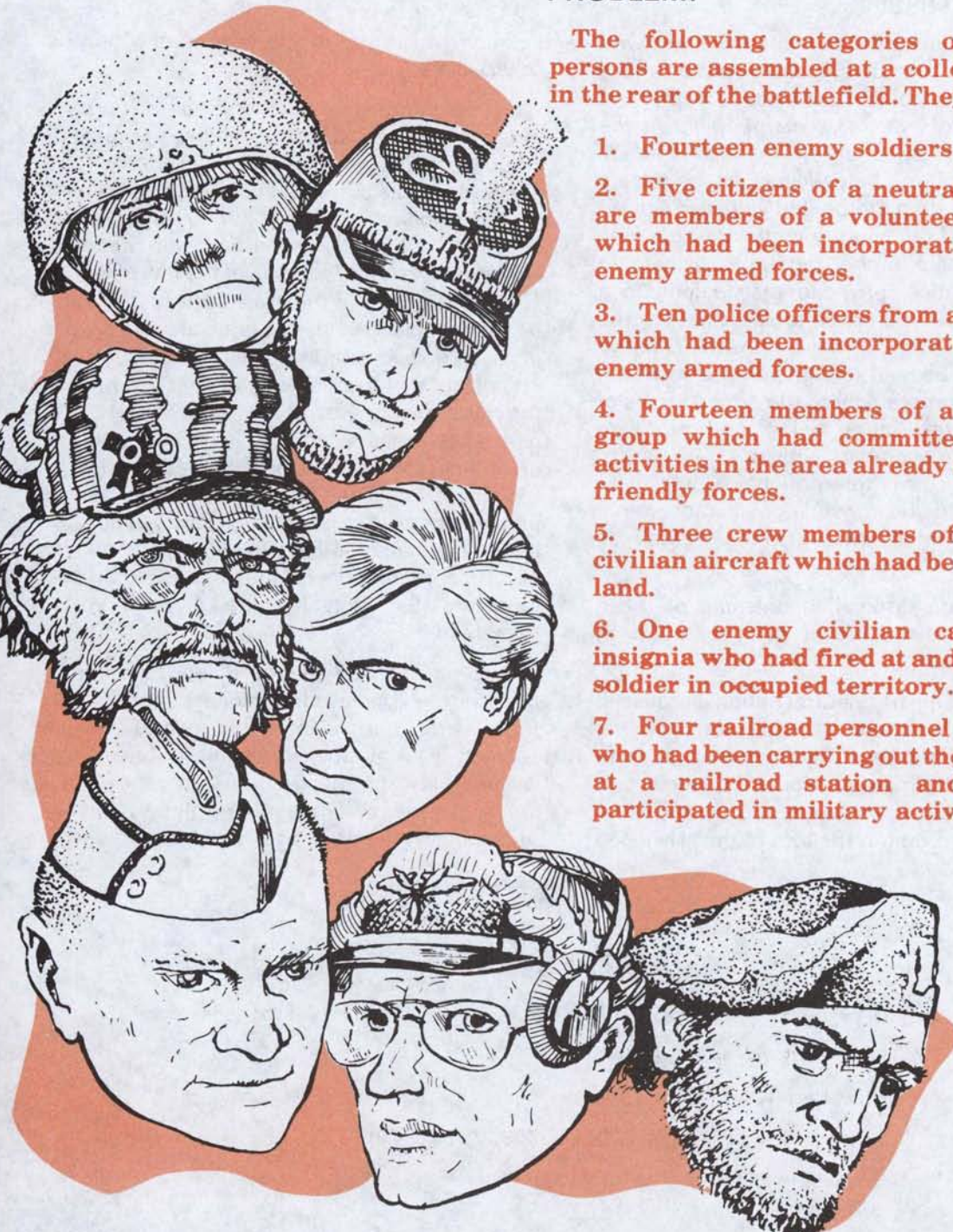
- DA Pam 27-1, pp 20-21, 68-70 (H.V. art 17, GPW arts 4, 5).
- FM 27-10, paras 61, 550a.
- UCMJ art 104.
- Johnson v. Eisentrager, 339 US 763, 787 (1948)
- P.P. v. Oie Hee Koi, 2 WRL 715 (P.C.) (1968)

THE DETERMINATION AND TREATMENT OF LAWFUL COMBATANTS

PROBLEM:

The following categories of captured persons are assembled at a collecting point in the rear of the battlefield. They consist of:

1. Fourteen enemy soldiers in uniform.
2. Five citizens of a neutral state who are members of a volunteer battalion which had been incorporated into the enemy armed forces.
3. Ten police officers from a police unit which had been incorporated into the enemy armed forces.
4. Fourteen members of a resistance group which had committed sabotage activities in the area already occupied by friendly forces.
5. Three crew members of an enemy civilian aircraft which had been forced to land.
6. One enemy civilian carrying no insignia who had fired at and wounded a soldier in occupied territory.
7. Four railroad personnel in uniform who had been carrying out their business at a railroad station and had not participated in military activities.



How should the commander of the reception camp treat each of the above categories of individuals?

DISCUSSION:

The commander must determine who, among the captives, are entitled to treatment as prisoners of war and who are to be treated as civilians. He should also determine against whom criminal proceedings should be initiated.

The following are to be treated as prisoners of war:

1. The 14 enemy soldiers, as members of the regular armed forces of a party to the conflict.
2. The 5 members of the volunteer battalion, which represents a corps of volunteers incorporated into the enemy armed forces. Citizens of neutral countries are lawful combatants if they participate in combat operations in a manner provided for by the laws of war. Although neutrals lose their claim to neutrality if they participate in combat activities, they cannot be punished for this.
3. The 10 police officers. The national laws of the country of origin determine who, from among its nationals, belong to the armed forces and are authorized to participate in military activities. This right is not necessarily limited to soldiers of the regular armed forces. If no such national authorization has been issued, police can only participate in combat under the same conditions as other civilians.
4. The members of the resistance movement may be considered prisoners of war, provided they:
 - a. are led by an individual responsible for his subordinates' conduct and actions,
 - b. wear permanent distinctive insignia which can be recognized from a distance,
 - c. carry their weapons openly, and

d. observe the laws and usages of war in their combat activities.

Sabotage operations behind enemy lines are lawful combat activities, provided they are carried out by lawful combatants. If the resistance movement has satisfied the specified conditions, the punishment of the members for sabotage activities is not permitted. However, if at least one of the prerequisites is not fulfilled, members of the resistance group are not entitled to be treated as prisoners of war. They can be punished for the sabotage activities which they committed in accordance with the criminal and procedural laws which apply to the civilian population in the occupied territory.

5. The crew members of the enemy civilian aircraft, who are treated like members of the Merchant Marine Service and are entitled to prisoner of war status.

The following are not entitled to be treated as prisoners of war:

a. *The civilian who, without being a member of some group authorized to participate in combat activities, had fired at and wounded a soldier. He can be punished for his acts by a military court and turned over to the proper military authorities for trial.*

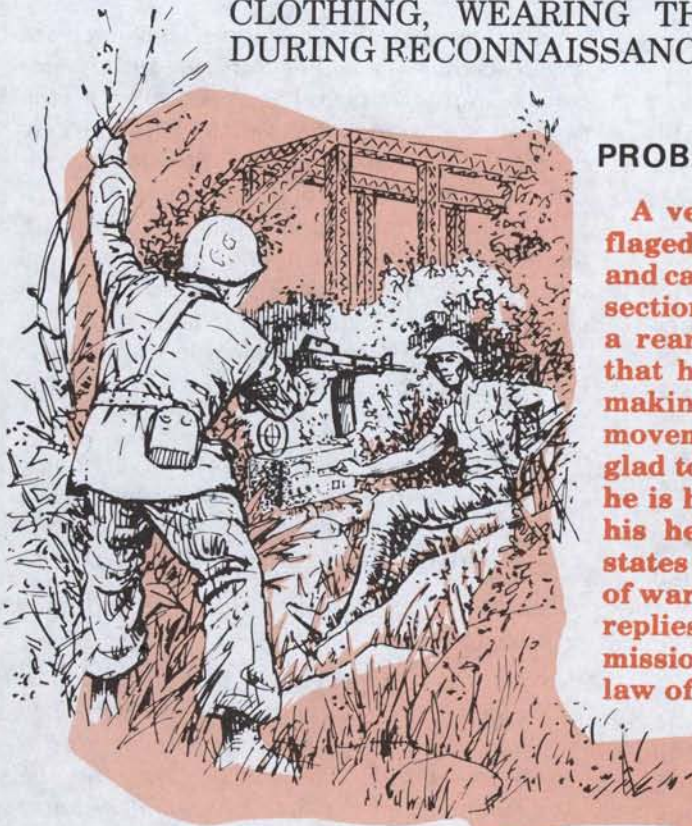
b. *The railroad personnel. They would be treated as prisoners of war provided they: (a) carried out activities as accredited nonmilitary personnel of the armed forces, (b) were authorized to conduct these activities by the armed forces, and (c) had appropriate identification documents. Otherwise, they are to be treated as civilians and released, unless internment in an internment area for civilians appears to be required for security reasons.*

REFERENCES:

- DA Pam 27-1, pp 20-21, 68-70 (H.V. art 17, GPW art 4A, GC art 5).
DA Pam 27-161-2, pp 72-76.
FM 27-10, paras 61, 248, 550.
GREENSPAN, pp 97-101, 157-160.

25

COMPARISON OF ESPIONAGE AND LAWFUL INTELLIGENCE-GATHERING PROCEDURES: RUSES OF WAR, CAMOUFLAGING, USE OF CIVILIAN CLOTHING, WEARING THE ENEMY'S UNIFORM DURING RECONNAISSANCE MISSIONS



PROBLEM:

A very ragged soldier, wearing a camouflaged uniform of his country's armed forces and carrying a radio, is captured in a wooded section near an important railroad bridge in a rear area. When interrogated, he states that he hid for 10 days in the woods after making a parachute jump to scout troop movements over the railroad bridge. He is glad to have become a prisoner of war since he is hungry and wants to have a roof over his head again. The interrogating officer states that he will not be treated as a prisoner of war, but will be tried as a spy. The soldier replies that he was only carrying out his mission and was not aware of violating the law of war.

What treatment does the law of war prescribe for the captured soldier?

DISCUSSION:

A spy is one who gathers or attempts to gather intelligence within the zone of operations of a belligerent, secretly or under false pretenses, with the intention of reporting the intelligence to his superiors.

Members of the armed forces in uniform who obtain intelligence in the enemy zone of operation do not commit espionage; rather, their

reconnaissance is a lawful combat activity. This applies even though they use a permissible ruse in their mission. Camouflage is a permitted ruse provided civilian clothing or the enemy uniform is not used during the intelligence-gathering operation. In the above case, the captured soldier is not to be treated as a spy, but as a prisoner of war, and is to be sent to a prisoner of war camp.

REFERENCES:

DA Pam 27-1, pp 13-14 (HR arts 24, 29)

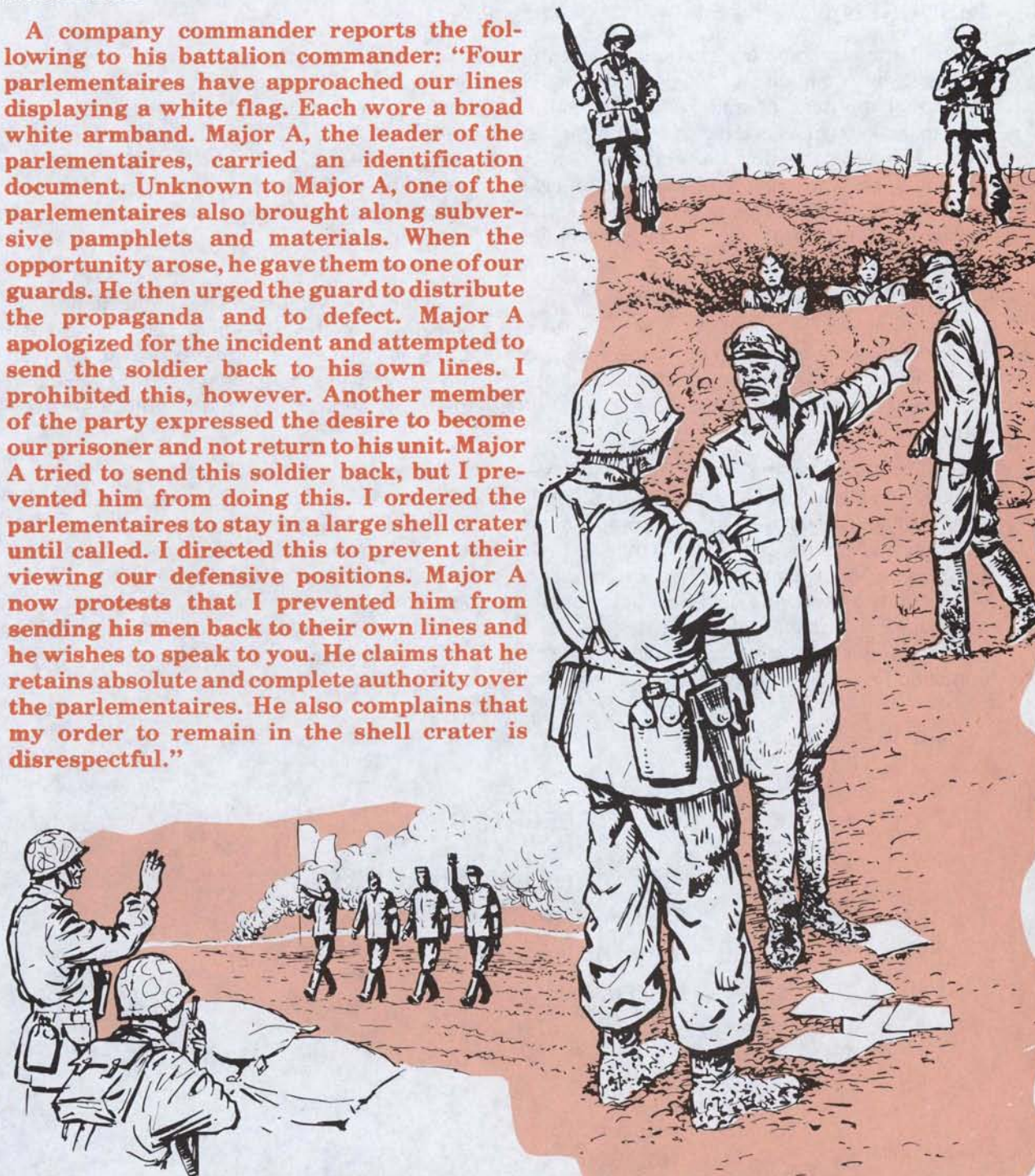
DA Pam 27-161-2, pp 57-58.

FM 27-10, paras 48, 75.

GREENSPAN, pp 318-320, 326-328.

PROBLEM:

A company commander reports the following to his battalion commander: "Four parlementaires have approached our lines displaying a white flag. Each wore a broad white armband. Major A, the leader of the parlementaires, carried an identification document. Unknown to Major A, one of the parlementaires also brought along subversive pamphlets and materials. When the opportunity arose, he gave them to one of our guards. He then urged the guard to distribute the propaganda and to defect. Major A apologized for the incident and attempted to send the soldier back to his own lines. I prohibited this, however. Another member of the party expressed the desire to become our prisoner and not return to his unit. Major A tried to send this soldier back, but I prevented him from doing this. I ordered the parlementaires to stay in a large shell crater until called. I directed this to prevent their viewing our defensive positions. Major A now protests that I prevented him from sending his men back to their own lines and he wishes to speak to you. He claims that he retains absolute and complete authority over the parlementaires. He also complains that my order to remain in the shell crater is disrespectful."



*How should the battalion commander respond to this situation?
Why?*

DISCUSSION:

The battalion commander should reject the protests and complaints of Major A. He should order that the parlementaires who engaged in propaganda activities and the other who desired to become a prisoner both be sent to the rear as prisoners of war. Finally, he should decide whether or not he wants to receive the remaining parlementaires. If not, he should order that they be returned to their unit unharmed.

The members of the party are authorized parlementaires and are properly identified as such. They have a protected status and are entitled to immunity from capture, injury, or other harm.

One member of the party, however, has exploited his privileged position by urging the enemy to defect and by distributing propaganda material for the purpose of inciting the enemy to commit treason. He has therefore lost his claim to immunity. He may be detained, but must be treated as a prisoner of war since he is a member of the enemy armed forces. He may be punished for violating his privileged position.

By declaring that he no longer wishes to return to his unit, another member of the party has relinquished his status as a parlementaire. He has voluntarily left the area controlled by his armed forces and has put himself under the protection of the enemy who may grant him asylum. If detained, he is to be treated as a prisoner of war.

Under the circumstances, the temporary placement of the parlementaires in the shell crater was lawful. The measure was taken in order to prevent the parlementaires from using their special position to gather intelligence.

The battalion commander is not required to receive the parlementaires. Only when the latter indicate a desire to negotiate a cease-fire for the recovery of the dead and wounded must they be received, and then only if the circumstances permit such a cease-fire. In this case they have not indicated such a desire. The battalion commander is therefore free to decide if he wishes to receive them.

REFERENCES:

DA Pam 27-1, p 14 (HR arts 32-34).

DA Pam 27-161-2, p 53.

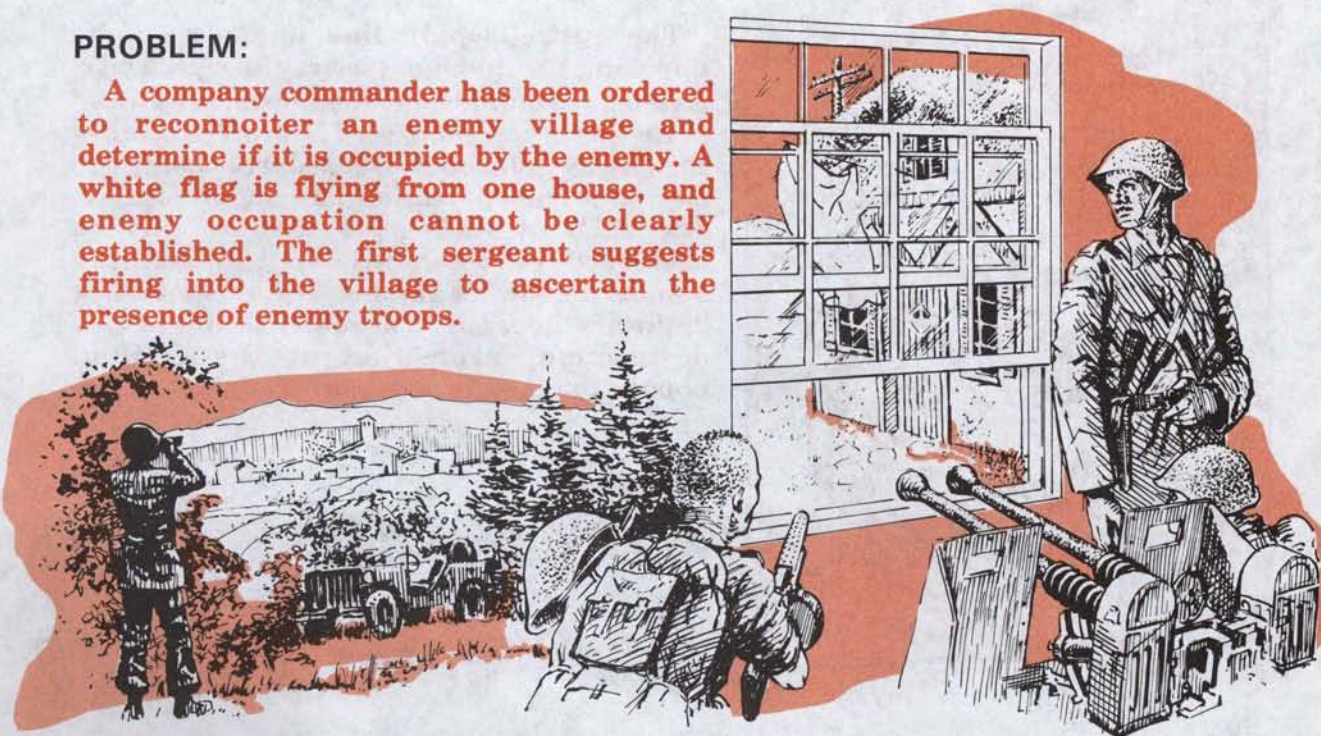
FM 27-10, paras 53, 458-467.

GREENSPAN, pp 380-385.

27 FIRING ON RESIDENTIAL AREAS: THE SIGNIFICANCE OF DISPLAYING WHITE FLAGS

PROBLEM:

A company commander has been ordered to reconnoiter an enemy village and determine if it is occupied by the enemy. A white flag is flying from one house, and enemy occupation cannot be clearly established. The first sergeant suggests firing into the village to ascertain the presence of enemy troops.



How should the commander act in this situation? Explain.

DISCUSSION:

The company commander should not fire on the village. Firing on undefended towns or buildings is not permitted, since this would cause unnecessary destruction. Doubt as to whether a town or building is defended shall not be settled by firing on these subjects. Other means, such as reconnaissance, must be used.

Displaying a white flag does not necessarily mean that a town or building is undefended. All available facts and circumstances must be considered. A white flag may indicate that the enemy wishes to negotiate or surrender.

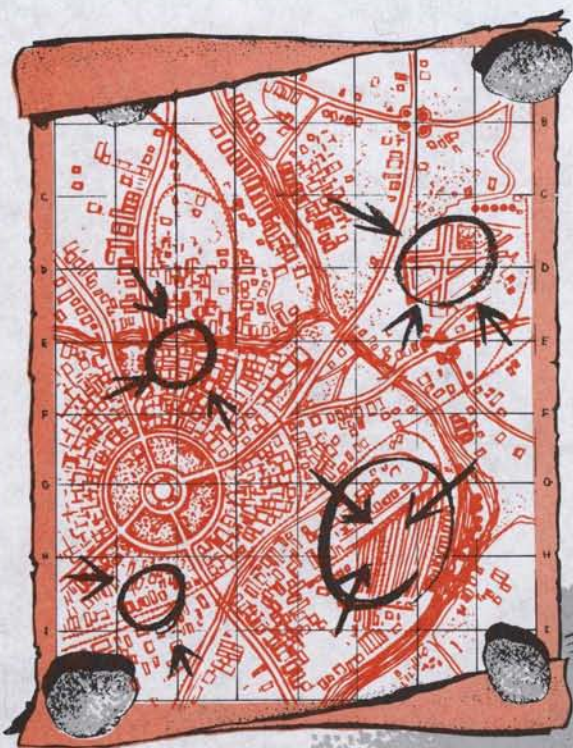
However, if the white flag is not displayed by individuals but from buildings, it is more reasonable to assume that no resistance is being offered from these buildings. Whether the display applies only to a particular building, a group of buildings, or to an entire town will, likewise, only be determined from all circumstances in the particular case. Therefore, when a white flag is displayed in the manner stated, it is possible that the town or the building displaying the flag is undefended. Thus, the village should not be fired upon so long as no resistance is offered by the village.

REFERENCES:

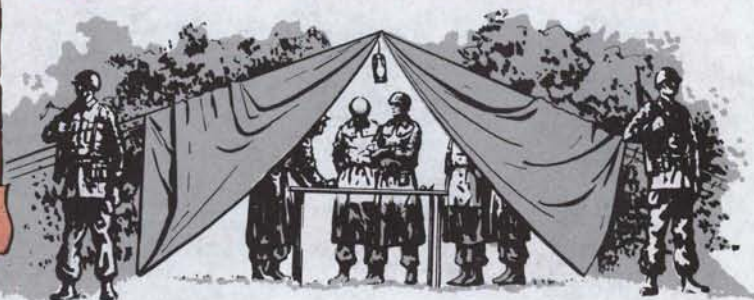
DA Pam 27-1, p 13 (HR art 25).

DA Pam 27-161-2, pp 47-48

FM 27-10, paras 39, 504e.

**PROBLEM:**

The entire supply line to enemy units opposing the division passes through a city. Extensive supplies for these units are stored in the city's warehouses. The staff concludes the enemy must be prevented from using the city as a transportation and supply center. The chief of staff urges that the city be destroyed by combined air and artillery bombardment. He further argues that since "military necessity" urgently requires this destruction, protection of the civilian population may be subordinated.



What decision should be made and why?

DISCUSSION:

Bombardment must be limited to those military targets whose elimination is required by the present combat situation. Thus, troop quarters, supply and transport facilities, and troop positions can be fired on as military targets. Bombardment of the entire town, however, is not permissible, unless all of it is being used for military purposes.

Before deciding on the chief of staff's proposal, it is necessary to determine the extent to which the bombardment of individual targets

is called for on military grounds. The means chosen for achieving military objectives must involve the minimum possible destruction of the civilian population and property. In the case above, the enemy supply line which passes through the city and the enemy's use of a number of warehouses in the city do not, by themselves, justify the destruction of the entire city. Only destruction of facilities and routes being used by the enemy is justified. Therefore, the division commander should order the attack only against recognized military targets.

REFERENCES:

DA Pam 27-1, pp 12-13, 141, 152 (HR arts 23(g), 26-27, GC arts 18-19, 53).

DA Pam 27-161-2, pp 47-50.

FM 27-10, paras 40-41, 43.

GREENSPAN, pp 332-349.

29

**DISPOSITION OF LAW OF WAR VIOLATORS:
BAN ON SUMMARY PROCEEDINGS TO DETERMINE
GUILT OR PUNISHMENT, BAN ON REPRISALS,
RUSES OF WAR, DECEPTIVE STATEMENTS, USE OF
ENEMY'S LANGUAGE, PASSWORDS, WEAPONS,
EQUIPMENT, AND UNIFORM**

PROBLEM:

A brigade commander reports the following to his division commander: "Last night, 75 of the enemy entered my defensive area with 10 presumably captured APCs of the same design as ours without any national insignia. They wore the combat uniform of their country's army, but could not be distinguished in the darkness. They used our password and claimed that they were returning from a reconnaissance mission. Later we learned that the enemy team was assigned to take and hold an important railroad bridge. One of our sentries at this bridge was shot in the back by the enemy team. My troops eventually succeeded in overpowering and capturing the enemy team but suffered several casualties. In their anger over the deaths of their comrades, my men demanded the immediate execution of those responsible. I intend to hold an administrative hearing to try and punish the responsible prisoners."



What action should the division commander take? Explain. What measures should be taken if the prisoners had worn the uniform of their enemy or if the APCs had the enemy's military insignia or national flag affixed to them?

DISCUSSION:

The division commander should prohibit the brigade commander from conducting his administrative hearing. He should also direct that the prisoners be taken immediately to a prisoner of war collecting point.

A summary or administrative hearing to determine guilt and punishment is not permissible, regardless of whether the prisoners have violated the law of war. Punishment may be prescribed for a war crime

only after conviction in a trial offering all the procedural safeguards provided for by law. This applies regardless of whether the accused persons are prisoners of war or protected civilians.

The disposition of prisoners depends, first, on their status and, second, on whether they have committed a violation of the law of war. The prisoners in the present case obviously belong to the enemy armed forces. Upon capture, therefore, they must be treated as prisoners of war.

The use of captured weapons, equipment, and other material is permissible under the law of war. However, the enemy's uniform, national flag, and national emblem may not be used during combat. The use of captured vehicles to deceive the enemy is a permitted ruse so long as the enemy's national emblem is removed from the vehicle prior to use. Unlike a situation involving the use of enemy uniforms and insignia, the soldier who is confronted with such a vehicle cannot assume that he is facing friendly troops. Thus, the use of enemy APCs in the present case does not constitute a treacherous ruse in violation of the law of war. There is no provision in the law of land warfare which requires the national emblem to be displayed on land vehicles during combat operations. Thus the absence of such insignia does not violate the law of war.

As a standard issue uniform of the enemy forces, the combat clothing worn by the prisoners was sufficient to identify them as enemy soldiers. Although a uniform should be designed so that it can be distinguished from that of the enemy, it is not necessary that the differences be easily recognizable at night. The

use of the combat clothing in the present case was not in violation of the law of war.

The use of the enemy's language and password and the deceptive statement that the team was returning from a reconnaissance mission are ruses which are permitted.

The prisoners, therefore, have not committed any violations of the law of war. They cannot be punished, nor can reprisals be taken against them.

With regard to the use of the military insignia, national flag, and the uniform of the enemy, the law is clear that such use is prohibited during actual fighting. The principle is considered inviolable that during actual fighting opposing forces ought to be certain of who is friend and who is foe. However, there are two views about such use before combat. One view is that combatants may use such items as a legitimate ruse until actual fighting starts. The other view holds that such use is illegal even before actual fighting commences. The Protocol to the Geneva Convention (which is not yet in force) updating the law of war, provides that the use of such items is illegal even before actual fighting begins if used to shield, favor, or impede military operations. In the present case, the prisoners would at least be subject to prosecution if they used their enemy's uniform, national flag, or military insignia during actual fighting at the railroad bridge.

The division commander would in such case have the prisoners of war delivered up for prosecution before a military court, accompanied by a detailed report of the matter. He should, in addition, report the violation to his government for possible countermeasures such as protest and lawful reprisals.

REFERENCES:

DA Pam 27-1, pp 12, 17, 68-69, 98, 102-105, 137 (HR arts 23(f), 53, GPW arts 4, 84-85, 99, 102, 105, GC art 5).

DA Pam 27-161-2, pp 53-57.

FM 27-10, paras 51, 54, 160-161, 175, 173a, b, 181.

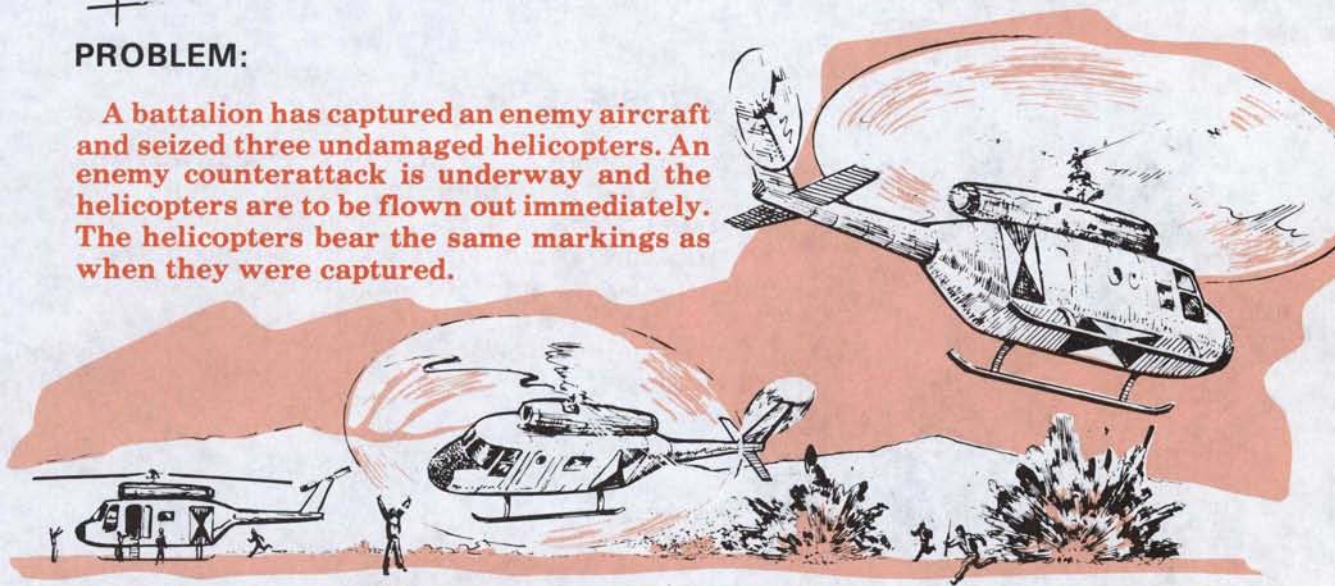
GREENSPAN, pp 319-321.

J. M. SPAIGHT, WAR RIGHTS ON LAND 105 (1911).

30 THE STATUS, USE, AND MARKING OF CAPTURED MILITARY AIRCRAFT

+ PROBLEM:

A battalion has captured an enemy aircraft and seized three undamaged helicopters. An enemy counterattack is underway and the helicopters are to be flown out immediately. The helicopters bear the same markings as when they were captured.



What legal consideration must be kept in mind regarding the use of the captured aircraft?

DISCUSSION:

The captured enemy aircraft are spoils of war. That is, they are immediately the property of the captor and may be used by him for military purposes. In combat, captured aircraft must always show their nationality and military character by means of suitable insignia. Transfer of the helicopters from the enemy airfield to another airfield does not constitute combat activity, which would require the display of new national insignia. Nevertheless, the retention of the old insignia may deceive the enemy and make him refrain from attacking the helicopters. Though this alone would not constitute a treacherous ruse, the enemy insignia should be covered, if possible, in order to avoid misunderstandings and accusations of violations of the law of war. However, if time does not allow such concealment, the helicopters may be transferred in the condition

in which they were captured. In such a case, no combat activities are permitted during the transfer flight. If the captured aircraft are used in combat, the national emblem and military insignia of the captor must be affixed.

NOTE: The position taken in the last sentence of the discussion may appear to contradict the conclusion stated in the fourth paragraph of Problem 29 regarding the marking of land vehicles during combat. The view taken on the marking of aircraft is based on the practical demands of aerial warfare. Identifying allied aircraft and protecting them from friendly fire is difficult and has led, in practice, to the adoption of the system of national markings. This practice has developed over the years into a customary rule of international law (see J. Spaight, *Air Power and War Rights* 76-91 (1947)).

REFERENCES:

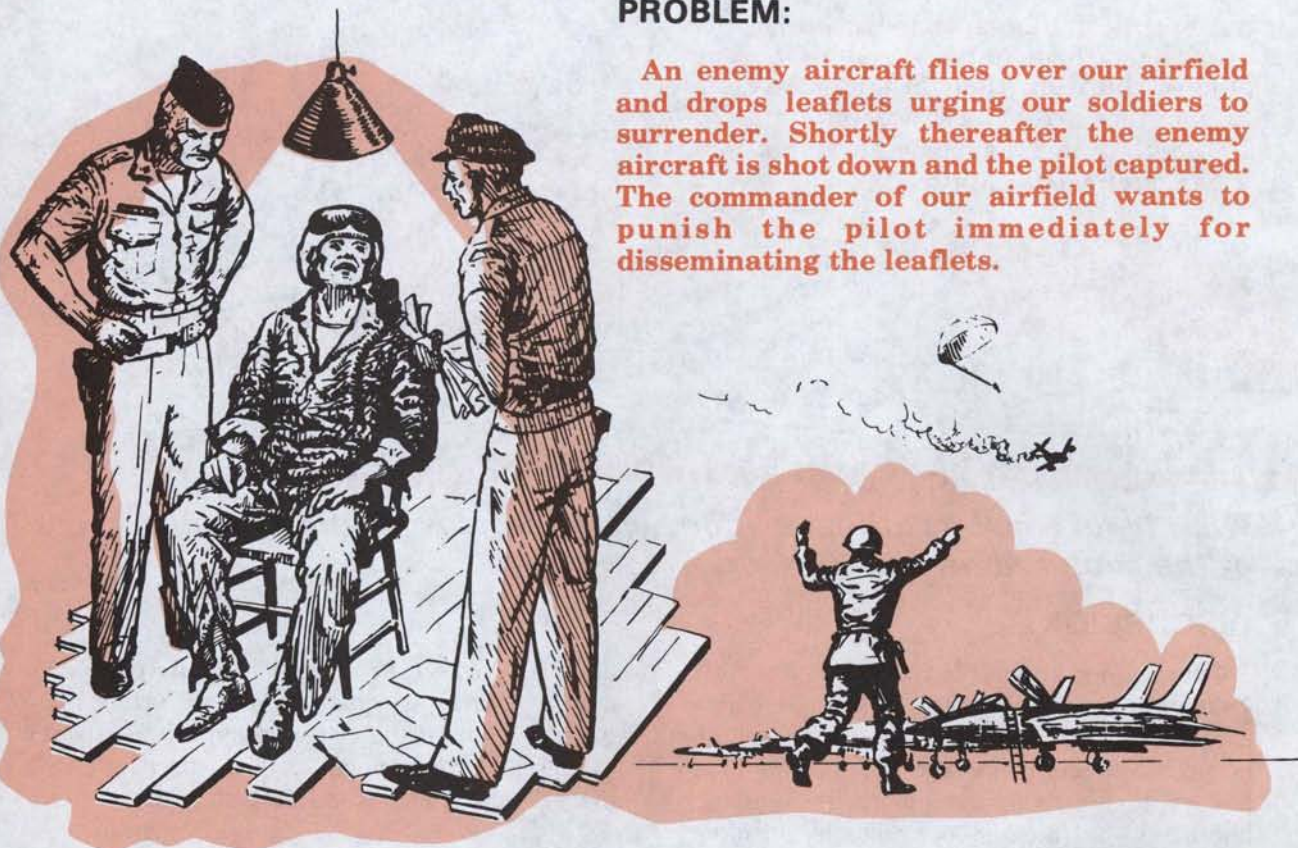
- DA Pam 27-1, pp 12, 17 (HR arts 23(f), 53).
- DA Pam 27-161-2, pp 175-176.
- FM 27-10, paras 59, 403-404.
- J. M. SPAIGHT, *AIR POWER AND WAR RIGHTS* 76-91 (1947) (hereinafter cited as SPAIGHT).

31

THE DISSEMINATION OF PROPAGANDA AS A MEANS OF WARFARE: BAN ON SUMMARY PUNISHMENT FOR ALLEGED LAW OF WAR VIOLATORS

PROBLEM:

An enemy aircraft flies over our airfield and drops leaflets urging our soldiers to surrender. Shortly thereafter the enemy aircraft is shot down and the pilot captured. The commander of our airfield wants to punish the pilot immediately for disseminating the leaflets.



Is such action permissible? Explain. What measures should be taken in the case?

DISCUSSION:

The dissemination of propaganda is a lawful means of warfare and must be considered a permissible ruse, even if the disseminated statements are untrue. The urging of enemy troops to rise against their government is likewise a permissible military measure. Thus,

the pilot in the present case may not be punished for urging surrender. As a member of the enemy armed forces, the captured pilot must be treated as a prisoner of war. He must be sent to a collecting point and may not be punished for his actions.

REFERENCES:

DA Pam 27-1, pp 12-13, 98-99, 105-106, (HR art 23, GPW arts 84-85, 99, 105-106).

FM 27-10, paras 51, 160-161.

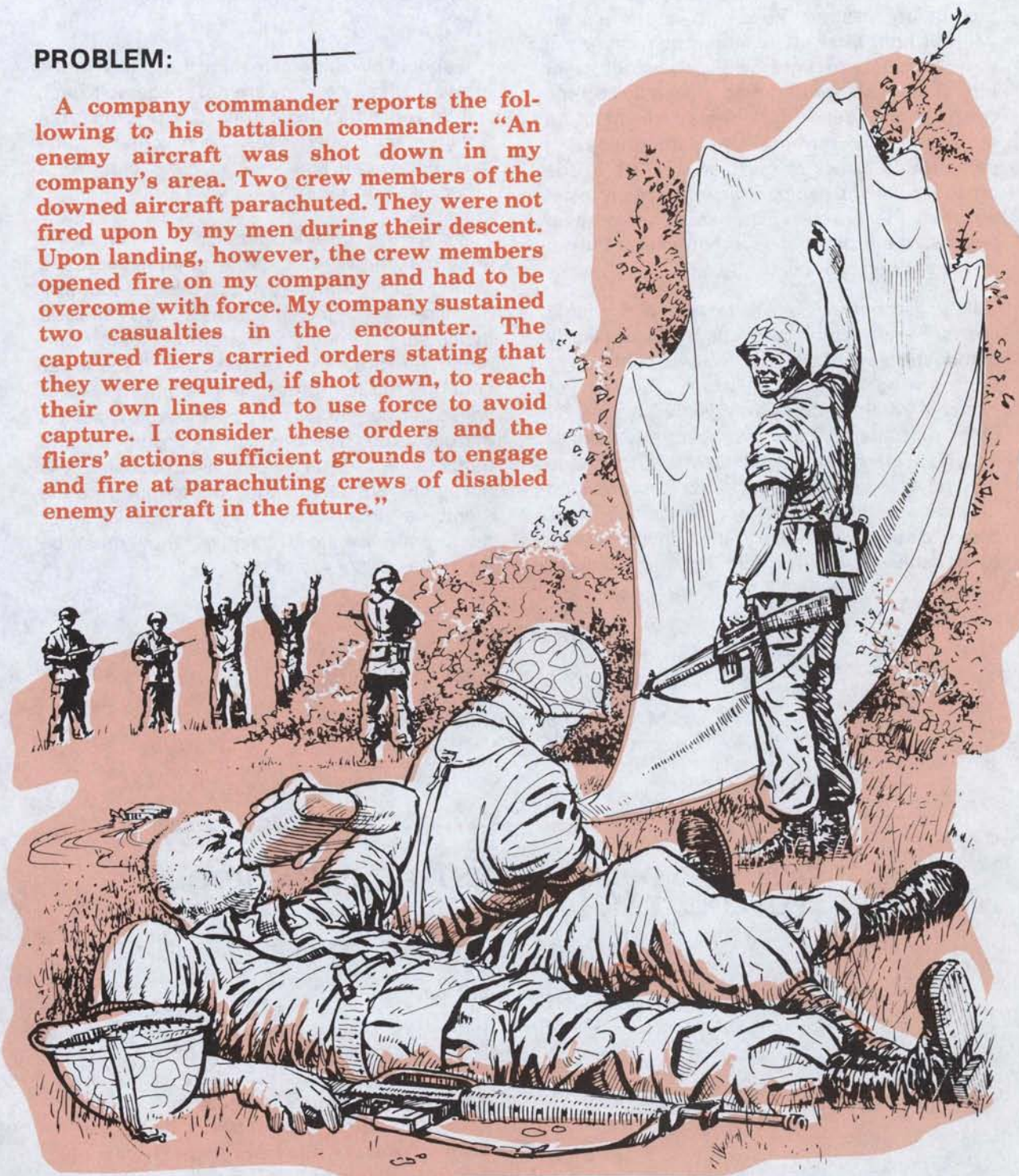
GREENSPAN, pp 323-325.

THE STATUS, TREATMENT AND RULES OF ENGAGEMENT RELATING TO PARACHUTING CREWS OF DISABLED AIRCRAFT

PROBLEM:



A company commander reports the following to his battalion commander: "An enemy aircraft was shot down in my company's area. Two crew members of the downed aircraft parachuted. They were not fired upon by my men during their descent. Upon landing, however, the crew members opened fire on my company and had to be overcome with force. My company sustained two casualties in the encounter. The captured fliers carried orders stating that they were required, if shot down, to reach their own lines and to use force to avoid capture. I consider these orders and the fliers' actions sufficient grounds to engage and fire at parachuting crews of disabled enemy aircraft in the future."



What are the legal considerations involved in this case?

DISCUSSION:

Generally, parachuting crews of disabled aircraft may not be attacked during their descent because of their defenseless state. This prohibition assumes, however, that the crew will not fight after abandoning their aircraft. If they continue to fight while descending, or intend to do so after landing, they may be fired upon during descent. However, it is often difficult to determine the intentions of parachuting crews of disabled aircraft. In the present case, the company acted correctly in not attacking the two crew members during descent because their intentions, at that time, could not be clearly determined.

It is also permissible to engage descending crews if the enemy's previous behavior clearly demonstrates that these crews will continue to fight during descent or after landing. For example, if the enemy has issued a general order that aircraft crews will continue combat activities after being shot down, such crews may be attacked while still airborne, provided they do not indicate during their descent their desire to surrender. Nevertheless, in all doubtful cases, these crews should not be attacked.

Furthermore, they may not be engaged solely because they are descending over friendly territory or because their escape after landing is likely.

It should also be kept in mind that parachuting crews in an emergency are not obligated to stop fighting once they have jumped. The jump is not a sign of surrender. Thus, the two fliers in the case above can use force to resist capture or otherwise continue the fight.

A different situation arises, however, if the crew making the emergency jump indicates in some manner that they desire to surrender and then renews the fight. Once surrender is indicated, the enemy may assume that they are no longer threatened by the crew. If the latter continue the fight, they then violate the law of war. Such conduct is not a permissible ruse. It is a treacherous ruse, which is prohibited and punishable. In the present case, however, it is not apparent that the parachuting crew members violated the law of war. Like other fliers who are taken captive, they must be treated as prisoners of war.

REFERENCES:

DA Pam 27-1, p 12 (HR art 23(c)).

FM 27-10, paras 29-30, 50.

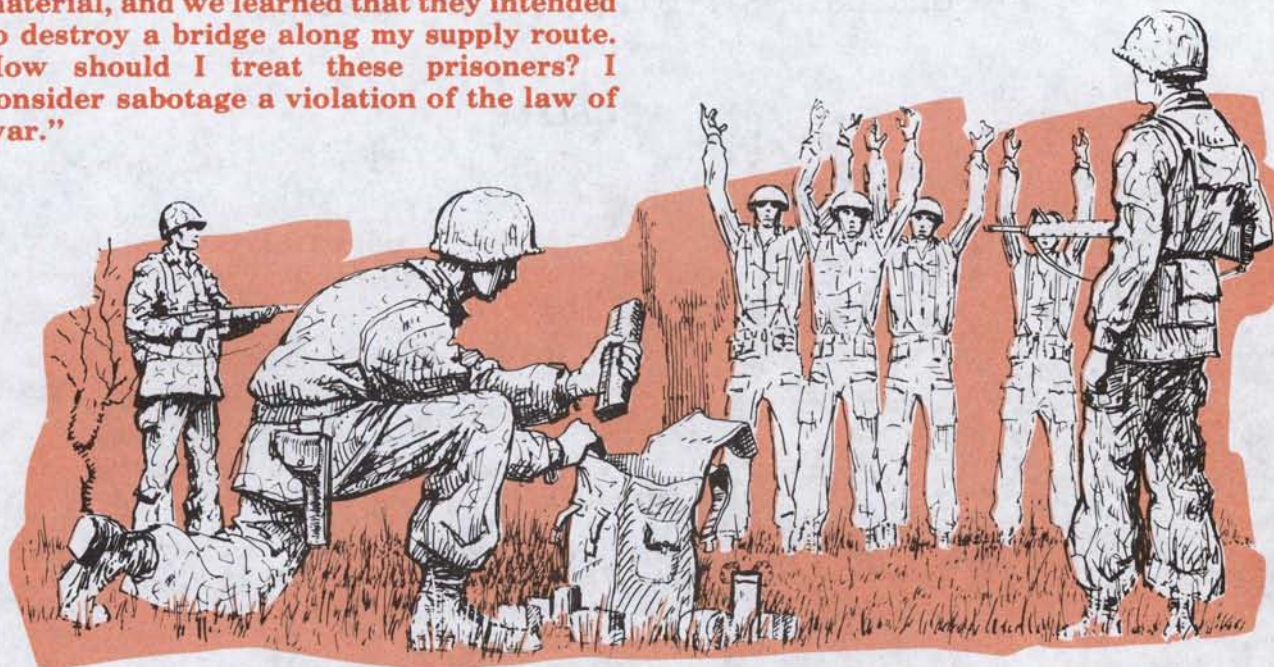
GREENSPAN, pp 317-318.

33 STATUS AND TREATMENT OF PARATROOPS: SABOTAGE TEAMS

PROBLEM:

A brigade commander reports to his division commander: "Ten enemy parachutists descended over my sector. Since an aerial engagement was taking place in the same area, we assumed that they were pilots from the disabled aircraft. We did not attack them during their descent. On the ground, however, they offered resistance

and could be overcome only after a prolonged fire fight. We captured seven of the parachutists. Each had sabotage material, and we learned that they intended to destroy a bridge along my supply route. How should I treat these prisoners? I consider sabotage a violation of the law of war."



How should the division commander respond?

DISCUSSION:

Sabotage activities that are carried out by lawful combatants are not a violation of the law of war. On the other hand, such activities are unlawful if they are engaged in by persons who are not authorized to participate in military activities. Those who attempt to engage in such unlawful activity may be tried and punished for their actions. In the case above, it is apparent that the paratroops are members of the enemy's regular armed forces. Therefore, they are lawful combatants and can engage in sabotage activities. They are to be treated as prisoners of war.

In contrast to parachuting crews of disabled aircraft, paratroops may be fired upon during

their descent. Their jump is considered part of an attack and combat mission. This rule applies even if the aircraft transporting them is shot down in the combat zone. It may always be assumed that paratroops are attempting to carry out their combat mission unless they indicate during a jump the desire to surrender. Then it is no longer permissible to attack them. In the present case, the facts do not indicate that surrender was intended. The fact that the paratroops were not attacked during their descent does not mean that they, themselves, must refrain from further combat activities upon landing. They may continue to fight and resist capture.

REFERENCES:

DA Pam 27-1, pp 12, 68-69 (HR art 23(c), GPW arts 4, 5).

FM 27-10, paras 29-30, 61A, 63.

GREENSPAN, p 318.

SPAIGHT, pp 313-316.

RULES OF BOMBARDMENT: MILITARY TARGETS AND OBJECTIVES, PROTECTED PERSONS, AREAS, FACILITIES, INSTITUTIONS, AND OBJECTS



PROBLEM:

A wing command is given the following mission:

1. Destroy military targets in city X outside the zone of operations of ground forces.
2. Interrupt railroad transit between city X, city Y, and city Z at points in or around city X.

Aerial photographs and other intelligence disclosed the following:

A large optical plant located at the northeast edge of city X has been converted to produce telescopes and sighting instruments.

Troop billets are located in the southern part of the city.

Another barracks area at the western edge of the city is marked with the Red Cross emblem on all its buildings. It was not determined whether these barracks had actually been converted into a hospital complex.

There are antiaircraft batteries, a radio tower, and transmitting facilities in the hills surrounding the city.

Three hospitals, an old monastery, and five churches are located within the city, along with a museum which contains valuable art treasures. The museum is marked with the emblem of the Convention on Cultural Objects.



The railroad station, located in the center of the city, is surrounded by a large residential area. Although the station is not equipped for handling cargo, it is laid out in such a manner that the railroad line could be effectively interrupted at this point. The railroad line crosses several bridges outside the city. Destroying the railroad line at one of the bridges would require about the same amount of force and have the same effect as destroying the tracks at the railroad station.

What legal considerations must be taken into account in attacking and bombarding in and around city X? Which of the above-mentioned objects can be lawfully attacked? Which should not be attacked?

DISCUSSION:

Air attacks and the bombardment of cities and towns outside the zone of operations of ground forces may only be directed against military targets. These operations must cause the civilian population and protected objects as little suffering and damage as possible. Attacks which cause unnecessary suffering and destruction are prohibited. Moreover, the rules of war prohibit attacks directed against the civilian population or against cultural, historical, religious, and other protected objects. Finally, if a military objective can be achieved in more than one manner, the course of action chosen must be that which causes the least amount of suffering and destruction to the civilian population and protected objects.

The following may be attacked as military targets:

**the antiaircraft batteries,
the radio tower and other transmitting facilities,**

**the troop billets,
the converted optical factory,
the railroad bridges, and
the railroad station.**

An attack should not be made on the railroad station if unnecessary damage and suffering would result. The military objective can be accomplished in an alternative manner, since the rail line can be effectively cut by destroying the railroad bridges outside the city.

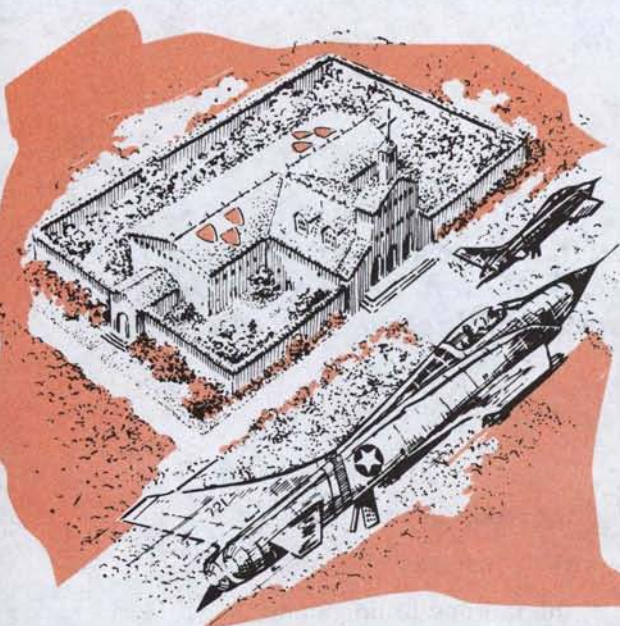
The barracks area which displays the Red Cross emblem on its buildings should not be attacked until it is established that the area is being used for military purposes, rather than as a hospital complex. The other hospitals, the monastery, the churches, and the museum are protected objects and may not be bombarded.

REFERENCES:

DA Pam 27-1, pp 12-13 (HR arts 23(g), 25, 27).
DA Pam 27-161-2, pp 46-52, 173-175.
FM 27-10, paras 40-43, 45-46.
GREENSPAN, pp 332-349.

35

RULES OF BOMBARDMENT: MILITARY TARGETS AND OBJECTIVES, PROTECTION OF CULTURAL AND RELIGIOUS INSTITUTIONS AND OBJECTS, PROTECTED PROPERTY USED FOR MILITARY PURPOSES



PROBLEM:

Friendly forces are taking heavy losses from an enemy bombardment. An enemy artillery observation post has been spotted on the tower of a monastery. The monastery contains valuable art treasures. Reports indicate that several emblems have been placed on the wall and roofs of the monastery. The emblems have shields with blue and white triangles. Three such shields are always arranged together in a triangle (two above and one below). The monastery is listed in an international register for cultural objects that have a special protected status.

Can the monastery be attacked? Explain.

DISCUSSION:

As a rule, religious, historical, and cultural objects may not be attacked. In the case above, the emblems on the monastery are the symbol of the Convention for the Protection of Cultural Objects During Armed Conflicts. This symbol and the entry on the Convention's official register indicate that the monastery is an immovable cultural object which has been given a protected status and may not be attacked. This is true even though the United States is not a party to the Convention on Cultural Objects.

However, if such objects are used for military purposes, the protection is forfeited, and the object may be attacked. Nevertheless,

whenever possible, a demand must first be made to terminate the misuse of the protected object within a reasonable time. In the present case, the immediate destruction of the observation post is justified. A demand to terminate the misuse would not be feasible under the circumstances, since the setting of any deadline would permit the enemy to continue its bombardment and cause considerable additional destruction and loss. Therefore, the monastery may be attacked immediately. The attack should, however, be limited as much as possible to the area where the observation post is located and be carried out in such a manner that damage to the monastery is kept to a minimum.

REFERENCES:

DA Pam 27-1, pp 12-13, 16-17 (HR arts 23(g), 25, 27, 46, 56).

FM 27-10, paras 393, 405.

GREENSPAN, pp 284-285, 340-345, 655-656.

PROBLEM:

Charlie Company is moving through an area reported to be heavily infested with enemy guerrillas. The company commander orders his first platoon to move into and secure a particular village. No instructions are given in regard to the taking of prisoners. On entering the village, the platoon encounters hostile fire. The exchange is short, but two members of the platoon are wounded. The persons who fired on the platoon apparently disappear among the villagers. The platoon leader orders his men to bring all the villagers to the central market place. After the villagers are assembled, he orders his men to shoot all the adult males. He explains that he suspects they are guerrilla fighters. Several members of the platoon carry out his orders. Those who do not participate in the shooting do nothing to try to stop it. Ten male villagers are killed. After the shootings, the platoon leader orders all his soldiers not to say anything about what happened and reports that the ten persons shot were killed during the fighting.



How should the soldiers in the first platoon have reacted to the order to shoot the villagers? How could the incident have been prevented? Is there a duty to report the shootings? If so, explain both the duty and the procedures for reporting killings.

DISCUSSION:

The soldiers in the first platoon should have refused to carry out the order to shoot the villagers. The persons whom they rounded up in the market place are either civilian detainees or prisoners of war. In either case, they are protected persons, and it would be a crime to kill them. An order to commit a crime is not only illegal, but it is a crime itself. The platoon leader is guilty of the murders he ordered. Also, the fact that the murders were committed pursuant to superior orders does not make them any less criminal. The soldiers who carried out the orders are also guilty of the crime of murder and can be prosecuted.

The incident could have been prevented first of all by the company commander who planned the mission. He knew that there had been guerrilla activity in the area and should have planned for the taking of prisoners. He should have given detailed instructions on what to do in regard to the taking of prisoners. He has a responsibility as a commander to prevent war crimes. In this case, he failed to do so, and he can be punished for the omission. Despite this, the soldiers themselves also had the duty to try to prevent the crimes. On being ordered to shoot

the male villagers, they should have raised the question of the legality of the action. In many cases, orders may be thought to be criminal because they are unclear. Where the order is meant to be criminal, the person giving it may change his mind if this is pointed out and the persons who would have to carry it out show reluctance to do so.

Anyone who witnesses the commission of a war crime has a duty to report it at the earliest opportunity. In the present case, therefore, the soldiers who observed the shootings have the obligation to report them the first chance they get. The preferred reporting procedure is through the chain of command. However, if this is not possible or would cause problems, reports may also be made to the military police, to a judge advocate, or even to a chaplain. In the above case, the soldiers who observed the crimes would probably not want to report them to their immediate commander, the platoon leader, since he was involved in their commission. They could, though, report them to the company commander after returning to the company area or to another appropriate official as suggested above.

REFERENCES:

DA Pam 27-1, pp 40, 72-73, 98, 146 (GWS art 50, GPW arts 13, 87, GC art 33)

DA Pam 27-161-2, pp 240-245, 250-251.

FM 27-10, paras 3a, 497d-501, 503, 509.

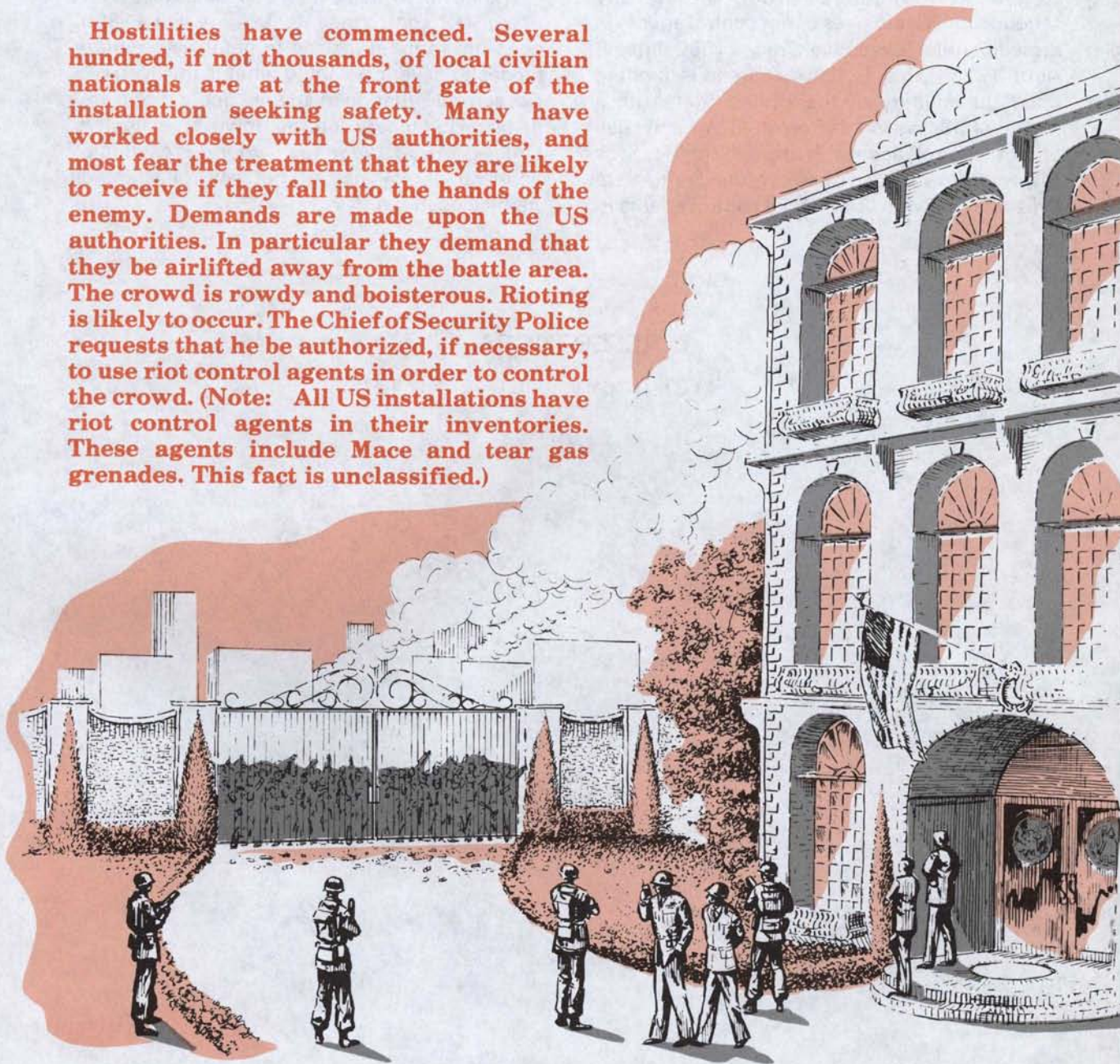
GREENSPAN, pp 420-421, 440-442, 459-460.

P. TROOBOFF, LAW AND RESPONSIBILITY IN WARFARE 188, 199-210 (1975).

37 CHEMICAL WEAPONS: LEGALITY AND RESTRICTIONS ON USE

PROBLEM:

Hostilities have commenced. Several hundred, if not thousands, of local civilian nationals are at the front gate of the installation seeking safety. Many have worked closely with US authorities, and most fear the treatment that they are likely to receive if they fall into the hands of the enemy. Demands are made upon the US authorities. In particular they demand that they be airlifted away from the battle area. The crowd is rowdy and boisterous. Rioting is likely to occur. The Chief of Security Police requests that he be authorized, if necessary, to use riot control agents in order to control the crowd. (Note: All US installations have riot control agents in their inventories. These agents include Mace and tear gas grenades. This fact is unclassified.)



What is the commander's decision?

DISCUSSION:

On 22 January 1975, the United States ratified the Geneva Gas Protocol. As part of the ratification process the US made its view clear

that the Protocol prohibited only the first use of lethal gases. Nonlethal gases, such as riot control agents, were not prohibited by this

Protocol. Therefore, the law of armed conflict does not prohibit the use of riot control agents per se in armed conflict.

However, the President of the United States issued an Executive Order unilaterally renouncing certain uses of riot control agents in armed conflict (Executive Order 11850 dated 8 April 1975.) This Executive Order is binding upon the military of the United States as a matter of US law. In this Executive Order the use of riot control agents in armed conflict was restricted to defensive military modes to save lives and included "Use of riot control agents in

riot control situations in areas under direct and distinct US military control to include rioting prisoners of war."

The law of armed conflict does not forbid the use of riot control agents. US law (EO 11850) does not forbid it *if* used in defensive military modes to save lives and *if* what is involved is a riot control situation in an area under direct and distinct US military control. However, Executive Order 11850 requires *prior* Presidential approval of *any* use of riot control agent or herbicides in war.

REFERENCES:

FM 27-10, para 38 (C1, 15 July 1976).

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By Order of the Secretary of the Army:

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