

Humanitarian Law in Armed Conflicts - Manual -

edited by
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Preliminary Remarks

1. The present manual of international humanitarian law applicable in armed conflicts is the English version of the German triservice manual *ZDv 15/2 Humanitäres Völkerrecht in bewaffneten Konflikten - Handbuch* -, issued in August 1992. It shall serve soldiers and civilian personnel of all command levels in training courses, military exercises and in general training.
2. The design of this regulation largely dispenses with examples as far as they are not of any historical importance. Cases suitable for instruction and individual study are incorporated in *ZDv 15/4 Humanitäres Völkerrecht in bewaffneten Konflikten - Sammlung von Fällen mit Lösungen* - [Humanitarian Law in Armed Conflicts - Collection of Cases and Solutions].
3. The **Annex** to this manual contains a survey of the **distinctive emblems** applicable under international law and a checklist for assessing the Situation with regard to international law, which is to provide an introduction into the handling of tasks associated with international law. The list of **manuals** and instruction aids dealing with international humanitarian law which is also included in the annex shall facilitate access to these documents. The list of **abbreviations** may also be used as a survey of relevant international instruments. The detailed **index** is to permit quick orientation.
4. An **abridged version** of the present manual is in preparation (*ZDv 15/1 Humanitäres Völkerrecht in bewaffneten Konflikten - Grundsätze* - [Humanitarian Law in Armed Conflicts - Principles -]).
5. The preparation of this manual was a joint effort. This cooperation included active support by government experts from 18 States, representatives of the International Committee of the Red Cross and the International Institute of Humanitarian Law, San Remo, to whom the German Ministry of Defence expresses its particular gratitude. All participants in this exercise felt that a continuous dialogue on the implementation of international humanitarian law is essential to ensure respect of applicable rules and that this dialogue should be broadened to embrace other cultures and Systems of law. While the German Ministry of Defence will continue to support this international cooperation, it bears full responsibility for this publication.

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Chapter I

Historical Development and Legal Basis

I. Definition of the Term "Humanitarian Law"

101. The use of force is prohibited under Art. 2 (4) of the UN Charter. States may resort to force only in the exercise of their inherent right of individual or collective self-defence (Art. 51 UN Charter) or as part of military sanctions authorized by the Security Council (Articles 43-48 UN Charter). International humanitarian law applies with equal force to all the parties in an armed conflict, irrespective of which party was responsible for starting that conflict. It comprises the whole of established law serving the **protection of man in armed conflict**.

102. International humanitarian law constitutes a reaffirmation and development of the traditional **international laws of war** (ius in bello). In this context, most of the rules of the law of war now extend even to those international armed conflicts which the parties to the conflict do not regard as wars. The term "international humanitarian law" takes this development into account.

103. **International humanitarian law** sets certain bounds to the use of force against an adversary. It determines both the relationship of the parties to a conflict with one another and their relationship with neutral states. Certain provisions of international humanitarian law are also applicable in the relationship between the state and its own citizens.

104. Apart from the general rules which apply to all types of warfare, there are special rules of the law of land warfare, the law of aerial warfare, the law of naval warfare and the law of neutrality.

II. Historical Development

105. The following historical references may promote appreciation of the development and value of international humanitarian law.

106. Throughout the various epochs, the development of international humanitarian law had been influenced by religious concepts and philosophical ideas. Customary rules of warfare are part of the first rules of international law altogether. In this process, the development from the first rules of customary law to the first written humanitarian principles for the conduct of war was also accompanied by setbacks.

107. Some rules which imposed restrictions on the conduct of war, the means of warfare and their application can even be traced back to **ancient times**.

The **Sumerians** regarded war as a state governed by the law, which was started with a declaration of war and was terminated by a peace treaty. War was subject to specific rules which, inter alia, guaranteed immunity to enemy negotiators.

Hammurabi (1728-1686 B.C.), king of **Babylon**, wrote the "Code of Hammurabi" for the protection of the weak against oppression by the strong and ordered that hostages be released on payment of a ransom.

The law of the **Hittites** also provided for a declaration of war and for peace to be concluded by treaty as well as for respect for the inhabitants of an enemy city which has capitulated. The war between Egypt and the Hittites in 1269 B.C., for instance, was thus terminated by a peace treaty.

In the 7th Century B.C., Cyrus I, king of the **Persians**, ordered the wounded Chaldeans to be treated like his own wounded soldiers.

The **Indian** epic Mahabharata (ca. 400 B.C.) and the Laws of Manu (after the turn to a new era) already contain provisions which prohibit the killing of an adversary who is no longer capable of fighting and surrenders, forbid the use of certain means of combat, such as poisoned or burning arrows, and provide for the protection of enemy property and prisoners of war.

The **Greeks**, in the wars between the Greek city-states which considered each other as having equal rights, but also in the war led by Alexander the Great against the Persians, respected life and personal dignity of war victims as a prime principle. They spared temples, embassies, priests and envoys of the opposite side and exchanged prisoners of war. For example, the poisoning of wells was proscribed in warfare. The **Romans** also accorded to their prisoners of war the right to life. However, the Greeks and Romans distinguished between those peoples whom they regarded as their cultural equals and those whom they considered to be barbarians.

108. The **Islam** also acknowledged essential requirements of humanity. In his Orders to his commanders, the first caliph, Abu Bakr (ca. 632) stipulated, for instance, the following: "The blood of women, children and old people shall not stain your victory. Do not destroy a palm-tree, nor burn houses and cornfields with fire, and do not cut any fruitful tree. You must not slay any flock or herds, save for your subsistence." In many cases, Islamic warfare was not less cruel than warfare by Christians. Under the reign of leaders like Sultan Saladin in the 12th Century, however, the laws of war were observed in an exemplary manner. Saladin ordered the wounded of both sides to be treated outside Jerusalem and allowed the members of the Order of St. John to discharge their hospital duties.

109. In the **Middle Ages**, feud and war were governed by strict principles. The principle of protecting women, children and the aged from hostilities originated from the church father **Augustine**. The enforcement of respect for holy places (Truce of God) created a right of refuge, i.e. a right of asylum, in churches, the observance of which was carefully monitored by the Church. The **knights** fought against each other according to certain (unwritten) rules. The rules of arms were variously enforced by arbiters of tribunals of knights. They applied only to knights, but not to the ordinary people. The enemy was frequently regarded as an equal combatant who was to be defeated in an honourable fight. It was deemed to be forbidden to start a war without prior notification.

110. The "Bushi-Do", the medieval code of honour of the warrior caste of **Japan**, included the rule that humanity must be exercised even in battle and towards prisoners of war. In the 17th Century the military tactician Sorai wrote that whoever kills a prisoner of war shall be guilty of manslaughter no matter whether such a prisoner had surrendered or fought "to the last arrow".

111. As a result of the decline of the knighthood, the invention of firearms and, above all, the creation of **armies consisting of mercenaries**, the morals of war coarsened again towards the end of the Middle Ages. Considerations of chivalry were unknown to these armies. Equally, they did not make any distinction between combatants and the civilian population. Mercenaries regarded war as trade which they followed for the purpose of private gain.

112. At the beginning of **modern times**, the **wars of religion**, and particularly the Thirty Years' War, once again entailed the most inhuman methods of warfare. The

cruelties of this war essentially contributed to the fact that **jurisprudence** considered the *ius in bello* and established a number of dictates which were to be observed by the belligerents. In his work "De iure belli ac pacis", which was published in 1625, Hugo **Grotius**, the father of modern international law, highlighted existing bounds to the conduct of war.

113. A fundamental change in the attitude of states to the conduct of war did not come until the advent of the age of **Enlightment** in the 18th Century. In 1772, **Jean-Jacques Rousseau** made the following Statement in his work "Le contrat social": "War then is a relation, not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens, but as soldiers; not as members of their country, but as its defenders ... The object of the war being the destruction of the hostile State, the other side has a right to kill its defenders, while they are bearing arms; but as soon as they lay them down and surrender, they become once more merely men, whose life no one has any right to take." From this doctrine, which was soon generally acknowledged, it follows that acts of hostility may only be directed against the armed forces of the adversary, but not against the civilian population which does not take part in these hostilities. These ideas also found expression in some international treaties concluded at that time.

Example: The treaty of friendship and commerce concluded between Prussia and the United States in 1785, whose most important authors are deemed to be King Frederic the Great and Benjamin Franklin, contained some exemplary and trendsetting provisions for the treatment of prisoners of war.

114. In the **19th Century**, after a few temporary setbacks, humanitarian ideas continued to gain ground. They led to remarkable initiatives of individual persons as well as to the conclusion of numerous international treaties. These treaties imposed restrictions on the means of warfare and the methods of their use.

115. Florence Nightingale, an Englishwoman, soothed the sufferings of the sick and wounded through her efforts as a nurse in the Crimean War (1853-1856). Later she made essential contributions towards the renovation of the civil and military nursing Systems of her homeland.

116. In 1861, **Francis Lieber** (1800 - 1872), a German-American Professor of political science and jurisprudence at Columbia University, N.Y., prepared, on the behalf of President Lincoln, a manual based on international law (Lieber Code), which, in 1863, was put into force the first time for the Union Army of the United States in the Civil War (1861).

117. The Genovese merchant **Henri Dunant** who, in the Italian War of Unification, had witnessed the plight of 40,000 Austrian, French and Italian soldiers wounded on the battlefield of **Solferino** (1859), published his impressions in his book "A Memory of Solferino" which became known all over the world. In 1863, the International Committee of the Red Cross (**ICRC**) was founded in Geneva on his initiative.

118. The 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field defined the legal status of medical personnel. It

stipulated that wounded enemy soldiers were to be collected and cared for just like members of the friendly armed forces. These rules were extended and improved by the **Geneva Convention of 1906**.

119. The 1868 Declaration of St. Petersburg was the first to introduce conventional limitations for the use of means of warfare. It codified the customary principle still valid today according to which the use of weapons to cause unnecessary suffering is prohibited.

120. The 1874 Brussels Declaration provided the first comprehensive code of the laws and customs of war. This declaration was further developed at the **Hague Peace Conferences of 1899 and 1907**. The most important result was achieved in the Hague Regulations Respecting the Laws and Customs of War on Land (HagueReg).

121. The World War I, with its new munitions and unprecedented extension of combat actions, demonstrated the limits of the existing law.

122. In 1923 the **Hague Rules of Aerial Warfare** (HRAW 1923) were formulated, together with rules concerning the control of radio communications in times of war. Although they were never adopted in legally binding form, they were influential in the development of the legal opinions.

123. In 1929 the "Convention for the Amelioration of the Condition of the **Wounded and Sick** in Armies in the Field" and the "Convention relative to the Treatment of **Prisoners of War**" were signed in Geneva. They developed the Geneva Convention of 1906 and part of the Hague Regulations of 1907.

124. The first **regulations on naval warfare** had already been developed in the Middle Ages. These regulations, which primarily embodied the right to search vessels and their cargo and the right of seizure, were subsequently changed several times. The treatment of ships belonging to neutral states lacked uniform regulations and was disputed. In the north, the Hanseatic League used its almost unrestricted naval supremacy to enforce embargos in times of war, which were not only detrimental to the adversary, but also made it impossible for neutral states to exchange goods with the latter. The concern of neutral states to also pursue their maritime trade activities in times of war could only prevail over the concern of the belligerents to effectively cut off the adversary from his ship-to-shore logistics if the powerful position of these neutral states was secured. In the 18th Century, this led to the formation of alliances between neutral states and to the employment of their naval forces to protect their right to free maritime trade. The **1856 Paris Declaration Respecting Maritime Law** (ParisDecl 1856) was the first agreement to accord the protection of neutral maritime trade more appreciation.

III. Legal Basis

125. The four 1949 Geneva Conventions have come to be internationally binding upon all States:

- **Geneva Convention I** for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (**GC I**);

- **Geneva Convention** n f or the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (**GC II**);
- **Geneva Convention HI** Relative to the Treatment of Prisoners of **War (GC III)**;
- **Geneva Convention IV** Relative to the Protection of Civilian Persons in Time of War (**GC IV**).

126. The 1907 Hague Conventions were not only binding upon the contracting parties, but have even been largely recognized as customary law. The documents relevant to international humanitarian law are:

- Hague Convention III Relative to the Opening of Hostilities (**HC III**);
- Hague Convention IV Respecting the Laws and Customs of War on Land (**HC IV**), and Annex to the Convention: Regulations Respecting the Laws and Customs of War on Land (**HagueReg**);
- Hague Convention V Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (**HC V**);
- Hague Convention VI Relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities (**HC VI**);
- Hague Convention VII Relating to the Conversion of Merchant Ships into Warships (**HC VII**);
- Hague Convention VIII Relative to the Laying of Automatic Submarine Contact Mines (**HC VIII**);
- Hague Convention IX Concerning Bombardment by Naval Forces in Times of War (**HC IX**);
- Hague Convention XI Relative to Certain Restrictions with Regard to the Exercise of the Right of Capture in Naval War (**HC XI**);
- Hague Convention XIII Concerning the Rights and Duties of Neutral Powers in Naval War (**HC XIII**).

127. The two 1977 **Protocols Additional to the Geneva Conventions** are designed to reaffirm and develop the rules embodied in the law of Geneva of 1949 and part of the law of The Hague of 1907:

- Protocol of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts - Protocol I - (**AP I**); and
- Protocol of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts - Protocol II - (**AP II**).

128. Other agreements refer to specific issues of warfare and the protection of certain legal assets. The most important documents are:

- **St. Petersburg Declaration** of 11 December 1868 Renouncing the Use, in Times of War, of Explosive Projectiles under 400 grammes Weight (**PetersburgDecl 1868**);
- Hague Declaration of 29 July 1899 Concerning Expanding Bullets, i.e. so-called **dumdum bullets (HagueDecl 1899)**;
- Geneva Protocol of 17 June 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of War are - **Geneva Protocol on Gas Warfare - (GasProt)**;

- London Proces-Verbal of 6 November 1936 Relating to the Rules of Submarine Warfare (LondonProt 1936);
- Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict - **Cultural Property Convention - (CultPropConv)**;
- Convention of 10 April 1972 on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction - **Biological Weapons Convention - (BWC)**;
- Convention of 18 May 1977 on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques - **ENMOD Convention - (ENMOD)**;
- Convention of 10 October 1980 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (**WeaponsConv**).

129. If an act of war is not expressly prohibited by international agreements or customary law, this does not necessarily mean that it is actually permissible. The so-called **Martens Clause**, developed by the Livonian professor Friedrich von Martens (1845-1909), delegate of Tsar Nicholas II at the Hague Peace Conferences, which has been included in the Preamble to the 1907 Hague Convention IV and reaffirmed in the 1977 Additional Protocol I as stated below, shall always be applicable:

"In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established **custom**, from the **principles of humanity** and from the dictates of **public conscience**." (Art. L para 2 AP I; see also Preamble para 4 AP II).

IV. Humanitarian Requirements and Military Necessity

130. In war, a belligerent may apply only that amount and kind of force necessary to defeat the enemy. Acts of war are only permissible if they are directed against military objectives, if they are not likely to cause unnecessary suffering and if they are not perfidious.

131. International humanitarian law in armed conflicts is a compromise between military and humanitarian requirements. Its rules comply with both military necessity and the dictates of humanity. Considerations of **military necessity** cannot, therefore, justify departing from the rules of humanitarian law in armed conflicts and to seek a military advantage using forbidden means.

132. Any exception to the usually prescribed behaviour for reasons of military necessity shall be permissible only if a rule of international humanitarian law expressly provides for such a possibility. The Hague Regulations Respecting the Laws and Customs of War on Land, for instance, prohibit the destruction or seizure of enemy property, „unless such destruction or seizure be imperatively demanded by the necessities of war" (Art. 23 lit. g HagueReg).

V. Binding Effect of International Law for the Soldier

133. The obligations of the Federal Republic of Germany under international humanitarian law are binding not only upon its government and its supreme military command but also upon every individual.

134. According to Article 25 of the Basic Law of the Federal Republic of Germany, the **general rules of international law** form part of the federal law. They take precedence over the law and entail rights and duties for all inhabitants of the Federal territory. These general rules include those provisions of international humanitarian law demanding a behaviour as it results from the principles of humanity and from the dictates of public conscience (Art. 1 para 2 AP I; Preamble para 4 AP II).

135. Apart from these general rules, the members of the Federal Armed Forces are obliged to comply and ensure compliance with all **treaties** of international humanitarian law binding upon the Federal Republic of Germany.

136. The four Geneva Conventions and the Protocols Additional to them oblige all contracting parties to disseminate the text of the conventions as widely as possible (Art. 47 GC I; Art. 48 GC II; Art. 127 GC III; Art. 144 GC IV; Art. 83 para 1 AP I; Art. 19 AP II). This shall particularly be accomplished through **programmes of instruction** for the armed forces and by encouraging the civilian population to study these conventions (Art. 83 para 1 AP I). Considering their responsibility in times of armed conflict, military and civilian authorities shall be fully acquainted with the text of the Conventions and the Protocols Additional to them (Art. 83 para 2 AP I). Regarding the Federal Armed Forces, § 33 para 2, of the Legal Status of Military Personnel Act (Soldatengesetz) stipulates for the soldiers of the Federal Armed Forces to be instructed concerning their rights and duties under international law in peace and war.

137. All soldiers of the Federal Armed Forces receive **instruction in international law**. It is conducted in the military units by the **superiors** and the **legal advisers** and at the armed forces schools by the **teachers of law**. The emphasis is put on presentations related to practice. Using examples, the soldier is given instruction in law to deal with the problems of and the issues in international law: This instruction has the purpose not only of disseminating knowledge, but also and primarily of developing an awareness of what is right and what is wrong. The soldier is taught to bring his conduct into line with this awareness in every situation.

138. The superior has to ensure that his subordinates are aware of their duties and rights under international law. He is obliged to prevent and, where necessary, to suppress or to report to competent authorities breaches of international law (Art. 87 AP I). He is supported in these tasks by the Legal Adviser (Art. 82 AP I).

139. It shall be a **natural duty** of a member of the Federal Armed Forces to follow the rules of international humanitarian law. With whatever means wars are being conducted, the soldier will always be obliged to respect and observe the rules of international law and take them as a basis for his actions. If, in a particular Situation, he should be in doubt as to what international law prescribes, he has to leave it to his superiors to decide. If this is not possible, the soldier will always be right to let himself be guided by the principles of humanity and to follow his conscience.

140. The soldier shall **avoid inhumanity even in combat** and refrain from using any force against defenceless persons and persons needing protection, and from committing

any acts of perfidy and brutality. The soldier shall only look upon his wounded Opponent as a fellowman in need. He shall respect the prisoner of war as an Opponent fighting for his native country. He shall treat the civilian population as he wants civilians, civilian property and cultural property of his own people to be treated by the adversary; the same applies to foreign property and cultural assets.

141. Superiors shall only issue **Orders** which are in conformity with international law (§10 para 4 of the Legal Status of Military Personnel Act). A superior who issues an order contrary to international law exposes not only himself but also the subordinate obeying to the risk of being prosecuted (Art. 86 AP I).

142. According to German law an order is **not binding if:**

- it violates the human dignity of the third party concerned or the recipient of the order;
- it is not of any use for service or
- in a definite Situation, the soldier cannot reasonably be expected to execute it.

Orders which are not binding need not be executed by the soldier (§11 para 1 of the Legal Status of Military Personnel Act).

143. Moreover, it is expressly **prohibited** to obey Orders whose execution would be a crime (§ 11 para 2 of the Legal Status of Military Personnel Act). Grave breaches of international humanitarian law (Art. 50 GC I, Art. 51GC II, Art. 130 GC III, Art. 147 GC IV, Art. 85 AP I) are penal offences in accordance with German national law.

144. A plea of superior Orders shall not be acknowledged if the subordinate realized or, according to the circumstances known to him, obviously could have realized that the action ordered was a crime (§ 5 of the Military Penal Code (Wehrstrafgesetz)).

145. Punishment for disobedience or refusal to obey shall be impossible if the order is not binding (§ 22 of the Military Penal Code).

VI. Tasks of the Legal Adviser

146. A lawyer who is qualified to exercise the functions of a judge is assigned to every military commander at the division level and above to perform the following tasks:

- to advise the commander (and his subordinate disciplinary superiors) in all matters pertinent to the military law and the international law;
- to examine military Orders and instructions on the basis of legal criteria;
- to participate in military exercises (in his wartime assignment) as a legal officer whose duties include giving advice on matters pertinent to international law; and
- to give legal instruction to soldiers of all ranks, particularly including the further education of officers.

147. The Legal Adviser has direct access to the **commander** to whom he is assigned. The commander may give directives to the Legal Adviser only if they are pertinent to general aspects of duty.

148. The Legal Adviser receives directives and instructions pertinent to legal matters only from his **Supervising Legal Adviser**, via the legal specialist chain of command.

149. The Legal Adviser additionally exercises the functions of a **Disciplinary Attorney for the Armed Forces**. In the case of a severe disciplinary offence the Legal Adviser conducts the investigation and brings the Charge before the military disciplinary court. Such a disciplinary offence may include a grave breach of international law which in addition to its criminal quality also has a disciplinary significance.

Chapter 2 Scope of Application of Humanitarian Law

I. Armed Conflicts

201. International humanitarian law is applicable in **international armed conflicts**. Thereby the international law of peace existing between the states concerned will largely be superseded by the rules of international humanitarian law. The international law of peace, however, will continue to be of great importance, particularly for the relationship between the parties to a conflict and the neutral states.

202. An international armed conflict exists if one party uses **force of arms** against another party. This shall also apply to all cases of total or partial military occupation, even if this occupation meets with no armed resistance (Art. 2 para 2 common to the Geneva Conventions). The use of military force by individual persons or groups of persons will not suffice. It is irrelevant whether the parties to the conflict consider themselves to be at war with each other and how they term this conflict.

203. The application of international humanitarian law is not dependent on a formal **declaration of war**. Formal declarations of war (Art. I HCIII) nowadays occur only occasionally.

Examples: In the Six-Day War of June 1967, Jordan, Kuwait, Sudan, Yemen, Algeria and Saudi Arabia formally declared war on Israel. In the Panama Conflict on 15 December 1989, five days before the Intervention of US troops, the then Panamanian Head of Government General Noriega declared that there was in fact a state of war between Panama and the USA.

204. Nor are formal declarations of war required for exercising the right of individual or collective self-defence. Art. 51 UN Charter prescribes that measures taken in the exercise of this right of self-defence shall be immediately reported to the UN Security Council.

205. Formal declarations of a state of armed conflict can be envisaged in alliance documents or national constitutional acts.

Example: In the Federal Republic of Germany the Federal President may issue adequate internationally valid declarations upon occurrence of a state of defence (Art. 115a paras 1 and 5 of the Basic Law).

206. It is irrelevant to the validity of international humanitarian law whether the states and governments involved in the conflict **recognize** each other as states (Art. 13 para 3 GC I; Art. 13 para 3 GC II; Art. 4 A para 3 GC III; Art. 43 para 1 AP I).

207. The application of humanitarian law in international armed conflicts does not depend on whether an armed conflict has been started in violation of the provisions of international law, e. g. the **Prohibition of aggressive war**. The victims of a military aggression contrary to international law are also bound by the rules of international humanitarian law.

208. The rules of international humanitarian law shall also be observed in peacekeeping operations and other military operations of the **United Nations**.

209. While a state of war exists, the **law of neutrality** shall be applied to the relations between the belligerent parties and states not participating in the conflict (Art. 2 HC III).

210. A non-international armed conflict is a confrontation between the existing governmental authority and groups of persons subordinate to this authority, which is carried out by force of arms within national territory and reaches the magnitude of an armed riot or a civil war.

211. In a non-international armed conflict each party shall be bound to apply, as a minimum, the **fundamental humanitarian provisions of international law** embodied in the four 1949 Geneva Conventions (common Art. 3), the 1954 Cultural Property Convention (Art. 19) and the 1977 Additional Protocol II. German soldiers like their Allies are required to comply with the rules of international humanitarian law in the conduct of military operations in all armed conflicts however such conflicts are characterized.

II. Acts of War

212. Acts of war are all measures of force that, using military instruments of power, one party implements against another party in an international armed conflict. These comprise combat actions designed to eliminate opposing armed forces and other military objectives.

213. The term "act of war" does not purport anything about the **lawfulness** of such an act. The admissibility of an act of war under international law shall be subject to examination in every single case.

214. Support for a third party's acts of war shall regularly be rated as an act of war of the supporting State if it is directly, i.e. closely related in space and time to measures harmful to the adversary. Cooperation in arms production or other activities to support the armed forces will not suffice.

III. Area of War

215. Military operations of the parties to a conflict shall only be carried out in the **area of war**. The area of war comprises:

- the territories of the parties to the conflict as defined by the national boundaries;
- the high sea (including the airspace above and the sea floor) ; and
- exclusive economic zones.

216. The **national territory** includes:

- land territory;
- rivers and landlocked lakes;
- national maritime waters and territorial waters; and
- the airspace above these territories.

217. The dividing line between the airspace of the national territory of a state and **outer space** shall be drawn where, due to the existing physical conditions, the density of the air is small enough to permit the employment of satellites. According to the present state of the art, the minimum flight altitude of satellites ranges between 80 and 110 km above ground.

218. Although they belong to the national territories of the parties to the conflict, **demilitarized zones** (Art. 60 AP I), in particular hospital and safety zones (Art. 23 GC I; Art. 14 GC IV) and neutralized zones (Art. 15 GC IV), are excluded from the area of war. Non-defended localities (Art. 25 HagueReg; Art. 59 AP I), however, are part of the area of war, but enjoy special protection (see Section 458 below).

219. Military operations shall not be carried out in the national **territories of neutral** or other **states** not parties to the conflict and in **neutralized zones**. These are areas in which, according to contractual agreements, no military operations shall take place, even if the states whose area of jurisdiction they belong to is a party to the conflict. There are, for instance, binding agreements not to execute any military operations in Spitsbergen, in the Area of the Aland Islands, in the Suez Canal, in the Panama Canal, and in the Antarctic regions.

220. The zones in which military operations actually take place shall be designated as the **area of operations**.

IV. Termination of Hostilities

221. Hostilities may be terminated temporarily or permanently. Even a definite cessation of hostilities does not alter the fact that there is a state of war. This state of war will be ended only by a **conclusion of peace** unless it has already been expressly terminated.

Example: After World War II there was no peace treaty with Germany. The state of war existing with Germany was, however, formally declared terminated by France (9 July 1951), Great Britain (9 July 1951), the USA (24 October 1951), and the USSR (25 January 1955). Similar declarations had been notified by Germany's other former adversaries.

1. Parlementaires and Protecting Powers

222. A cessation of hostilities is regularly preceded by **negotiations** with the adversary. In the area of operations the parties to the conflict frequently use parlementaires for this purpose.

223. **Parlementaires** are persons authorized by one party to the conflict to enter into negotiations with the adversary. Parlementaires and the persons accompanying them, e.g. drivers and Interpreters, have a right to inviolability (Art. 32 HagueReg). They make themselves known by a white flag.

224. When entering the territory of the adversary, parlementaires and the persons accompanying them shall not be taken prisoner or detained. The principle of inviolability shall apply until they have safely returned to friendly territory. It does not require the adverse party to completely cease fire in a sector where a parlementaire arrives.

225. The parlementaire is usually but not necessarily an **officer**. His nationality is irrelevant. Defectors or members of friendly forces taken prisoner by the adversary have no Status as parlementaires nor as persons accompanying parlementaires and hence no right of inviolability. They can be detained if the tactical Situation so requires.

226. The commander to whom a parlementaire is sent is not in all cases obliged to receive him (Art. 33 para 1 HagueReg).

227. It is permissible to take all necessary precautions (e. g. blindfolding) to prevent the parlementaire from taking advantage of his mission to obtain information (Art. 33 para 2 HagueReg).

228. A parlementaire may **temporarily be detained** if he has accidentally acquired information the disclosure of which to the adversary would jeopardize the success of a current or impending Operation of the friendly armed forces. In this case, the parlementaire may be detained until the Operation has been completed. In the meantime, he shall be treated with all respect appropriate to his position and at least like a prisoner of war.

229. The parlementaire loses his right of **inviolability** if it is proved in an incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason (Art. 34 HagueReg). Such a case of **misuse**, which implies the right to detain the parlementaire (Art. 33 para 3 HagueReg), exists if the latter has committed acts contrary to international law and to the detriment of the adversary during his mission. This includes particularly the following activities:

- gathering intelligence beyond the observations he inevitably makes when accomplishing his mission;
- acts of Sabotage;
- inducing soldiers of the adverse party to collaborate in collecting intelligence;
- instigating soldiers of the adverse party to refuse to do their duty;
- encouraging soldiers of the adverse party to desert; and
- organizing espionage in the territory of the adverse party.

230. Misusing the flag of truce constitutes perfidy and hence a violation of international law (Art. 23 lit. f HagueReg; Art. 37 para 1 lit. a, 38 para 1 AP I). The flag of truce is being misused, for instance, if soldiers approach an enemy position under the protection of the flag of truce in order to attack.

231. Apart from detaching parlementaires, the parties to a conflict may also communicate with each other through the intermediary of **Protecting Powers**. Protecting Powers are neutral or other states not parties to the conflict which safeguard the rights and interests of a party to the conflict and those of its nationals vis-a-vis an adverse party to the conflict (Art. 2 lit. c AP I). Particularly the International Committee of the Red Cross may act as a so-called **substitute** (Art. 5 para 4 AP I), if the parties to the conflict cannot agree upon the designation of a Protecting Power.

2. Cease-fire and Armistice

232. An armistice agreement is characterized by the intention to provide an opportunity for making preparations for the termination of an armed conflict. Its aim is to terminate hostilities for good. That is what distinguishes an armistice from a cease-fire. An armistice may be local (Art. 37 HagueReg). As a matter of principle, however, an

armistice agreement shall be designed to widely suspend military operations between the parties to the conflict and to pave the way for peace negotiations.

Example: The armistice of Rethondes in 1918 was a prerequisite for starting negotiations which finally led to the 1919 Treaty of Versailles.

233. A cease-fire is defined as a temporary Interruption of military operations which is limited to a specific area and will normally be agreed upon between the local commanders. It shall regularly serve humanitarian purposes, in particular searching for and collecting the wounded and the shipwrecked, rendering first aid to these persons, and removing civilians (Art. 15 GC I; Art. 18 GC II; Art. 17 GC W). The regulations governing armistices (Art. 36 - 41 HagueReg) shall be applied analogously.

234. If the parties to the conflict have not defined the **duration** of an armistice, it shall, as a matter of principle, be considered a valid assumption that the armistice is designed to be the transition to a definite cessation of hostilities. The ban on the use of force embodied in the Charter of the United Nations shall also be observed during this period of transition. In contrast to the provisions of the Hague Regulations Respecting the Laws and Customs of War on Land (Art. 36 HagueReg), the parties to a conflict may not, at any time, resume operations after the conclusion of an armistice unless the exercise of the right to self-defence makes it absolutely necessary.

235. Any serious **violation of a cease-fire** or an armistice may give the other party a cause to recommence hostilities immediately. A denunciation of the armistice treaty (Art. 40 HagueReg) will be necessary only if the military Situation so permits.

236. A violation of the terms of the armistice by **individuals** acting on their own initiative does not entitle the injured party to denounce the agreement but only to demand the punishment of the off enders and compensation for the losses sustained (Art. 41 HagueReg).

237. The terms of the armistice treaty shall strictly be observed by the parties to a conflict. It is not permissible to carry out any military operations giving an advantage over the adversary. To what extent this shall also apply to other actions taken during the armistice depends on the contents of the agreements made. If these agreements do not contain any further terms (Art. 39 HagueReg), activities such as entrenching, ammunition resupply, and repositioning of reinforcements, shall be permissible. During an armistice it is, however, definitely forbidden to move the forces in contact with the enemy forward or to employ reconnaissance patrols.

238. The area of application of a limited armistice shall be defined as precisely as possible. If, for instance, wounded persons are to be recovered it must be clear if and up to what line bombardments further to the rear remain permissible. Sometimes it will also be necessary to coordinate the utilization of the airspace and the passage of ships.

239. An armistice must be **notified** in an unmistakable form and in good time. Hostilities are to be suspended immediately after the notification, or on the date fixed (Art. 38 HagueReg).

240. The terms of an armistice shall not deviate from the provisions of the Geneva Conventions to the detriment of protected persons (Art. 6 common to GC I-III; Art. 7 GC IV).

3. Capitulation

241. A **capitulation** is the unilateral or mutually agreed termination of hostilities. It must take into account the rules of military honour (Art. 35 para 1 HagueReg).

242. It may be a **total capitulation** applying to all armed forces of a state, or a **partial capitulation** limited to specific units.

243. Every commander may declare or accept a capitulation only **for his particular area of command**. The capitulation and its acceptance are binding upon the states involved in the conflict. Every state may, however, call a capitulating commander to account if he has violated his duties, e.g. offended against Orders.

244. A capitulation must be faithfully observed by the parties to the conflict (Art. 35 para 2 HagueReg). Persons who infract the terms of the capitulation may be called to account by the adversary.

4. Conclusion of Peace

245. While a cease-fire, an armistice, and a capitulation only lead to a Suspension or temporary cessation of hostilities, a conclusion of peace results in the **termination of the state of armed conflict**.

246. A conclusion of peace is generally brought about by a **peace treaty**. The application of humanitarian law between the parties to a conflict (save a few provisions which, for instance, relate to prisoners of war not yet repatriated) will thereupon be ended.

247. A peace treaty may only be concluded by Heads of States or explicitly authorized representatives of the government of a State.

248. A peace treaty regularly includes provisions on the following specific areas:

- termination of all hostilities;
- reestablishment of peaceful relations to the adversary;
- settlement of disputes which led to the outbreak of the armed conflict;
- resolution of territorial issues;
- arms restrictions or disarmament duties;
- repatriation of prisoners of war; and
- compensations for war damages.

249. Nowadays, armed conflicts are often terminated merely by a cease-fire without any peace treaty, or by mere cessation of hostilities.

Example: In 1953 the Korean War was terminated by the armistice of Panmunjon, with no peace treaty having been concluded.

Chapter 3 Combatants and Non-Combatants

301. The armed forces of a party to a conflict consist of combatants and noncombatants. **Combatants** are persons who may take a direct part in the hostilities (Art. 3 HagueReg; Art. 43 para 2 AP I), i.e. participate in the use of a weapon or a weapon-system in an indispensable function. The other members of the armed forces are regarded as **non-combatants**. The Status of the various groups of service-personnel will be determined by national decision in accordance with the aforementioned international legal principles.

302. Whereas combatants may not be punished for the mere fact of fighting, persons, who take a direct part in the hostilities without being entitled to do so (**unlawful combatants**) have to face penal consequences. They do not have the right to the status of a prisoner of war. Unlawful combatants do, however, have a legitimate claim to certain fundamental guarantees (Art. 75 AP I), including the right to humane treatment and a regular judicial procedure.

303. In particular, **mercenaries** shall be regarded as unlawful combatants. A mercenary is any person who is motivated to take a direct part in the hostilities by the desire for private gain without being a national or a member of the armed forces of a party to the conflict (Art. 47 AP I). In addition, the provisions of the **1989 Mercenary Convention** apply.

I. Combatants

304. **The armed forces** of a party to a conflict consist of all its organized armed forces, groups and units. They also include militias and voluntary corps integrated in the armed forces. The armed forces shall be:

- under a command responsible to that party for the conduct of its subordinates, and
- subject to an internal disciplinary System which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict (Art. 43 para 1 AP I).

305. It shall be left to the discretion of the individual states whether they want to admit **women** to their armed forces. Their combatant or non-combatant status is determined by the same principles as with male members of armed forces.

306. The parties to the conflict shall take all feasible measures in order that **children** who have not attained the age of fifteen years do not take direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces (Art. 77 para 2 AP I; see also Art. 38 of the 1989 Convention on the Rights of the Child).

307. Whenever a party to a conflict incorporates a paramilitary or armed **law enforcement agency** into its armed forces it shall notify the other parties to the conflict (Art. 43 para 3 AP I). In the Federal Republic of Germany the Federal Border Guard Commands including their Border Guard formations and units as well as the Federal Border Guard School shall become part of the armed forces upon the outbreak of an armed conflict. They shall, however, remain subordinate to the Federal Minister of the Interior and shall only be employed for their police functions and for their own defence (§ 64 of the Federal Border Guard Act).

308. Combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military Operation preparatory to an attack (Art. 44 para 3 AP I). In accordance with the generally agreed practice of states, members of regular armed forces shall **wear their uniform** (Art. 44 para 7 AP I). Combatants who are not members of uniformed armed forces nevertheless wear a permanent **distinctive sign** visible from a distance and carry their arms openly.

309. Recognizing that there are situations in occupied territories and in wars of national liberation where, owing to the nature of the hostilities, a combatant (especially a **guerillero**) cannot so distinguish himself from the civilian population, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:

- during each military engagement, and
- during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate (Art. 44 para 3, sentence 2 AP I).

The term "military deployment" refers to any movement towards the point from which an attack shall be launched.

310. The inhabitants of a territory which has not yet been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to form themselves into armed units (so-called **levee en masse**) shall be combatants. They shall carry arms openly and respect the laws and customs of war in their military operations (Art. 2 HagueReg; Art. 4 A N° 6 GC III).

311. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant (Art. 44 para 2 AP I).

312. Combatants who fall into the hands of the adversary shall be **prisoners of war** (Art. 3, sentence 2 HagueReg; Art. 44 para 1 AP I). They shall not be called to account for their participation in lawful military operations. Violations of international law committed by them may be prosecuted under the laws of the detaining power and international law (Art. 82 ff GC III).

II. Non-Combatants

313. Persons who are members of the armed forces but, by virtue of national regulations, **do not have any combat mission**, such as judges, government officials and blue-collar workers, are non-combatants. If they fall into the power of the adversary, they shall be **prisoners of war** just as combatants will (Art. 4 A N° I GC III).

314. Members of the medical Service and religious personnel (chaplains) attached to the armed forces are also non-combatants. Medical personnel and chaplains who have fallen into the hands of the adversary shall be retained only in so far as it is necessary for assisting prisoners of war. Although they shall not be deemed prisoners of war, they shall be granted the same legal protection (Art. 28, 30 GC I; Art. 36, 37 GC II; Art. 33 GC III).

315. Non-combatants, too, have the right to defend themselves or others against attacks contrary to international law. Medical personnel and chaplains are allowed to bear and use small arms (pistols, rifles or submachine guns) for this purpose (Art. 22 N° I GC I; Art. 35 N° 1 GC II; Art. 13 para 2 lit. a AP I). This presupposes a national authorization for the handling of fire arms and ammunition, which has generally been given to the medical personnel of the Federal Armed Forces (see § 2 of the General Administrative Directive of FMOD Relating to the Law on the Purchase, Possession, and Carrying of Fire Arms [Allgemeine Verwaltungsvorschrift des BMVg zum Waffengesetz, VMBI. 1989, S. 174]).

316. Should any doubt arise as to whether a person who has taken part in hostilities and fallen into the hands of the adversary shall be deemed a combatant or non-combatant, this person shall continue to be treated as a prisoner of war until such time as his Status has been determined by a competent tribunal (Art. 5 para 2 GC III; Art. 45 para 1 AP I).

317. A captive shall not be prosecuted for his participation in hostilities unless he has definitely been identified as a unlawful combatant.

318. No sentence may be passed and no penalty may be executed except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure (Art. 84 GC III; Art. 75 para 4 API).

III. Persons Accompanying the Armed Forces

319. Persons who accompany the armed forces without actually being members thereof, such as war correspondents, members of labour units or of Services responsible for the welfare of the soldiers, shall not be deemed combatants. When fallen into the power of the adversary, they shall become prisoners of war (Art. 4 A N° 4 GC III).

IV. Special Command Forces

320. It shall be a lawful act of combatants recognizable as such (by their uniform, insignia, etc.) to participate in raids, acts of Sabotage, and other attacks carried out by **special command forces** in the enemy's hinterland or in forward areas. Combatants who commit such acts wearing plain clothes or the uniform of the adversary can be punished. They shall nevertheless have the right to a regular judicial procedure (Art. 82 ff GC III; Art. 75 para 4 AP I).

V. Spies

321. **Spies** are persons who clandestinely or on false pretenses, i.e. not wearing the uniform of their armed forces, gather information in the territory controlled by the adversary. Even if they are members of their armed forces, they do not have the right to the status of prisoner of war. Persons who fall into the hands of the adversary while engaging in espionage shall be liable to punishment (Art. 29 -31 HagueReg).

322. Even if taken while engaging in espionage, a spy shall not be punished without prior conviction pursuant to regular judicial proceedings (Art. 30 HagueReg; Art. 75 para 4 AP I).

323. A spy who, after rejoining his own or allied armed forces upon completion of his mission, is subsequently captured by the adversary, shall be treated as a prisoner of war and incur no responsibility for his previous acts of espionage (Art. 31 HagueReg; Art. 46 para 4 AP I).

324. Combatants, such as reconnaissance patrols, who, marked as such, reconnoitre the adversary's area of operations shall not be considered as being engaged in espionage (Art. 29 para 2 HagueReg; Art. 46 para 2 AP I).

VI. Peculiarities of Aerial and Naval Warfare

325. Unlike military ground vehicles, manned military aircraft and ships are required to bear external **marks** indicating their nationality and military character. Ununiformed members of armed forces who take part in hostilities using correctly marked military aircraft or ships shall remain combatants. When fallen into the hands of the adversary, they shall prove their military status by an identity card.

326. No aircraft other than **military aircraft** of the parties to an international armed conflict shall engage in hostilities in any form (Art. 16 para 1 HRAW 1923).

327. A military aircraft shall be under the **command** of a duly commissioned soldier. The crew must be subject to military discipline (Art. 14 HRAW 1923).

328. No private aircraft, when outside the jurisdiction of its own country, shall be armed in international armed conflict (Art. 16 para 3 HRAW 1923).

329. Public non-military aircraft shall be treated as private aircraft (Art. 5 and 6 HRAW 1923). Public aircraft employed for jurisdictional purposes (customs, police) shall also carry papers and bear marks evidencing their non-military character (Art. 4 HRAW 1923). Public aircraft shall be subject to condemnation. Private aircraft shall be made the subject of prize proceedings (Art. 32 HRAW 1923).

330. Special provisions relating to **warships** are contained in Chapter 10 (Sections 1001 ff).

Chapter 4 Methods and Means of Combat

I. General Rules

401. The right of the parties to an armed conflict to **choose means** (Art. 22 HagueReg) and **methods** (Art. 35 para 1 AP I) of **warfare is not unlimited**. It is particularly prohibited to employ means or methods which are intended or of a nature:

- to cause superfluous injury or **unnecessary suffering** (Art. 23 lit. e HagueReg; Art. 35 para 2 AP I),
- to cause widespread, long-term and severe damage to the natural **environment** (Art. 35 para 3, 55 para 1 AP I; ENMOD); or
- to injure military objectives, civilians, or civilian objects without distinction (Art. 51 paras 4 and 5 AP I).

402. "Superfluous injury" or "unnecessary suffering" is caused by the use of means and methods of combat whose presumable harm would definitely be excessive in relation to the lawful military advantage intended.

403. "Widespread", "long-term" and "severe" damage to the natural environment is a major interference with human life or natural resources which considerably exceeds the battlefield damage to be regularly expected in a war. Damage to the natural environment by means of warfare (Art. 35 para 3, 55 para 1 AP I) and severe manipulation of the environment as a weapon (ENMOD) are likewise prohibited.

404. The prohibition of indiscriminate warfare implies that the civilian population as such as well as individual civilians shall not be the object of attack and that they shall be spared as far as possible (Art. 51 AP I).

405. In the study, development, acquisition or adoption of **new means or methods of combat** it shall be determined whether these means and methods are compatible with the rules of international law (Art. 36 AP I). The agency responsible for this assessment in the Federal Armed Forces is FMOD – VR II 3 (International Legal Affairs Directorate).

II. Means of Combat

1. Certain Conventional Weapons

406. In the 1868 **St. Petersburg Declaration** the use of **explosive and incendiary projectiles** under 400 **grammes** was prohibited, since these projectiles were deemed to cause disproportionately severe injury to soldiers, which is not necessary for putting them out of action. This prohibition is only of limited importance now, since it is reduced by customary law to the use of explosive and incendiary projectiles of a weight significantly lower than 400 grammes which can disable only the individual directly concerned but not any other persons. 20 mm high-explosive grenades and projectiles of a similar calibre are not prohibited.

407. It is prohibited to use bullets which expand or flatten easily in the human body (e.g. **dum-dum bullets**) (HagueDecl 1899). This applies also to the use of **shotguns**, since shot causes similar suffering unjustified from the military point of view. It is also prohibited to use projectiles of a nature:

- to burst or deform while penetrating the human body;
- to tumble early in the human body; or
- to cause shock waves leading to extensive tissue damage or even a lethal shock (Art. 35 para 2, 51 para 4 lit. c AP I; Art. 23 lit. e HagueReg).

408. It is also prohibited to use any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays (WeaponsConv, Prot. 1).

409. The use of **mines** and other devices on land is, on principle, permissible (WeaponsConv, Prot 2, Art. 1). According to this understanding:

- "mine" means any device placed - or remotely delivered - under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle (WeaponsConv, Prot. 2, Art. 2 N° 1);
- "other devices" means manually emplaced munitions or devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time (WeaponsConv, Prot. 2, Art. 2 N° 3).

410. It is prohibited to direct the above-mentioned munitions -neither by way of **reprisals - against the civilian population** as such or against individual civilians (WeaponsConv, Prot. 2, Art. 3 para 2). Any **indiscriminate use** of these weapons is **prohibited** (WeaponsConv, Prot. 2, Art. 3 para 3).

411. All feasible precautions shall be taken to protect **civilians** also from unintended effects of these munitions (WeaponsConv, Prot. 2, Art. 3 para 4).

412. Mines and other devices shall not be used in any built-up area or other area predominantly inhabited by civilians in which combat between ground forces is neither taking place nor imminent (WeaponsConv, Prot 2, Art. 4 para 2). Exceptions are permissible if:

- these munitions are placed on or in the close vicinity of a military objective;
- or
- measures are taken to protect civilians from their effects, for example, the posting of warning signs, the posting of sentries, the Provision of fences or the issue of warnings (WeaponsConv, Prot. 2, Art. 4 para 2 lit. a and b).

413. The use of **remotely delivered mines** is prohibited unless such mines are only used within an area which is itself a military objective or which contains military objectives (WeaponsConv, Prot. 2, Art. 5 para 1). After emplacement their location shall be accurately recorded (WeaponsConv, Prot. 2, Art. 5 para 1 lit. a). If a mine does no longer serve its military purpose, a self-actuating mechanism shall ensure its destruction or neutralization within a reasonable lapse of time (WeaponsConv, Prot. 2, Art. 5 para 1 lit. b).

414. Effective advance warning shall be given of any delivery or dropping of remotely delivered mines which may affect the civilian population, unless circumstances do not permit (WeaponsConv, Prot. 2, Art. 5 para 2).

415. It is prohibited in all circumstances to use:

- a) any **booby-trap** in the form of an apparently harmless portable object (WeaponsConv, Prot. 2, Art. 2 para 2, 6 para 1 lit. a);
- b) booby-traps which are in any way attached to or associated with:
 - internationally recognized protective emblems, signs or signals,

- sick, wounded or dead persons,
- burial or cremation sites or graves,
- medical facilities, medical transportation, medical equipment or medical supplies,
- food or drink,
- objects of a religious nature,
- cultural objects,
- children's toys and all other objects related to children,
- animals or their carcasses (WeaponsConv, Prot. 2, Art. 6 para 1 lit. b);

or

c) **booby-traps** designed to cause superfluous injury or unnecessary suffering (WeaponsConv, Prot. 2, Art. 6 para 2).

416. This prohibition does not apply to fixed demolition appliances and portable demolition devices lacking any harmless appearance.

417. The location of minefields, mines and booby-traps shall be recorded: The parties to the conflict shall retain these records and, whenever possible, by mutual agreement, provide for their publication (WeaponsConv, Prot. 2, Art. 7). In the Federal Armed Forces the territorial command authorities are responsible for the **mining documentation**.

418. When a United Nations' force or mission performs functions of peacekeeping, observation or similar functions, each party to the conflict shall, if requested:

- render harmless all mines or booby-traps;
- take such measures as may be necessary to protect the force or mission while carrying out its duties; and
- make available to the head of the force or mission all pertinent information in the party's possession (WeaponsConv, Prot. 2, Art. 8 para 1 lit. a-c).

The protection of the force or mission shall always be ensured (WeaponsConv, Prot. 2, Art. 8 para 2).

419. After the cessation of an international armed conflict, the parties to the conflict shall, both among themselves and, where appropriate, with other states or international organizations, exchange **information and technical assistance** necessary to remove or otherwise render ineffective minefields, mines and booby-traps (WeaponsConv, Prot. 2, Art. 9).

420. Incendiary weapons are weapons or munition which are primarily designed to set fire to materials or objects or to cause burn injury to persons through the action of flame, heat, or a combination thereof (e.g. flame throwers, fougasses - these are hand-held incendiary weapons containing liquid incendiaries -, Shells, rockets, grenades, mines, bombs and other Containers of incendiary substances (WeaponsConv, Prot. 3, Art. I paras 1 and I lit. a).

421. Incendiary weapons do not include:

- munitions which may have incidental incendiary effects (e.g. illuminants, tracers, smoke or signaling Systems) (WeaponsConv, Prot. 3, Art. I para 1 lit. b i); or

- munitions designed to combine penetration, blast or fragmentation effects with an additional incendiary effect (e.g. armour-piercing projectiles, fragmentation Shells, explosive bombs, etc.). The incendiary effect shall only be used against military objectives (WeaponsConv, Prot. 3, Art. I para 1 lit. b ii).

422. When incendiary weapons are used, precautions shall be taken which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations (WeaponsConv, Prot. 3, Art. I para 5).

423. The **civilian population** as such, individual civilians and civilian objects shall be granted special protection. They shall never be made the object of attack by incendiary weapons (WeaponsConv, Prot. 3, Art. 2 para 1).

424. It is prohibited in all circumstances to make any military objective located within a concentration of civilians the object of attack by incendiary weapons (WeaponsConv, Prot. 3, Art. 2 paras 2 and 3).

425. It is further prohibited to use incendiary weapons against **forests** or other kinds of plant cover except when such natural elements are used by the adversary to cover, conceal or Camouflage a military objective, or are themselves military objectives (WeaponsConv, Prot. 3, Art. 2 para 4).

426. It is prohibited to employ **poison and poisoned weapons** (Art. 23 lit. a HagueReg).

2. NBC Weapons

a. Nuclear Weapons

427. Numerous multilateral und bilateral treaties already exist which are designed to prohibit the proliferation of **nuclear** weapons, to restrict the testing of nuclear weapons, to prohibit the stationing of nuclear weapons, to provide for nuclear weapon free zones, to limit the scope of nuclear armament, and to prevent the outbreak of a nuclear war:

- Treaty on the Non-Proliferation of nuclear weapons of 1 July 1968;
- Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water of 5 August 1963;
- Outer Space Treaty of 27 January 1967;
- Seabed Treaty of 11 February 1971;
- Treaty on the Prohibition of Nuclear Weapons in Latin America of 14 February 1967;
- Treaty on the Establishment of a Nuclear Weapon Free Zone in the Southern Pacific Area of 6 August 1985;
- Treaty on the Elimination of American and Soviet Intermediate-Range and Shorter-Range Missiles of 8 December 1987: and
- Treaty on the Reduction and Limitation of American and Soviet Strategic Offensive Arms of 31 July 1991 with Protocol of 23 May 1992.

428. The international law in force, however, does not contain any explicit provisions definitely prohibiting the use of nuclear weapons, nor can any such prohibition be derived from current contractual and customary law.

429. International humanitarian law, however, sets the same **general bounds** to the use of nuclear weapons as are set to the use of conventional weapons: it is prohibited to make the civilian population as such the object of attack. A distinction shall at any time be made between persons who take part in hostilities and members of the civilian population, who are to be granted maximum protection.

430. The new rules introduced by Additional Protocol I have been established with the intention of being applied to conventional weapons irrespective of other rules of international law applicable to other types of weapons. They do not influence, regulate or prohibit the use of nuclear weapons.

431. Under Article I of Protocol No. III to the Brussels Treaty (WEU Treaty) of 23 October 1954 the **Federal Republic of Germany** undertakes **not to manufacture** in its territory **nuclear weapons**. Under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 the Federal Republic of Germany further undertakes not to **receive the transfer** from any transferer whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise test nuclear weapons or other nuclear explosive devices; and not to grant or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices. These commitments were confirmed under Article 3 of the Treaty on the Final Settlement with respect to Germany (2+4 Treaty) of 12 September 1990. Under the Law on Arms Control - revised on 5 November 1990 - any contravention to these provisions shall be liable to penalty, except for nuclear weapons under the control of NATO Member States or nuclear weapons developed or produced on their request.

432. Nuclear weapons continue to fulfill an essential role in the overall strategy of NATO to prevent war. They ensure that there are no circumstances in which nuclear retaliation in response to military action might be discounted.

433. The threat and use of nuclear weapons are subject to **political control**, which shall observe the principles of proportionality, limiting damage on the territory of the aggressor and limiting the risk of damage on friendly territory.

b. Chemical Weapons

434. The use of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or similar devices in war is prohibited (GasProt; Art. 23 lit. a HagueReg). This prohibition also applies to the toxic contamination of water supply installations and foodstuffs (Art. 54 para 2 AP I; Art. 14 AP II) and the use of irritant agents for military purposes. This prohibition does not refer to unintentional and insignificant poisonous secondary effects of otherwise permissible munitions.

435. The scope of this prohibition is restricted by the fact that, when signing the Geneva Gas Protocol, numerous states declared that this Protocol should cease to be binding in regard to any enemy state whose armed forces fail to respect the prohibition embodied in the Protocol.

436. The Convention on Chemical Weapons prepared by the Conference on Disarmament of the United Nations includes comprehensive prohibitions of any development, production, Stockpiling, transfer and use of chemical weapons as well as provisions on international control of compliance with these provisions. This Convention is not yet in force.

437. Under Article I of Protocol No. III to the WEU Treaty the **Federal Republic of Germany undertakes not to manufacture** in its territory **chemical weapons**. On signing the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction on 10 April 1972, the Federal Republic of Germany further declared that, in accordance with its attitude, it would neither develop nor acquire or stockpile under its own control chemical weapons whose manufacture it has already abstained from. This commitment was confirmed under Article 3 of the Treaty on the Final Settlement with respect to Germany (2+4 Treaty) of 12 September 1990. Under the Law on Arms Control, revised on 5 November 1990, any contravention to these provisions shall be liable to penalty.

c. Bacteriological (Biological) and Toxin Weapons

438. The use of bacteriological weapons is prohibited (GasProt).

439. The development, manufacture, acquisition and Stockpiling of bacteriological (biological) and toxin weapons is prohibited (B WC). These prohibitions shall apply both to biotechnological and synthetic procedures serving other but peaceful purposes. They also include genetic engineering procedures and microorganisms altered through genetic engineering.

440. Under Article I of Protocol No. III to the WEU Treaty the Federal Republic of Germany undertakes not to manufacture in its territory biological weapons. This commitment was confirmed under Article 3 of the Treaty on the Final Settlement with respect to Germany (2+4 Treaty) of 12 September 1990. Under the Law of Arms Control, revised on 5 November 1990, any contravention to these provisions shall be liable to penalty.

III. Methods of Combat

1. Military Objectives

441. Attacks, i.e. any acts of violence against the adversary, whether in offence or in defence (Art. 49 para 1 AP I), shall be limited exclusively to military objectives.

442. Military objectives are armed forces - including paratroops in descent (Art. 42 para 3 AP I) but not crew members parachuting from an aircraft in distress (Art. 42 para 1 AP I) - and objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offer a definite military advantage (Art. 52 para 2 AP I).

443. Military objectives are particularly:

- armed forces;
- military aircraft and warships;

- buildings and objects for combat service support; and
- economic objectives which make an effective contribution to military action (transport facilities, industrial plants, etc.).

444. The term "**military advantage**" refers to the advantage which can be expected of an attack as a whole and not only of isolated or specific parts of the attack.

445. Civilians present in military objectives are not protected against attacks directed at these objectives; the presence of civilian workers in an arms production plant, for instance, will not prevent opposing armed forces from attacking this military objective.

446. An objective which is normally dedicated to civil purposes shall, in **case of doubt**, be assumed not to be used in a way to make an effective contribution to military action (Art. 52 para 3 AP I), and therefore be treated as a civilian object.

447. Attacks against military objectives shall be conducted with maximum precautions **to protect the civilian population** (Art. 51 para 1 AP I; Art. 13 AP II). Attacks which may affect the civilian population shall be preceded by an **effective warning**, unless circumstances do not permit (Art. 26 HagueReg; Art. 57 para 2 lit. c AP I). These rules shall also apply to attacks by missiles and remotely controlled weapons.

448. In the aerial war zone enemy military **aircraft** may be attacked without warning in order to make them crash or land. Downed aircraft shall become spoils of war. The members of the crew and the passengers – save unlawful combatants and mercenaries - shall become prisoners of war (Art. 36 para 1 HRAW 1923).

449. Other enemy public aircraft shall not be attacked without **warning**. They may, however, by force of arms, be compelled to land (Art. 34 HRAW 1923). Besides, these aircraft may be attacked if they

- are escorted by enemy military aircraft,
- fly through an aerial zone interdicted by the adversary; or
- take part in hostilities.

450. It is prohibited to order that there shall be no survivors. It is also prohibited to threaten an adversary therewith or to conduct military operations on this basis (Art. 40 AP I; Art. 23 lit. d HagueReg).

2. Protection of Civilian Objects

451. It is prohibited to fire at or bombard - whether for terrorizing them or for any other purpose - members of the **civilian population** not taking part in hostilities (Art. 51 para 2 AP I), and to make civilian objects the object of attack. Such attacks are also prohibited by way of **reprisal** (Art. 51 para 6, Art. 52 para 1, 53 lit. c, 54 para 4, 55 para 2, 56 para 4 AP I).

452. Defended localities or buildings may be fired at or bombarded in order to:

- break down active resistance (conquering fire, bombardment);
- eliminate military objectives located therein (destructive fire, bombardment).

In both cases, the fire or bombardment shall be locally limited to the actual resistance and the military objectives.

453. Effective advance **warning** shall be given of any bombardment, unless circumstances do not permit (Art. 57 para 2 lit. c AP I; Art. 26 HagueReg).

454. It is prohibited in any circumstances to fire at or **bombard** civilian and military objects without **distinction** (Art. 51 paras 4 and 5 AP I; Art. 24 para 3 HRAW 1923).

455. Indiscriminate firing and bombardment means attacks:

- which are not directed at a specific military objective (Art. 51 para 4 lit. a AP I);
- which cannot be directed at a specific military objective (Art. 51 para 4 lit. b AP I);
- whose intended effects cannot be limited to the military objective (Art. 51 para 4 lit. c AP I).

456. Attacks and bombardments are also to be considered as indiscriminate if:

- a number of clearly separated and distinct military objectives located in a built-up area are attacked as if they were one single military objective (Art. 51 para 5 lit. a AP I);
- they may be expected to cause loss of civilian life, injury to civilians and damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated (Art. 51 para 5 lit. b AP I);
- they also cause excessive injury and damage to civilians or civilian objects located outside the actual target area and its immediate vicinity.

457. Before engaging an objective, every responsible military leader shall:

- verify the military nature of the objective to be attacked (Art. 57 para 2 lit. a i AP I);
- choose means and methods minimizing incidental injury and damage to civilian life and objects (Art. 57 para 2 lit. a ii AP I);
- refrain from launching any attack which may be expected to cause incidental injury and damage to civilian life and objects which would be excessive in relation to the concrete and direct military advantage anticipated (Art. 57 para 2 lit. a iii AP I);
- give the civilian population advance warning of attacks which may affect it, unless circumstances do not permit (Art. 57 para 2 lit. c AP I);
- when a choice is possible between several military objectives of equal importance, engage that objective the attack on which may be expected to cause the least incidental injury or damage (Art. 57 para 3 AP I).

An attack shall be suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause excessive incidental loss of civilian life or damage (Art. 57 para 2 lit. b AP I).

458. The attack or bombardment of **non-defended localities** is prohibited (Art. 59 para 1 AP I; Art. 25 HagueReg).

459. A locality shall be considered as non-defended if it has been declared so by its competent authorities, if it is open for occupation and fulfils the following conditions:

- all combatants, as well as mobile weapons and mobile military equipment must have been evacuated;
- no hostile use shall be made of fixed military installations and establishments;

- no acts of hostility shall be committed by the authorities or by the population; and
- no activities in support of military operations shall be undertaken (Art. 59 para 2 AP I).

460. A locality shall not on suspicion be deemed non-defended unless the behaviour of the adversary substantiates such a supposition.

461. It is prohibited to extend military operations to demilitarized zones. The prerequisites for establishing such a zone are equal to those applying to nondefended localities (Art. 59 para 2, 60 para 3 AP I). Demilitarized zones are created by an agreement concluded between the parties to the conflict either in peacetime or in case of conflict. It is prohibited for each party to the conflict to attack or occupy such zones (Art. 60 para 1 AP I).

462. If one of the parties to the conflict breaches these provisions, the nondefended localities, open towns or cities, and demilitarized zones will lose their special protection. The general provisions for the protection of the civilian population and civilian objects shall, however, continue to be applicable (Art. 59 para 7, 60 para 7 API).

463. It is further prohibited to attack:

- safety zones and neutralized zones, i.e. zones designed to give shelter to wounded and sick soldiers as well as to civilians who take no part in hostilities (Art. 23 GC I; Art 14, 15 GC IV);
- medical and religious personnel (Art. 12,15 AP I);
- hospital ships (Art. 22 GC II);
- hospitals and associated personnel (Art. 19 GC I; Art. 18,20 GC IV);
- objects indispensable to the survival of the civilian population, e.g. production of foodstuffs, clothing, drinking water installations, with the aim to prevent the civilian population from being supplied (Art. 54 para 2 AP I; Art. 14 AP II); any deviations from this prohibition shall be permissible only on friendly territory if required by imperative military necessity (Art. 54 paras 3 and 5 AP I; Art. 14 AP II);
- coastal lifeboats and associated fixed coastal installations (Art. 27 GC H);
- cultural objects (Art. 53 AP I);
- aircraft protected by international law:
 - + employed for the purpose of exchanging prisoners;
 - + on the assurance of safe-conduct;
 - + medical aircraft (Art. 36 para I, 37 para 1 GC I; Art. 39 GC II; Art. 24 ff AP I; Art. 17 HRAW 1923) and
 - + civilian aircraft

3. Protection of Works and Installations Containing Dangerous Forces

464. Works and installations containing dangerous forces, namely **dams, dykes, and nuclear electrical generating stations** (Art. 56 para 1 AP I) shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population (Art. 56 para 1 AP I).

465. This protection shall cease if these works are used in regular, significant and direct support of military operations and such attack shall be the only feasible way to terminate such use. (Art. 56 para 2 lit. a - b AP I). This shall also apply to other military objectives located at or in the vicinity of these works or installations (Art. 56 para 2 lit. c AP I).

466. Regular, significant and direct support of military operations (Art. 56 para 2 lit. a - c AP I) comprises, for instance, the manufacture of weapons, ammunition and defence materiel. The mere possibility of use by armed forces is not subject to these provisions.

467. The decision to launch an attack shall be taken on the basis of all information available at the time of action.

468. Military objectives shall not be located in the vicinity of works and installations containing dangerous forces unless it is necessary for the defence of these works (Art. 56 para 5 AP I).

469. The parties to the conflict shall remain obliged to take all precautions to protect dangerous works from the effects of attack (e.g. shutting down nuclear electrical generating stations).

470. Works and installations containing dangerous forces may be marked with a special protective sign consisting of three bright orange circles on a horizontal axis (Art. 56 para 7 AP I). Nuclear electrical generating stations and important dams existing in the Federal Republic of Germany are shown on **Figures 1 and 2**.

(Von der Wiedergabe der Abb. 1 und 2 wurde abgesehen)

4. Ruses of War and Prohibition of Perfidy

471. Ruses of war and the employment of measures necessary for obtaining information about the adverse party and the country are considered permissible (Art. 37 para 2 AP I; Art. 24 HagueReg). Ruses of war include e.g. the use of enemy Signals, passwords, signs, decoys, etc.; not, however, espionage (see Sections 321 - 324 above).

472. Perfidy is prohibited. The term "perfidy" refers to acts misleading the adverse party to believe that there is a Situation affording protection under international law (e.g. humanitarian agreement to suspend combat with the intention of attacking by surprise the adversary relying on it, Art. 37 AP I).

473. It is prohibited to make improper use of a **flag of truce**, enemy or neutral **national flags, military insignia and uniforms** as well as of special **internationally acknowledged protective emblems**, e.g. the red cross or the red crescent (Art. 38 - 39 AP I; Art. 23 para 1 lit. f HagueReg; Art. 17 para 2 CultPropConv). For peculiarities of naval warfare see below, Sections 1017 ff.

5. Psychological Warfare

474. It is permissible to engage in political and military **propaganda** by spreading even false information to undermine the adversary's will to resist and to influence the military discipline of the adversary (e.g. instigation to defect).

475. Instigation to commit crimes and breaches of international law are prohibited.

6. Reprisals

476. Reprisals are retaliatory measures normally contrary to international law taken by one party to the conflict in order to stop the adversary from violating international law.

477. Because of their **political and military significance**, reprisals shall be ordered by the supreme political level, which would be in the Federal Republic of Germany the Federal Government. No soldier is entitled to order reprisals on his own accord.

478. Reprisals shall not be excessive in relation to the offence committed by the adversary and shall be preceded by a warning. They shall be the last resort, if all other means to stop the illegal behaviour have failed and the warning has not been heeded.

479. It is **expressly prohibited by agreement** to make reprisals against:

- the wounded, sick and shipwrecked, medical and religious personnel, medical facilities and supplies (Art. 46 GC I; Art. 47 GC II; Art. 20 AP I);
- prisoners of war (Art. 13 para 3 GC III);
- civilians (Art. 33 para 3 GC IV; Art. 51 para 6 AP I);
- private property of civilians on occupied territory and of enemy foreigners on friendly territory (Art. 33 para 3 GC IV);
- objects indispensable to the survival of the civilian population (Art. 55 para 2 AP I);
- the natural environment (Art. 55 para 2 AP I);
- works and installations containing dangerous forces (Art. 56 para 4 AP I);
- cultural objects (Art. 52 para I, 53 lit. c AP I; Art. 4 para 4 CultPropConv).

Chapter 5 Protection of the Civilian Population

I. General

501. With the exception of the levee en masse (see para 310 above) civilians shall not take part in hostilities.

502. Civilians who do not take part in hostilities shall be respected and protected. They are entitled to respect for their persons, their honour, their family rights, their religious convictions, and their manners and customs (Art. 27 para 1 GC IV; Art. 46 para 1 HagueReg). Their property is also protected (Art. 46 para 2 HagueReg). The civilian population as such, as well as individual civilians, shall not be attacked, killed, wounded or without sufficient reason be taken prisoner (Art. 51 para 2 AP I; Art. 13 para 2 AP II).

503. If the civilian population of a party to the conflict is inadequately supplied with indispensable goods, relief actions by neutral States or humanitarian Organizations shall be permitted. Every State and in particular the adversary, is obliged to grant such relief actions free transit, subject to its right of control (Art. 23 GC IV; Art. 70API).

504. Any attack on the honour of **women**, in particular rape, enforced Prostitution, or any form of indecent assault, is prohibited (Art. 27 para 2 GC IV; Art. 76 para 1 AP I).

505. Children shall be the object of special respect and protection. They shall be provided with the care and aid they require, whether because of their youth or for any other reason (Art 24 GC IV; Art. 77 para 1 AP I). Children who have not attained the age of fifteen shall not take part in direct hostilities. They shall not be enlisted. If they fall into the power of an adverse party, they shall be granted special protection (Art. 77 para 3 AP I; see also Art. 38 of the 1989 Convention on the Rights of the Child).

506. None of the parties to the conflict shall use civilians as a shield to render certain points or areas immune from military operations (Art. 28 GC IV; Art. 51 para 7 AP I).

507. Collective penalties as well as measures of **intimidation** or of **terrorism** (Art. 33 para 1 GC IV; Art. 51 para 2 AP I; Art. 13 para 2 AP II), **reprisals** against the civilian population and its property (Art. 33 para 3 GC IV; Art. 20, 51 para 6 AP I), and **pillage** (Art. 33 para 2 GC IV; Art. 47 HagueReg) are prohibited.

508. The taking of hostages is prohibited (Art. 34 GC IV).

509. Attacks on military objects shall not cause any loss of civilian life which would be excessive in relation to the concrete and direct military advantage anticipated (Art. 51 para 5 lit. b AP I; Art. 23 para 1 lit. g HagueReg).

510. When launching an attack on a military objective, all feasible precautions shall be taken to avoiding, and in any event to minimizing, incidental losses of civilian life, injury to civilians and damage to civilian objects (Art. 57 lit. a ii AP I).

511. Soldiers may, in principle, be employed for the protection of **civilian objects**. Since they may be attacked on account of their status, their presence, however, is a

factor endangering the object to be protected. Therefore, whenever soldiers are employed for the protection of civilian objects, the Situation must be assessed by weighing the advantages and disadvantages.

512. Hospital and safety zones and localities shall be established on mutual agreement so as to protect wounded, sick and aged persons, children, expectant mothers and mothers of children under seven from any attack (Art. 14 GC IV).

513. Military objects shall not be located within or in the vicinity of hospital and safety zones. These zones shall not be used for military purposes nor be defended.

514. The parties to the conflict may agree to establish **demilitarized (neutralized) zones** (Art. 15 GC IV; Art. 60 AP I). No military activities shall be carried out in these zones. Their sole purpose is to provide shelter for wounded, sick and other persons not involved in the conflict.

515. Journalists engaged in dangerous Professional missions in areas of armed conflict are protected as civilians, provided that they take no action adversely affecting their status as civilians (Art. 79 AP I), and without prejudice to the right of war correspondents accredited to the armed forces to the status of persons accompanying the armed forces without actually being members thereof (Art. 4 lit. A N° 4 GC III). Journalists may obtain an identity card which attests to their Status (Art. 79 para 3 and Annex II of AP I)

516. Civilians may at any time **seek help** from a protecting power, the International Committee of the Red Cross (ICRC) or any other aid society (Art. 30 para 1 GC IV). Representatives of the protecting powers and the ICRC shall be entitled to visit protected persons at any place they like (Art. 143 GC IV).

517. Persons taking a direct part in hostilities are not entitled to claim the rights accorded to civilians by international humanitarian law (Art. 51 para 3 AP I; Art. 13 para 3 AP II). The same applies if they are definitely suspected of activities hostile to the security of the State (Art. 5 para 1 GC IV).

518. The civilians concerned shall be treated humanely. They shall have the right to a regular and fair **judicial procedure** (Art. 5 para 3 GC IV; Art. 75 AP I).

II. Civil Defence

519. Civil defence organizations are protected in like manner as is the medical Service (Art. 61-67 AP I).

520. Civil defence **tasks** are particularly warning, rescue and maintenance, fire protection, medical Service, NBC defence, construction of shelters, and other measures to restore and maintain order (Art. 61 AP I).

521. Civil defence organizations, their personnel, buildings and vehicles as well as shelters provided for the civilian population shall be especially respected and protected (Art. 62 - 64, 52 AP I).

Example: In the Federal Republic of Germany, the German Red Cross (Deutsches Rotes Kreuz), the St. John Rescue Service (Johanniter-Unfallhilfe), the Hospitaler Emergency Service (Malteser-Hilfsdienst), the Workers-Samaritan Association (Arbeiter-Samariterbund), the Technical Relief Organization (Technisches Hilfswerk), the German Life-Guard Society (Deutsche Lebensrettungsgesellschaft), and the fire Services have been acknowledged as relief societies.

522. The protection accorded to civilian civil defence organizations under international law shall cease if, in spite of a warning, such an organization continues to commit acts harmful to the enemy (Art. 65 para 1 AP I). Cooperation with military authorities and the employment of some members of the armed forces shall not be considered as acts harmful to the enemy. The performance of civil defence tasks may benefit military victims (Art. 65 para 2 lit. c AP I). Civilian civil defence organizations may be formed along military lines (Art. 65 para 4 AP I). Their personnel may be enlisted for compulsory Service (Art. 65 para 4 AP I) and bear individual weapons for the purpose of maintaining the internal order and for self-defence (Art. 65 para 3 AP I).

Example: In the Federal Republic of Germany, civil defence organizations are exclusively formed along civilian lines. The Federal Civil Defence Agency (Bundesamt für Zivilschutz) cooperates with the competent Federal and Land authorities and with the relief societies. The personnel required may be enlisted for compulsory Service under the Act on the Extension of Protection in Case of Disasters (Gesetz über die Erweiterung des Katastrophenschutzes) and the Labour Requisitioning Law (Arbeitssicherstellungsgesetz). The personnel of these organizations is not armed.

523. Civilian civil defence organizations may be permitted to continue their humanitarian activities even in **occupied territories** (Art. 63 GC IV; Art. 63 AP I).

524. The international **distinctive sign of civil defence** is an equilateral blue triangle on an orange ground (Art. 66 para 4 AP I). It is shown in appendix I, N° 6. Civil defence personnel shall be recognizable by this distinctive sign and by an identity card (Art. 66 para 3 AP I). At the same time, aid societies may also use their traditional signs.

III. Belligerent Occupation

1. General Provisions

525. **The occupying power** shall assume responsibility for the occupied territory and its inhabitants (Art. 29, 47 ff GC IV; Art. 43 HagueReg).

526. Territory shall be considered occupied if it has actually come under the authority of hostile armed forces (Art. 42 HagueReg). The occupying power must be able to actually exercise its **authority**.

527. A force invading hostile territory will not be able to substantiate its occupational authority unless it is capable of enforcing directions issued to the civilian population.

528. Occupied territory does not include **battle areas**, i.e. areas which are still embattled and not subject to permanent occupational authority (area of invasion,

withdrawal area). The general rules of international humanitarian law shall be applicable here.

529. In the occupied territory the **sovereignty** of the occupied state will be suspended. It shall be superseded by the f actual authority of the occupying power.

530. The occupying power is **not successor in right** of the temporarily suspended national authority. It is prohibited from transferring its own sovereignty rights onto the occupied territory.

531. The occupying power is obliged to restore, and ensure, as far as possible, public order and safety (Art. 43 HagueReg); it should give a perspective for the termination of occupation.

532. Civilians are entitled to **respect** for their persons, their honour, their family rights, their religious convictions, and their manners and customs. Their private property is protected (Art. 27 para 1 GC IV; Art 48 ff, 75 AP I; Art. 46 HagueReg).

533. Any discrimination for reasons of race, nationality, language, religious convictions and practices, political opinion social origin or Position or similar considerations is unlawful (Art. 27 GC IV; Art. 75API).

534. Civilians shall be protected from any **acts of violence** (Art. 13, 27 GC IV; Art. 46 HagueReg).

535. Reprisals against Civilians and their property are prohibited (Art. 33 para 3 GC IV; Art. 20, 51 para 6 AP I). .

536. The same applies to **collective penalties** as well as measures of **intimidation and terrorism** (Art. 33 para 1 GC IV). **Pillage** is prohibited (Art. 33 para 2 GC IV; Art. 47 HagueReg).

537. No one may be punished for an offence he or she has not personally committed. The **taking of hostages** is prohibited (Art. 33 para I, 34 GC IV).

538. Each of the Parties to the conflict is obliged to forward Information regarding the fate of protected civilians who are in its power (Art. 136 GC IV), as well as of prisoners of war (Art. 122 GC III), wounded, sick, shipwrecked, and dead (Art. 16 GC I; Art. 19 GC II, see below Sections 611, 708). For this purpose a **National Information Bureau** shall be instituted upon the outbreak of a conflict and in all cases of occupation (Art. 136 - 141 GC IV). The Bureau shall cooperate with the Central Tracing Agency of the International Committee of the Red Cross (Art. 140 GC IV).

Example: In the Federal Republic of Germany, in accordance with Article 2 of the Act on the Protocols I and II Additional to the Geneva Conventions, the German Red Cross is tasked with planning of and preparations for the National Information Bureau. The Federal Armed Forces Central Personnel Office – Information Bureau - (Personalstammamt der Bundeswehr -

Bundeswehrauskunftsstelle -) is tasked with the implementation in the Federal Armed Forces.

539. The **period of occupation** shall cease with the end of the **state of war**. An occupying power shall not order measures which will remain effective beyond the end of the war. Although the **cessation of military operations** alone does not necessarily lead to the termination of the state of occupation (Art. 6 para 3, 1st sentence GC P7).

540. Should the **occupation be continued**, the occupying power shall remain bound by fundamental humanitarian provisions of the **IVth Geneva Convention** (Art. 6 para 3, 2nd sentence).

2. Legal Status of the Population

541. The legal Status of the population shall not be infringed by any agreement concluded between the authorities of the occupied territories and the occupying power, nor by any annexation by the latter of the whole or part of the occupied territory (Art. 47 GC IV).

542. The protected persons cannot abrogate their rights under the IVth Geneva Convention (Art. 8).

543. The occupying power shall as a matter of principle not detain protected persons in an area particularly exposed to the dangers of war (Art. 49 para 5 GC W).

544. A temporary **evacuation** of certain areas shall be permissible if the security of the population or imperative military reasons so demand. An **evacuation** of persons to areas outside the bounds of the occupied territory shall be permitted only in case of emergency (Art. 49 para 2 GC IV).

545. If an evacuation is necessary, the occupying power shall provide for sufficient accommodation and supply. **Members of the same family shall not be separated** (Art. 49 para 3 GC IV).

546. For imperative **reasons of security**, the occupying power may subject individual civilians to assigned residence or internment (Art. 78 para 1 GC IV).

3. Rights and Duties of the Occupying Power

547. **The national laws** applicable in the occupied territory shall, **on principle**, remain in force. Laws which served the purpose of warfare in the territory now occupied or which constitute a threat to security or an obstacle to the application of humanitarian law may be repealed or suspended by the occupying power (Art. 64 GC IV; Art. 43 HagueReg).

548. The occupying power may enact **legal provisions of its own** if military necessity or the Obligation to maintain public order so demand (Art. 64 para 2 GC IV; Art. 43 HagueReg).

549. The **administration** of the occupied territory shall be given the opportunity to carry on its activities. The jurisdiction of the occupied territory shall remain in force.

550. The occupying power may set up **administrative bodies of its own** if military necessity or the Obligation to maintain public order so demand (Art. 64 para 2 GC IV).

551. The Status of **judges and public officials** shall not be altered. It is prohibited to compel them to carry on their functions against their conscience (Art 54 para 1 GC IV). Public officials may be removed from their posts (Art 54 para 2 GC IV).

4. Requisition of Civilian Resources by the Occupying Power

552. Within the purview of existing laws, the occupying power may **itself** impose **taxes, tariffs, and dues**, which includes the obligation to defray all administrative costs arising there from (Art. 48 HagueReg). **Any additional** money contributions shall only be levied to meet the requirements of the occupational forces or to cover the administrative costs (Art. 49 HagueReg).

553. No extra charges (**contributions**) shall be collected except under a written order issued by a commander-in-chief. For every contribution a receipt shall be given to the contributors (Art. 51 HagueReg).

554. A local commander may demand contributions in kind and Services (**requisitions**) from the population and the authorities of the occupied territory to satisfy the needs of the occupational forces (Art. 52 paras 1 and 2 HagueReg). The requisitions shall be in proportion to the capabilities of the country. It is prohibited to compel members of the population to take part in military operations against their own country (Art. 52 para 1 HagueReg).

555. Requisitions shall, on principle, be paid for in cash. If this is not possible, a **receipt** shall be given. Payment shall be effected as soon as possible (Art. 52 para 3 HagueReg).

556. Movable **government property** which may be used for military purposes shall become **spoils of war** (Art. 53 para 1 HagueReg). Upon seizure it shall, without any compensation, become the property of the occupying state. Such property includes, for instance, means of transport, weapons, and food supplies (Art. 53 para 1 HagueReg). The latter shall not be requisitioned unless the requirements of the civilian population have been taken into account (Art. 55 para 2 GC IV). The requirements of the civilian population shall be satisfied first (Art. 55 para 1 GC IV).

557. Movable **private property** which may be used for military purposes and immovable government property may only be requisitioned but not confiscated (Art. 53 para 2, 55 HagueReg). The title to this property shall not pass to the occupying state. Upon termination of the war, the items and real estate seized shall be restored.

558. All private property shall be protected from permanent seizure (Art. 46 para 2 HagueReg) - except for commodities designed for consumption.

559. The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences shall be treated as private property (Art. 56 para 1 HagueReg).

560. Civilian hospitals may be requisitioned only temporarily and only in cases of urgent necessity. The care and treatment of the patients must be ensured (Art. 57 para 1 GC IV). The material and stores of civilian hospitals cannot be requisitioned as long as they are needed for the civilian population (Art. 57 para 2 GC IV; Art. 14 para 2 AP I).

561. It is prohibited to requisition, destroy or damage **cultural property** (Art. 56 HagueReg; Art. 5 CultPropConv).

562. The occupying power may not compel members of the population to **serve** in its armed forces (Art. 51 para 1 GC IV). Any pressure or **Propaganda** which aims at securing enlistment in the armed forces is also of the occupying power prohibited (Art. 51 para 1 GC IV).

563. It is prohibited to exercise physical or moral coercion against members of the civilian population in order to obtain general (Art. 31 GC IV) and military (Art. 44 HagueReg) **Information** from them.

564. For the benefit of the occupational forces or for ensuring public utility Services and the feeding, sheltering, clothing, transportation and health of the population, the occupying power may compel civilians over eighteen years to **work**. Work which would involve them in the Obligation of taking part in military operations (Art. 51 para 2 GC IV; Art. 52 HagueReg) or lead to the mobilization of workers in military or semi-military organizations shall be excepted from this regulation (Art. 51 para 4 GC IV).

565. Civilians liable to work shall, as far as possible, be kept in their usual places of employment to perform work for the occupying power. Existing **working conditions** (e.g. wages, working hours, labour protection) shall not be altered by the occupying power (Art. 51 para 3 GC IV).

566. It is prohibited to employ protected persons for work outside the occupied territory (Art. 51 para 3 GC IV).

5. Supply Activities in Occupied Territories

567. The occupying power is obliged to ensure the provision of supplies to the civilian population to the fullest extent of the means available to it. The **resources** of the occupied territory shall be used in the first place. If necessary, supplies shall be brought in by the occupying power (Art. 55 para 1 GC IV; Art. 69 para 1 AP I).

568. Stocks available in the occupied territory may be requisitioned for use by the occupying power only if the requirements of the civilian population have been taken into account and fair value is paid for the requisitioned goods (Art. 55 para 2 GC IV).

569. If the whole or part of the population of an occupied territory is inadequately supplied, the occupying power shall agree to relief actions conducted by other states or by humanitarian organizations (Art. 59 GC IV; Art. 69-71 AP I).

570. The occupying power has the duty to ensure and maintain, in cooperation with the appropriate authorities of the occupied territory, **medical care** for the civilian population as well as public health and hygiene. Adequate prophylactic measures shall be taken to prevent contagious diseases and epidemics (Art. 56 para 1 GC IV; Art. 14 para 1 AP I).

571. The national **Red Cross or Red Crescent Society** shall be able to pursue its activities in accordance with Red Cross principles. **Other relief societies** shall be permitted to continue their humanitarian activities under equivalent conditions (Art. 63 GC IV).

6. Jurisdiction

572. **National laws** relating to the prosecution of criminal offences shall, on principle, remain in force. Penal laws of the occupied territory may be repealed by the occupying power in cases where they constitute a threat to its security (Art. 64 para 1 GC IV).

573. For these reasons and, particularly, for maintaining an orderly administration, the occupying power may enact penal provisions of its own (Art. 64 para 2 GC IV). These penal provisions shall not come into force before they have been promulgated in the language of the inhabitants of the occupied territory (Art. 65 GC IV).

574. Courts of the occupying power may not prosecute criminal offences committed before the occupation unless they constitute **violations of international humanitarian law** (Art. 70 para 1 GC IV).

575. Breaches of the penal laws of the occupied territory shall continue to be prosecuted by local courts. Jurisdiction shall pass over to a military court of the occupying power only if these courts are not able to work.

576. Any breaches of penal provisions enacted by the occupying power may be prosecuted by properly constituted **military courts** of the occupying power (Art. 66 GC IV).

577. Legal proceedings conducted by military courts of the occupational power shall be in conformity with the rule of law (Art. 67, 69 - 75 GC IV; Art. 75 AP I).

578. **Minor offences** shall only be punishable by internment or simple imprisonment (Art. 68 para 1 GC IV). **Serious offences** (espionage, serious acts of Sabotage, homicide) shall be punishable by death if, in the occupied territory, such offences were **likewise liable to death penalty before the occupation began** (Art. 68 para 2 GC IV; Art. 76 para 3, 77 para 5 AP I).

579. Nationals of the occupying power who, before the occupation, have sought refuge in the territory of the occupied state, shall not be prosecuted on that account. Crimes

and other punishable offences which had been committed after the outbreak of hostilities and would already have justified extradition in times of peace shall be liable to prosecution (Art. 70 para 2 GC IV).

580. Persons accused or convicted of offences shall be detained under humane conditions. All **sentences passed** must be **executed** in the occupied territory (Art. 76 para 1 GC IV). Detainees have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross (Art. 76 para 6 GC IV).

581. At the close of occupation, all detainees and the relevant records shall be handed over to the authorities of the liberated territory (Art. 77 GC IV).

IV. Aliens in the Territory of a Party to the Conflict

582. All civilians may leave the territory, unless their departure is contrary to the national interests of the State (Art. 35 para 1 GC IV). The departure shall be carried out in humane conditions (Art. 36 GC IV).

583. If any such person is refused permission to leave, it shall be ensured that such refusal be reconsidered by an appropriate **court or administrative board** particularly designated for that purpose (Art. 35 para 2 GC IV).

584. Aliens remaining in the territory of a party to the conflict shall, on principle, be treated the same way as they would be in peacetime.

585. In particular, this implies *inter alia*:

- ensuring medical care and freedom of religion, and
- the right to leave areas exposed to the dangers of the conflict.

Aliens shall be entitled to these rights to the same extent as the nationals of the state they are living in (Art. 38 GC IV).

586. Aliens shall be given the opportunity of **finding a Job**. That opportunity shall be equal to that enjoyed by the nationals of the state they are living in (Art. 39 GC IV). Aliens may be compelled to work only under the same conditions as nationals of the power in whose territory they are (Art. 40 para 1 GC IV).

587. The placing in assigned residence or internment of aliens may be ordered only if reasons of security make it absolutely necessary (Art. 42 para 1 GC IV), or if it is not possible to control these persons sufficiently (Art. 41 para 1 GC IV). It shall also be possible to have these measures reconsidered by an appropriate court or administrative board (Art. 43 para 1 GC IV).

588. Refugees and stateless persons shall in all circumstances be treated as protected persons (Art. 44 GC IV; Art. 73 AP I).

589. Enemy aliens may be transferred to a party to Geneva Convention IV if this does not cause any disadvantage for these persons (Art. 45 GC IV).

590. All restrictions imposed on enemy aliens shall be cancelled as soon as possible after the close of hostilities (Art. 46 GC IV).

V. Internment of Civilians

591. An **internment** of civilians shall be permissible only in exceptional cases:

- if, in definite cases, it is necessary for imperative reasons of security (Art. 41-43, 78 para 1 GC IV); or
- as a penalty to be imposed on civilians (Art. 68 GC IV).

Decisions regarding such internment shall be made according to a regular procedure and be subject to regular review (Art. 43, 78 para 2 GC IV).

592. The **treatment** of internees **basically** corresponds to the treatment of prisoners of war (Art. 79 - 141 GC IV). Representatives of the Protecting Power and delegates of the ICRC may visit internees in their camps at any time and talk to them individually and without witnesses.

593. The **place of internment** shall be put under the authority of a responsible officer or of a public official chosen from the civil administration of the detaining power (Art. 99 para 1 GC IV). The detaining power shall, as far as possible, accommodate the internees according to their nationality, language and customs (Art. 82 para 1 GC IV). The detaining power shall ensure that members of the same family are lodged together in the same place of internment. Separation of a temporary nature may be necessitated for reasons of employment or health or for the purpose of executing penal or disciplinary measures (Art. 82 para 2 GC IV).

594. Internees shall always be accommodated separately from prisoners of war and from persons detained for any other reason (e.g. convicts) (Art. 84 GC IV),

595. Internees shall be treated humanely. In particular, any victimization, punishment drill, military drill or the reduction of food rations are prohibited (Art. 100 GC IV). Contact with the exterior shall be permitted (Art. 105 - 116 GC IV).

596. On principle, internees are **not obliged to work** (Art. 95 para 1 GC IV). Internees may, however, be employed for work within places of internment or for activities serving their own interests (Art. 95 para 3 GC IV). Internees shall not do voluntary work which is connected with the conduct of military operations.

597. Internees who commit offences shall be subject to the laws in force in the territory in which they are detained (Art. 117 para 1 GC IV).

598. Upon the close of hostilities or occupation, the belligerent parties shall ensure the return of all internees to their last place of residence or facilitate their repatriation (Art. 134 GC IV).

Chapter 6 Protection of the Wounded, Sick and Shipwrecked

I. General

601. The wounded, sick and shipwrecked shall be respected and protected in all circumstances (Art. 12 para 1, 35 para 1 GC I; Art. 12 para 1 GC II; Art. 3 para 1 N° 2 GC III; Art. 10 para 1 AP I; Art. 7 para 1 AP II). Any attempts upon their lives, or violence to their persons, are prohibited. They shall be treated humanely and cared for (Art. 12 para 2 GC I; Art. 12 para 2 GC II; Art. 10 para 2 AP I; Art. 7 para 2 AP II).

602. The protection of the wounded and sick ceases if they do not refrain from any act of hostility (Art. 8 lit. a AP I).

603. "Shipwrecked" means persons who are in peril at sea or in other waters and who refrain from any act of hostility (Art. 13 GC II; Art. 8 lit. b AP I).

604. Reprisals against the wounded, sick and shipwrecked are prohibited (Art. 46 GC I; Art. 47 GC II; Art. 20 AP I).

605. At all times all possible measures shall be taken to collect the wounded, sick and shipwrecked and to ensure their adequate medical assistance. They shall be protected against pillage and ill-treatment (Art. 15 GC I; Art. 18 para 1 GC II; Art. 11 para 1 AP I; Art. 8 AP II).

606. It is prohibited to subject wounded, sick and shipwrecked persons to any **medical procedure** which is not consistent with generally accepted medical Standards (Art. 12 para 2 GC II; Art. 11 para 1 AP I). In particular it is prohibited to carry out physical mutilations, medical or other scientific experiments or removal of tissue or organs for transplantation.

607. Exceptions to the prohibition of the removal of tissue or organs may be made only if such donations are given voluntarily. This applies in particular to donations of blood. Such operations shall only serve therapeutic purposes and shall be consistent with generally accepted medical Standards (Art. 11 para 3 AP I).

608. Wounded, sick and shipwrecked have the right to refuse any **surgical Operation** and similar manipulations. In such cases, medical personnel shall request a written statement to that effect, signed or acknowledged by the patient (Art. 11 para 5 AP I). Simple diagnostic measures, such as the taking of blood, shall be permitted. The same applies to measures necessary to prevent, combat and cure contagious diseases, such as epidemics.

609. Each party to the conflict has the duty to keep and retain **medical records**, and to make them available at all times for inspection by the protecting power (Art. 11 para 6 AP I).

610. Each wounded, sick, shipwrecked or dead person shall be **identified**. All pertinent information shall be forwarded to the appropriate information bureau (Art. 16 GC I; Art. 19 GC II; see below Section 708).

611. **The dead are** to be collected and prevented from being despoiled (Art. 15 para 1GC I). Burial or cremation of the dead shall be preceded by an examination of the bodies with documentation (Art. 17 para 1GC I; Art. 20 para 1GC II).

II. Medical Establishments and Transport

612. Fixed **medical establishments**, vehicles and mobile medical units of the medical Service shall under no circumstances be attacked (Art. 19 para 1GC I; Art. 18 paras 1 and 5 GC IV; Art. 12 para 1AP I; Art. 11 para 1 AP II). Their unhampered employments shall be ensured at all times. As far as possible, medical establishments and units shall be sited or employed at an adequate **distance to military objectives** (Art. 19 para 2 GC I; Art. 18 para 5 GC IV; Art. 12 para 4 AP I).

613. They shall not be used to commit acts harmful to the enemy (Art. 21 GC I; Art. 34 GC II; Art. 19 para 1 GC IV; Art. 13 para 1 AP I; Art. 11 para 2 AP H).

614. Should medical establishments or units fall into the hands of the adversary, the latter shall allow them to pursue their activities until he has **ensured the necessary medical care** by himself (Art. 19 para 1 GC I; Art. 57 para 1 GC IV; Art. 14 AP I).

615. **The material** of the mobile medical units of the armed forces (litters, equipment, medicine, surgical dressings, vehicles, etc.) shall remain available to the medical personnel to enable them to perform their functions (Art. 33, 35 para 2 GC I; Art. 57 para 2 GC IV; Art. 14 AP I). Hospital ships and medical aircraft are subject to special regulations (see below Sections 1054 ff, 1065 ff).

616. **The property** (buildings, material, stores, etc.) **of aid societies** shall be protected. In case of urgent necessity, it may be requisitioned provided that the welfare of the wounded and sick has duly been ensured (Art. 33, 34 GC I; Art. 14 paras 2 and 3, 21 AP I; Art. 53 para 2 HagueReg).

617. **Any transport of wounded, sick, and medical equipment** shall be respected and protected. They shall be marked by clearly visible (Art. 36 para 2, 42 paras 2 and 4 GC I; Art. 21 GC IV; Art. 18 para 4 AP I; Art. 12 AP II) **distinctive emblems** (red cross on a white ground or related emblems) (Art. 38, 39, 44 GC I; Art. 18 AP I).

618. Medical establishments which contrary to their intended purpose are used to carry out **acts harmful to the enemy** may lose their protection after prior warning has been given (Art. 21 GC I; Art. 34 GC II; Art. 19 para 1 GC IV; Art. 13 para 1 AP I; Art. 11 para 2 AP H).

619. To this effect, the following acts shall not be considered as hostile acts (Art. 22 No 3 GC I; Art. 35 No 3 GC II; Art. 13 para 2 API):

- that medical personnel use arms for their own protection, and that of the wounded and sick;
- that medical personnel and medical establishments are protected by sentries or an escort;

- that medical personnel are employed as sentries for the protection of their own medical establishments; and
- that war material taken from the wounded and sick is retained.

III. Medical Aircraft

620. **Medical aircraft** are military or civilian aircraft, designed exclusively for medical transport on a permanent or *ad hoc* basis and subordinated to a competent authority of a party to the conflict. Besides the national emblem they carry the distinctive emblem on their wings and hull and may not be attacked (Art. 39 GC II; Art. 26 para I, 29 AP I).

621. The parties to the conflict are prohibited from using their medical aircraft to attempt to acquire any military advantage over an adverse party. The presence of medical aircraft shall not be used in an attempt to render military objectives immune from attack (Art. 28 AP I).

622. Medical aircraft may be ordered to land on the ground or on water, as appropriate, to permit inspection. The inspection shall be commenced without delay and shall be conducted expeditiously. The inspecting party shall not require the wounded and sick to be taken off the aircraft unless this is essential for the inspection. In any event the inspecting party shall ensure that the condition of the wounded and sick is not adversely affected (Art. 30 para 2 AP I).

623. If the inspection discloses that the aircraft does not meet the requirements for special protection or has acted in breach of its obligations, it may be seized. An aircraft which has been assigned as a permanent medical aircraft and is seized may be used thereafter only as a medical aircraft (Art. 30 para 4 AP I).

IV. Medical Personnel

624. Civilian and military medical personnel are entitled to special protection. They shall neither be made the object of attack nor prevented from exercising their functions (Art. 23 para I, 24 GC I; Art. 37 GC II; Art. 14 GC IV; Art. 15 AP I; Art. 9 - 11 AP II).

625. Military medical personnel are **military non-combatants**. They include:

- persons who are exclusively engaged in the care for, or the collection and transport of the wounded, sick and shipwrecked, and in the treatment and prevention of disease, including physicians, nurses, etc., and the hospital personnel of hospital ships (Art. 24 GC I; Art. 30 GC II; Art. 22 and 23 AP I);
- administrative personnel of medical units and establishments, such as managers, clerks, mess personnel, etc. (Art. 24 GC I; Art. 36, 37 GC H);
- medical personnel of aid societies of the medical Service (Art. 26 GC I; Art. 8 lit. c ii AP I);
- medical personnel assigned to civil defence organizations (e.g. the Technical Relief Organization in the Federal Republic of Germany) of the parties to a conflict (Art. 63 para 2 GC IV; Art. 8 lit. c i AP I); and
- non permanent medical personnel (including attendants in the medical Service who have been adequately trained) (Art. 25 GC I).

626. Permanent Medical personnel who have been captured shall be free to pursue their duties under the direction of the detaining party, as long as the latter has not ensured the necessary care of the wounded and sick (Art. 19 GC I). They are not be deemed prisoners of war; nevertheless they shall at least benefit by all the provisions of Geneva Convention III. They shall preferably be engaged in the care of the wounded and sick of the party which they themselves belong to (Art. 30GC I).

627. Medical personnel whose retention is not indispensable for the care of prisoners of war shall be repatriated (Art. 30 GC I; Art. 37 GC II).

628. Irregular military medical personnel become prisoners of war, but shall be employed on their medical duties in so far as the need arises (Art. 25, 29 GC I).

629. The employment of **medical personnel of the aid societies** of a neutral or other state which is not a party to the conflict requires the consent of the government of this state and the authorization of the party to the conflict for which this personnel shall be employed (Art. 27 GC I).

630. Medical personnel who fall into the hands of the adverse party may only be detained as long as the state of health and the number of prisoners of war so require (Art. 28 paras 1 and 2 GC I; Art. 37 paras 2 and 3 GC II). This shall not apply to the personnel of a neutral or other state which is not a party to the conflict (Art. 27, 32 GC I; Art. 9 para 2 AP I).

631. Medical personnel may be equipped with **individual weapons** for the protection of the wounded, sick and shipwrecked in their Charge as well as for their own protection (Art. 22 GC I; Art. 35 GC II; Art. 13 AP I). Individual weapons are pistols, submachine guns and rifles.

632. Civilians must respect the wounded, sick and shipwrecked, even if they belong to the opposite party. They must not use violence against them. Civilians and help organizations such as, for example, the National Red Cross or Red Crescent Society are permitted to collect and care for the wounded, sick and shipwrecked. No one should be molested, followed or punished for such humanitarian actions (Art. 18 GC I; Art. 17 AP I).

V. Hospital Zones and Localities

633. The parties to an armed conflict may agree to establish **hospital zones and localities** so organized as to protect the wounded and sick as well as the necessary nursing personnel from the effects of the conflict (Art. 3 and Annex I GC I; Annex I GC IV).

634. These zones and localities shall be situated as far as possible from any military object and shall not be situated in areas which may be important for the conduct of military operations (Art. 4 lit. c and d Annex I GC I). They shall comprise only a small part of the territory governed by a party to the conflict and shall only be thinly populated (Art. 4 lit. a and b Annex I GC I). They shall not be made the object of any military Operation (Art. 11 Annex I GC I).

635. Hospital zones and localities shall be clearly marked by means of **the red cross (red crescent)** emblem on a white ground placed on buildings and outer precincts (Art. 6 para 2 Annex I GC IV).

636. Hospital zones and localities shall, as far as possible on mutual agreement, also be set up for **civilians** (Art. 23 GC I; Art. 13 Annex I GC I; Art. 14 GC IV; Art. I para 1 Annex I GC IV).

VI. The Distinctive Emblem

1. General

637. The distinctive emblem of medical and religious personnel as well as that of medical establishments (including hospital ships), medical transports, medical material and hospital zones is the **red cross** on a white ground. Countries which wish to use the **red crescent** in place of the red cross shall be free to do so. The two distinctive emblems have no religious significance; they must be equally respected in all places, and at all times.

638. The distinctive emblem shall be displayed on **armlets** worn by medical and religious personnel in conjunction with a special identity card (Art. 40, 41 GC I; Art. 42 GC II; Art. 20 paras 2 and 3 GC IV; Art. 18 para 3 AP I; Art. 12 AP II) as well as on **flags** and **signs** used for medical units and their material (Art. 39,42,43 GC I; Art. 42 para 1 GC II; Art. 18 paras 3 and 4 GC IV; Art. 18 para 4 AP I; Art. 12 AP II). It shall only be used for the intended purposes and shall be big in size and clearly visible from a distance.

639. The red cross and the red crescent are, in times of peace, also the **emblems of the National Red Cross (Red Crescent) Societies** as well as of their establishments and members. As far as they are only used for the purpose of identification, and protection is not being provided by the Geneva Conventions (Art. 44 GC I), the emblems shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings (Art. 44 para 2 GC I).

640. The perfidious use of the distinctive emblem is explicitly prohibited and constitutes a grave breach of international law (Art. 49, 53, 54 GC I; Art. 44 GC II; Art. 37, 38, 85 para 3 lit. f AP I; Art. 12 AP II; Art. 23 lit. f HagueReg).

641. The use of the distinctive emblem by persons and organizations other than those entitled thereto is prohibited. The parties to the Geneva Conventions shall take the precautions necessary for the prevention and repression of any abuse (Art. 53, 54 GC I; Art. 45 GC II; Art. 18 para 8 AP I; Art. 12 AP II).

642. In the Federal Republic of Germany, the abuse of certain distinctive emblems may be liable to prosecution as an administrative offence under § 125 of the Administrative Offences Act (Ordnungswidrigkeitengesetz). § 125 of the Administrative Offences Act reads as follows:

"(1) Any person other than those entitled thereto who uses the emblem of the Red Cross on a white ground or the word "Red Cross" or "Geneva Cross" commits an administrative offence.

- (2) Any person other than those entitled thereto who uses the emblem of the Swiss Confederation also commits an administrative offence.
- (3) The emblems, names and heraldic figures designated in paras 1 and 2 are on an equal Status with those that may be mistaken for them.
- (4) Paras 1 and 3 shall apply by analogy to those emblems or names which, under international law, are on an equal Status with the emblem of the Red Cross on a white ground or the word "Red Cross".
- (5) This administrative offence shall be liable to a fine."

2. Camouflage of Medical Establishments

643. Camouflage of medical establishments in order to protect them against discovery by the enemy shall be permitted by way of **exception** and without prejudice to Section 644 below when military reasons so require.

644. Camouflage of the **distinctive emblem** may only be ordered by brigade commanders and comparable grades upwards. The senior medical officer in Charge and the legal adviser shall previously be consulted. The Camouflage must be limited in space and time. Movable medical establishments which are assigned to the treatment of the wounded and medical establishments shall not be camouflaged.

645. Camouflage does not deprive medical establishments of the protection accorded to them by international law. They are, however, exposed to the **danger** that the enemy - rather than recognizing them as such - might consider them to be military objectives and make them the object of attack.

Chapter 7 Protection of Prisoners of War

I. General

701. The purpose of captivity is to exclude enemy soldiers from further military operations. Since soldiers are permitted to take part in lawful military operations, prisoners of war shall only be considered as captives detained for reasons of security, but not as criminals.

702. Prisoners of war are not prisoners of the capturing unit but **prisoners of the government** to whose armed forces the capturing unit belongs (**detaining power**). The detaining power is responsible for the treatment of the prisoners of war (Art. 12 para 1 GC III).

703. A detaining power may **transfer** prisoners of war to another power only if it has satisfied himself of the willingness and ability of the latter to apply the rules of international law relative to the protection of prisoners of war (Art. 12 para 2 GC III).

704. Fundamental rules for the treatment of prisoners of war are:

- It is prohibited to treat prisoners of war inhumanely or dishonourably (Art. 13,14 GC III).
- Any discrimination on the grounds of race, nationality, religious belief or political opinions or similar criteria is unlawful (Art. 16 GC III).
- Reprisals against prisoners of war are prohibited (Art. 13 para 3 GC III). Representatives of the Protecting Power and delegates of the ICRC may visit internees in their camps at any time and talk to them individually and without witnesses.

II. Beginning of Captivity

705. The Status of prisoner of war **begins** as soon as a combatant (Art. 4 A No 1 - 3, 6 GC III; Art. 44 AP I) or other person equal in status with a combatant (Art. 4 A No 4 and 5,4 B No I, 5 para 2 GC III; Art. 45 para 1 AP I) and hors de combat (Art. 41 para 2 AP I) falls into the hands of the adversary. An enemy who, having laid down his arms, or having no longer means of defence, surrenders or is otherwise unable to fight or to defend himself shall no longer be made the object of attack (Art. 41 para 1 AP I; Art. 23 para 1 HagueReg). He shall be taken prisoner of war.

706. Prisoners of war shall be **disarmed and searched**. Their military equipment and military documents shall be taken away from them (Art. 18 para 1 GC III).

707. Prisoners of war shall keep all effects and articles of **personal use**, their metal helmets and NBC protective equipment as well as all effects and articles used for their clothing and feeding (Art. 18 para 1 GC III). Prisoners of war shall keep their **badges** of rank and nationality, their decorations and articles of personal or sentimental value, e.g. pictures of family members (Art. 18 para 3,40 GC III).

708. The detaining Power is obliged to forward information regarding the fate of prisoners of war (Art. 122 GC III) as well as of wounded, sick, shipwrecked, and dead (Art. 16 GC I; Art. 19 GC II, see above Sections 538, 611), and of protected civilians (Art. 136 - 141 GC IV). For this purpose each of the Parties to the Conflict shall Institute

an **National Information Bureau** upon the outbreak of a conflict and in all cases of occupation (Art. 122 para 1 GC III). The Bureau shall cooperate with the Central Tracing Agency of the International Committee of the Red Cross (Art. 122 para 3, 123 GC III).

Example: In the Federal Republic of Germany, the Federal Minister of the Interior, acting in accordance with Art. 2 of the Act on the Protocols I and II Additional to the Geneva Conventions has tasked the German Red Cross with planning of and preparations for the National Information Bureau. The Federal Armed Forces Personnel Office - Information Bureau - (Personalstammamt der Bundeswehr - Bundeswehrauskunftsstelle -) is tasked with the implementation in the Federal Armed Forces.

709. Sums of money and articles of value carried by prisoners of war may not be taken away from them except by order of an officer of the detaining power and only after a receipt has been given. These sums of money and objects shall be returned to prisoners of war at the end of their captivity (Art. 18 paras 4 – 6 GC III).

710. Prisoners of war shall be evacuated, as soon as possible, to **camps** situated in an area far enough from the area of operations for them to be out of danger. Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation (Art. 19 GC III).

711. The evacuation of prisoners of war shall be effected in **humane conditions** - similar to those for the forces of the detaining power in their changes of Station. Prisoners of war shall be supplied with sufficient food, clothing and medical care. The civilian population shall be prevented from making attempts upon prisoners of war (Art. 13 para 2, 20 GC III).

712. Prisoners of war who, due to unusual conditions of combat, cannot be evacuated shall be **released**; in this case, too, all feasible precautions shall be taken to ensure their safety (Art. 41 para 3 AP I).

713. Every prisoner of war, when **questioned** on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number (in the Federal Armed Forces: service number). The exercise of this right shall not cause him any disadvantages (Art. 17 para 4 GC III). The questioning of prisoners of war shall be carried out in a language which they understand (Art. 17 para 6 GC III). No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatsoever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind (Art. 17 para 4 GC III).

III. Conditions of Captivity

714. The detaining power may subject prisoners of war to internment, i.e. put them into **camps** and guard them (Art. 21 para 1 GC III). These camps shall not be situated in danger zones (Art. 19 para I, 23 para 1 GC III). They shall not be used to render certain points or areas immune from military operations (Art. 23 para 1 GC III).

715. The camps shall meet certain minimum requirements of **hygiene and healthfulness** (Art. 22 para 1 GC III). They shall be provided with **shelters** against air raids and other hazards (Art. 23 para 2 GC III). Whenever the military Situation permits, prisoner of war camps shall be indicated by the letters **PG** (prisonniers de guerre) or **PW** (prisoners of war), so as to be clearly visible from the air (Art. 23 para 4 GC III).

716. As far as possible, prisoners of war shall be assembled according to their nationality, language and customs (Art. 22 para 3 GC III).

717. Prisoners of war shall receive sufficient **food** (Art. 26 GC III) and **clothing** (Art. 27 GC III) as well as the necessary medical attention (Art. 29-31 GC III).

718. Latitude in the **exercise of religious duties** shall be ensured (Art. 34 GC III).

719. The detaining power may employ able-bodied enlisted men for certain non-military **works** (Art. 49 para 1, 50 GC III). Non-commissioned officers shall only be required to do supervisory work. Officers are exempted from compulsory work (Art. 49 para 2,3 GC III).

720. No prisoner of war shall be employed against his will on labour which is of an unhealthy or other dangerous nature (e.g. mine Clearing), or which is humiliating; nevertheless, he may volunteer to do dangerous or unhealthy work (Art. 52 GC III).

721. Not more than one week after arrival at a camp, every prisoner of war shall be enabled to inform his family and the **Central Prisoners of War Agency** by letter of his captivity (Art. 70, 123 GC III) and to regularly correspond with his relatives henceforth.

722. As regards bad conditions of captivity, prisoners of war may apply to the authorities of the detaining power or to a protecting power (Art. 78 paras 1 and 2 GC III). The exercise of the right to make **complaints** shall not give rise to any punishment (Art. 78 para 3 GC III).

723. The prisoners of war shall elect prisoners' **representatives** to represent their interests; where officers are among the prisoners of war, the senior officer shall be recognized as the camp prisoners' representative (Art. 79 – 81 GC III).

724. A prisoner of war shall be subject to the **laws, regulations and orders** in force in the armed forces of the detaining power. The detaining power shall be entitled to take judicial or disciplinary measures in respect of any culpable offence committed by a prisoner of war against these provisions (Art. 82 para 1 GC III).

725. Penal and disciplinary sanctions shall be based in particular on the following rules:

- No prisoner of war may be punished or disciplined more than once for the same act (Art. 86 GC III).
- Prisoners of war may not be sentenced to any penalties except those provided for in respect of members of the armed forces of the detaining power who have committed the same acts (Art. 87 para 1 GC III).

- Prisoners of war shall be given an opportunity to present their defence (Art. 96 para 4, 99 para 3 GC III).
- Collective punishment f or individual acts and cruel punishment are forbidden (Art. 87 para 3 GC III).

726. Acts which constitute offences against discipline shall be investigated immediately (Art. 96 para 1 GC III). Disciplinary punishment may be ordered only by appropriate courts of law, military commands, camp commanders and their representatives who have been assigned disciplinary powers (Art. 96 para 2 GC III). In no case may prisoners of war themselves exercise disciplinary powers (Art. 96 para 3 GC III).

IV. Escape of Prisoners of War

727. Prisoners of war who have made good their escape and who are recaptured, shall not be liable to any punishment in respect to their escape (Art. 91 para 2 GC III). The escape of a prisoner of war shall be deemed to have **succeeded** when (Art. 91 para 1 GC III):

- he has joined friendly or allied armed forces;
- he has entered neutral territory or otherwise left the territory under control of the adversary; or
- he has joined a ship in the territorial waters of the detaining power which is not under the control of the detaining power.

728. A prisoner of war who has been captured in his attempt to escape shall be liable only to disciplinary punishment in respect of his act (Art. 92 para 1 GC III); this shall also apply to a repeated offence.

729. A prisoner of war shall not be liable to judicial prosecution even if he has committed offences to facilitate his escape, e.g. theft of food or clothing, or the drawing up and use of false papers. This shall not apply to cases in which the escapee has used violence against life or limb during his escape (Art. 93 para 2 GC III).

V. Termination of Captivity

730. Save by a successful escape, captivity shall cease with the **release** of the prisoner from the custody of the detaining power.

731. Seriously wounded and seriously sick prisoners of war who are fit to travel and whose mental or physical fitness has been incurably or permanently diminished or whose recovery may not be expected within one year shall already be **repatriated** during the armed conflict. No prisoner of war may, however, be repatriated against his will during hostilities (Art. 109,110 GC III).

732. All prisoners of war shall be released and repatriated without delay after the cessation of active hostilities (Art. 118 GC III). This requires neither a formal armistice agreement nor the conclusion of a peace treaty. What really matters is the actual cessation of hostilities - provided that, according to a reasonable estimate, they are unlikely to be resumed. Repatriation is carried out in an ordered form, after al plan has

been agreed by all parties, working with and under the control of the protecting powers and the International Committees of the Red Cross (Art. 8 - 10 GC III).

733. Prisoners of war who have committed an indictable offence and against whom criminal proceedings are pending or who have yet to complete a punishment may be detained beyond the cessation of active hostilities (Art. 119 para 5 GC III).

Chapter 8 Religious Personnel

I. General

801. Chaplains are ministers of faith assigned to the armed forces of a state to provide spiritual care to the persons in their Charge (Art. 24 GC I; Art. 37 GC II; Art. 23 para 5 AP I).

802. The Status of chaplains is accorded to:

- ministers who belong to a militia not forming part of the regular armed forces, a volunteer corps or to an organized resistance movement whose members are combatants (Art. 13 No 2 GC I);
- ministers who have been charged by the appropriate military authority to care for the personnel accompanying the armed forces (Art. 13 No 4 GC I);
- ministers assigned to **hospital ships** (Art. 36 GC II), even if they are not chaplains; and
- religious personnel of **merchant ships** (Art. 37, 13 N° 5 GC II).

803. Under international law, **non-permanent military chaplains** are not accorded the same status as permanent military chaplains. They are protected as civilians by Geneva Convention IV.

804. The auxiliaries of the chaplains (chaplain's assistants and drivers) assigned to the Federal Armed Forces shall be accorded the status of soldiers in a state of defence. It is, however, in keeping with the principles of international humanitarian law to respect and protect these persons, too, as far as possible.

805. The groups of persons to be attended by chaplains includes:

- members of the armed forces which they themselves belong to;
- for chaplains who fall into the hands of the adversary, also prisoners of war belonging to allied armed forces (Art. 33 para 2, 35 1st sentence GC III);
- in exceptional cases, members of the opposing armed forces who have been taken prisoner (Art. 37 GC III);
- in case of need, wounded, sick and shipwrecked members of opposing armed forces; and
- for the duration of an occupation, the civilian population - in particular children - (Art. 13, 24, 27 para I, 38 No 3, 50 para 3, 58 para 1 GC IV), protected persons accused of offences (Art. 76 para 3 GC IV) and internees (Art. 93, 94 GC IV).

806. Chaplains shall exercise their **functions** within the scope of the military laws and regulations of the detaining power and in accordance with their religious etiquette (Art. 33 para 2, 35 1st sentence GC III). They shall, however, not be confined to their religious duties and may particularly:

- perform the functions of a personal adviser;
- receive and forward the last wishes of dying soldiers; and
- provide material assistance.

807. Wherever possible, the dead shall be interred by chaplains of the same denomination. The states concerned have the duty to assist the chaplains,

within the means available to them, in fulfilling their tasks (Art. 17 para 3 1st sentence GC I).

808. Chaplains shall wear, affixed to the left arm, an **armlet** displaying the red cross or red crescent on a white ground (Art. 40 para 1 GC I; Art. 42 para 1 GC II; Art. 18 paras 1 and 3 AP I; Art. 12 AP II). The armlet shall be issued and stamped by the **appropriate authority** (Art. 40 para 1 GC I; Art. 42 para 1 GC II).

809. In addition to this armlet and the identity disk to be worn by all members of the armed forces, chaplains shall also carry a special **identity card** (Art. 40 para 2 GC I; Art. 42 para 2 GC II).

810. Chaplains may not be deprived of their special insignia, armlets or identity cards. In case of loss or destruction, they shall have the right to replacement (Art. 40 para 4 GC I; Art. 42 para 4 GC II). Should chaplains fall into the hands of the adversary, the latter shall be obliged to allow new identity cards or armlets to be forwarded to retained chaplains (Art. 40 para 4 GC I; Art. 42 para 4 GC II).

II. Protection of Chaplains

811. Chaplains shall be respected and protected in all circumstances (Art. 24 GC I; Art. 36, 37 GC II; Art. 15 para 5 AP I). This shall apply:

- at any time throughout the duration of an armed conflict;
- at any place; and
- in any case in which chaplains are retained by the adversary, be it temporarily or for a prolonged period of time.

812. Chaplains as such are entitled to the protection provided by international law. Direct participation in rendering assistance to the victims of war (wounded, sick, shipwrecked, prisoners of war, protected civilians) is not required.

813. Unlike medical supplies, the **articles** used for religious purposes are not explicitly protected by international law. It is, however, in keeping with the tenor of the Geneva Conventions to respect the material required for religious purposes and not to use it for alien ends.

814. Reprisals against chaplains are prohibited (Art. 46 GC I; Art. 47 GC II). This prohibition shall protect chaplains from any restriction of the rights assigned to them. They may, however, again be deprived of Privileges exceeding the statutory minimum of protection provided to them by the Geneva Conventions.

815. Chaplains may in no circumstances renounce the rights secured to them by international humanitarian law (Art. 7 GC I; Art. 7 GC II).

816. Any attack directed against chaplains and any infringement of their rights constitutes a grave breach of international law, which shall be liable to criminal prosecution (Art. 49 GC I; Art. 50 GC II).

817. The fact that chaplains may be armed, and that they may use the **arms** in their own defence, or in that of the wounded, sick and shipwrecked shall not deprive them of the protection accorded to them by international law (Art. 22 GC I; Art. 35 GC II). They may use the arms only to repel attacks violating international law, but not to prevent capture.

818. The protection accorded to chaplains shall cease if they use their arms for any other purpose than that of self-protection and defending protected persons.

819. The only arms which may be used are weapons suited for self-defence and emergency aid (**individual weapons**).

820. In the Federal Republic of Germany chaplains are not armed.

III. Legal Status of Chaplains Retained by a Foreign Power

821. Chaplains who are retained by an adverse party shall not be considered as prisoners of war (Art. 28 para 2 GC I; Art. 36 GC II; Art. 33 para 1 GC III).

822. Chaplains may be **retained** to assist prisoners of war of the armed forces to which they themselves belong in so far as the state of health, the spiritual needs and the number of prisoners so require (Art. 28 GC I; Art. 36, 37 GC II; Art. 33 GC III).

823. The provisions of Geneva Conventions I and III shall be applied to the treatment of the retained chaplains as **minimum requirements for protection**. As a consequence, chaplains shall receive as a minimum all the benefits accorded to prisoners of war by these conventions (Art. 30 GC I; Art. 33 GC III). Like prisoners of war, chaplains shall be released and repatriated without delay after the cessation of active hostilities (Art. 33 para 1 2nd sentence, 118 para 1 GC III).

824. In particular, the detaining power shall ensure the representatives of **religious organizations** a proper reception. The detaining power shall provide the duly accredited agents of these organizations with all necessary facilities for:

- visiting prisoners of war and chaplains in their camps;
- distributing relief supplies and material intended for religious, educational or recreative purposes; and
- assisting prisoners of war and chaplains in organizing their leisure time (Art. 125 GC III).

825. The provisions of the Geneva Conventions shall be applied by analogy to chaplains received or interned in neutral territory (Art 4 GC I; Art. 5 GC II).

826. Chaplains who are not retained shall be **returned** (Art. 28,30 GC I; Art. 37 GC II).

827. Chaplains shall be returned to the party to the conflict which they belong to. A detaining power which merely releases a person into territory of his home state which the said power keeps occupied does not appropriately fulfill its duty to return this person.

828. The repatriation of chaplains depends on the condition that a means is open for their return and that military requirements permit (Art. 30 para 3 GC I; Art. 37 GC II).

829. Chaplains who are to be returned may take with them the effects, personal belongings, valuables and ritual objects belonging to them (Art. 30 para 3 GC I; Art. 37 GC II).

830. Retained chaplains shall continue to exercise their spiritual functions for the benefit of prisoners of war - preferably those belonging to the armed forces upon which they depend. Their work shall be subject to the control of the competent Services (Art. 28 para 2 GC I; Art. 37 GC II; Art. 33 para 2, 35 GC III).

831. The spiritual functions to be exercised for the benefit of prisoners of war particularly include:

- holding religious Services (Art. 34 GC III);
- ministering to prisoners of war of the same religion (Art. 35 GC III); and
- burying prisoners of war who have died according to the rites of the religion to which they belong (Art. 120 para 4 GC III).

832. In order to ensure a **uniform level of assistance** for prisoners of war, chaplains will be allocated to camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practicing the same religion (Art. 35 2nd sentence GC III).

833. The detaining power shall provide chaplains with all **facilities** necessary for the exercise of their spiritual functions.

834. In particular, they shall be accorded the following facilities:

- They shall be provided with adequate **premises where religious Services may be held** (Art. 34 para 2 GC III).
- They shall be authorized to visit periodically prisoners of war situated outside the camp (e.g. in working detachments or hospitals). For this purpose, the detaining power shall place at their disposal the necessary **means of transport** (Art. 33 para 2 lit. a, 35 3rd sentence GC III).
- They shall have the **right to deal** with the competent authorities of the camp on all questions relating to their duties (Art. 33 para 2 lit. b 3rd sentence GC III).
- They shall enjoy all facilities for **correspondence** on matters concerning their duties. They shall be free to correspond, subject to censorship, with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for prisoners of war (Art. 35 4th and 5th sentences, 71 GC III).
- They shall be allowed to receive by any means whatsoever **individual parcels or collective shipments** containing devotional articles (e.g. bibles, prayer and Service books, hymnals, service articles, sacramental wine, crucifixes, and rosaries) (Art. 33, 72 para 1 GC III).

835. Retained chaplains shall be subject to the **disciplinary power** of the detaining power (Art. 28 para 2 GC I; Art. 33 para 2 GC III). They shall therefore be subordinate to

the general orders of the camp commander. This shall not apply to the exercise of their religious duties.

836. Chaplains may not be compelled to carry out any **work** other than that concerned with their religious duties (Art. 28 para 2 GC I; Art. 33 para 2 lit. c GC III).

837. Prisoners of war who are ministers, but not chaplains, e.g. ministers who serve in the armed forces as soldiers, shall be at liberty to minister freely to the members of their community (Art. 36 1st sentence GC III). The detaining power has the duty to give them an appropriate authority if prisoners of war of the same faith are to be ministered. Ministers who have been accorded this authority shall enjoy the same **Privileges and facilities** as retained chaplains. They shall also not be compelled to carry out any work (Art. 36 GC III). Nevertheless, they shall remain **prisoners of war**, though endowed with special rights.

838. When prisoners of war have not the assistance of a chaplain or of a prisoner of war minister, **another minister** belonging to the prisoners' or a similar denomination, or alternatively, a qualified **layman**, if such a course is feasible from the confessional point of view, shall be appointed, at the request of the prisoners concerned (Art. 37 GC III). These persons will normally be selected from among the prisoners of war, but they may also be members of the civilian population of the detaining power.

839. Subject to the approval of the detaining power, these ministers and laymen shall regularly be appointed by the appropriate local religious authorities of the respective faith with the agreement of the community of the prisoners concerned (Art. 37 GC III).

840. The ministers and laymen thus appointed shall enjoy the same Privileges and facilities as chaplains. They are subject to the discipline of the camp as well as to all regulations established by the detaining power in the interests of discipline and military security (Art. 37 3rd sentence GC III). As far as these persons are selected from the prisoner of war community they shall keep their old status.

Chapter 9 Protection of Cultural Property

I. General

901. The term "**cultural property**" means, irrespective of origin or ownership, movable or immovable objects of great importance to the cultural heritage of all peoples (e.g. monuments of architecture, art or history, be they of secular or religious nature, archaeological sites and collections) (Art. 53 lit. a AP I; Art. 16 AP II; Art. I CultPropConv).

902. Apart from this actual cultural property, a number of indirect cultural objects shall also be protected. These indirect cultural objects include:

- buildings for preserving or exhibiting cultural property (**museums, archives, etc.**);
- refuges intended to shelter cultural objects; and
- **centres containing monuments**, i.e. centres containing a large amount of cultural property (Art. I CultPropConv).

Protected cultural objects in the Federal Republic of Germany are documented in regional **Lists of Cultural Objects** which are available with the territorial command authorities.

903. Cultural property shall neither directly nor indirectly be used in support of military efforts. Any acts of hostility directed against cultural property shall be avoided (Art. 4 para 1 CultPropConv).

904. In addition, civilian objects, such as churches, theatres, universities, museums, orphanages, homes for the elderly and other objects, shall also be spared as far as possible, even if they are of no historical or artistic value (Art. 27 para 1 HagueReg; Art. 5 HCIX).

II. Specific Provisions for the Protection of Cultural Property

1. General Protection

905. General protection shall be granted to all cultural objects and does not require any entry in a special register. Cultural property placed under general protection shall neither be attacked nor otherwise damaged (Art. 53 AP I; Art. 16 AP II; Art. 4 para 1 CultPropConv). It is also prohibited to expose cultural property, its immediate surroundings and the appliances in use for its protection to the danger of destruction or damage by using them for other purposes than originally intended (Art. 4 para 1 CultPropConv).

906. An exception to this rule shall be permissible only in cases of imperative military necessity (Art. 4 para 2 CultPropConv). The decision is to be taken by the competent military commander. Cultural property which the enemy uses for military purposes shall also be spared as far as possible.

907. The parties to the conflict shall take sufficient precautions to prevent cultural property from being used for military purposes.

Example: On 19 June 1944 all military installations were removed from Florence by order of the German authorities so as to prevent this abundant city of art from becoming a theatre of war. The broad avenues surrounding the city of Florence

on its former fortifications were regarded as a boundary which was not to be crossed by military transport.

908. Any acts of **theft, pillage**, misappropriation, **confiscation or vandalism** directed against cultural property are prohibited (Art. 4 para 3 CultPropConv).

909. It is prohibited to make cultural property the object of **reprisals** (Art. 52 para I, 53 lit. c AP I; Art. 4 para 4 CultPropConv).

2. Special Protection

910. The contracting parties may place a limited number of cultural objects under **special protection** (Art. 9 CultPropConv).

911. Special protection may be considered only for the following cultural objects (Art. 8 para 1 CultPropConv):

- **refuges** intended to shelter cultural property in the event of armed conflict;
- **centres containing monuments; and**
- immovable cultural property of very great importance.

912. Special protection shall be granted on the following conditions:

- the property to be protected shall be situated at an adequate distance from any large industrial centre or from other important military objective which is particularly vulnerable (aerodrome, broadcasting Station, armament plant, a port or railway Station of relative importance, a critical river crossing site or main line of communication) (Art. 8 para 1 lit. a CultPropConv);
- the property to be protected shall not be used for military purposes (Art. 53 lit. b AP I; Art. 16 AP II; Art. 8 para 1 lit. b CultPropConv);
- the property to be protected shall be entered in the **International Register of Cultural Property under Special Protection** (Art. 8 para 6 CultPropConv) which is maintained by the Director General of UNESCO (Art. 12 - 16 RegEx CultPropConv). At the request of the Federal Republic of Germany, the **Oberrieder Stollen** located in the Breisgau (Hochschwarzwald) district has been entered in this register as the central refuge for cultural property.

913. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so designed that, in all probability, it will not be damaged in the event of attack. The same applies to cases in which the party asking for special protection undertakes, in the event of armed conflict, to make no use of a military object located in the vicinity of cultural property and particularly, in the case of a port, railway Station or aerodrome, to divert all traffic there from (Art. 8 paras 2 and 5 CultPropConv).

914. Neither cultural property placed under special protection nor its surroundings shall be used for military purposes (Art. 9 CultPropConv).

915. **A centre containing monuments** shall also be deemed to be used for military purposes whenever it is used for the movement of armed forces or military materiel, even in transit. The same shall apply whenever activities are carried on within the centre

which are directly connected with military operations, the stationing of armed forces, or the production of military materiel (Art. 8 para 3 CultPropConv).

916. The **guarding** of cultural property by armed custodians specially empowered to do so, or the presence of police forces responsible for the maintenance of public order shall not be deemed to be used for military purposes (Art. 8 para 4 CultPropConv).

917. It shall be permissible, by way of exception, to make cultural property under special protection the object of attack if reasons of **unavoidable military necessity** so require. Such an unavoidable military necessity can be established only by the commander of a division or of a superior major formation. The competent legal adviser shall previously be consulted. Whenever circumstances permit, the adversary shall also be notified, a reasonable time in advance, of the decision (Art. 11 para 2 CultPropConv). If a **Commissioner General for Cultural Property** is nominated (Art. 2 - 10 RegEx CultPropConv), he shall be informed in writing, stating the reasons (Art. 11 para 3 CultPropConv).

918. If one of the parties to the conflict violates its Obligation to protect cultural property under special protection, the other party shall, as long as this **violation** persists, be released from the Obligation to ensure the immunity of the property concerned. Nevertheless, whenever possible, the latter party shall first request the adversary to cease such violation within a reasonable time (Art. 11 para 1 CultPropConv). In addition, only those measures shall be taken which are necessary to ward off the danger arising from such violation.

3. Protection of Cultural Property during Occupation

919. The protection of cultural property also extends to a period of **occupation**. This implies that a party which keeps a territory occupied shall be bound to prohibit, prevent and, if necessary, put a stop to any theft, pillage, confiscation or other misappropriation of, and any acts of vandalism directed against cultural property (Art. 4 para 3 CultPropConv).

920. It is prohibited to **seize**, or wilfully **destroy or damage** institutions dedicated to religion, charity and education, the arts and sciences; the same shall apply to historic monuments and other works of art and science (Art. 56 HagueReg; Art. 52 and 53 lit. a AP I; Art. 16 AP II).

921. The occupying power shall as far as possible Support the authorities of the occupied country in safeguarding and preserving cultural property (Art. 5 para 1 CultPropConv). Should the national authorities be unable to take such measures of preservation for cultural property already damaged, the occupying power itself shall, in close **cooperation** with these authorities, initiate the most necessary measures (Art. 5 para 2 CultPropConv).

922. Each party to the conflict shall be bound to prevent the **exportation** of cultural property from a territory occupied by it during an international armed conflict (Section I para 1 Protocol CultPropConv). If, in spite of this prohibition, cultural property should nevertheless be transferred from the occupied territory into the territory of another party,

the latter shall be bound to place such property under its protection. This shall either be already effected automatically upon the importation of the property or, failing this, at a later date, at the request of the authorities of the occupied territory concerned (Section I paras 2 and 3 Protocol CultPropConv).

4. Transport of Cultural Property

923. Authorized transport of cultural property exclusively engaged in the transfer of such property may be placed under **special protection**. Any acts of hostility directed against such transport are prohibited (Art. 12 CultPropConv). It is also prohibited to seize such property in transport (Art. 14 CultPropConv).

924. Transport of cultural property which, in urgent cases, has to be effected to safeguard specially valuable cultural property, with no opportunity being given to apply the procedure for granting special protection, shall be spared as far as possible. If possible, the adversary shall previously be notified of such transport (Art. 13 CultPropConv).

925. Whenever cultural property is transferred to the territory of another state, that state shall deposit such property with same care as that which it bestows upon its own cultural property (Art. 18 lit. a RegEx CultPropConv).

5. Personnel Engaged in the Protection of Cultural Property

926. Personnel engaged in "the protection of cultural property shall be respected (Art. 15 CultPropConv).

927. Should such protective personnel fall into the hands of the adversary, they shall be allowed to continue to carry out their duties (Art. 15 CultPropConv).

928. At the beginning of an armed conflict the Director-General of **UNESCO** shall nominate a **Commissioner-General for Cultural Property**, who, together with inspectors, monitors compliance with the Cultural Property Convention (Art. 2-10 RegEx CultPropConv).

6. Distinctive Marking of Cultural Property

929. Cultural property placed under general protection shall be identified by a **blue and white shield pointed below** (Art. 6, 16 CultPropConv). This distinctive emblem may also be displayed as a means of Identification on the armllets and identity cards of the personnel engaged in the protection of cultural property (Art. 17 para 2 lit. c CultPropConv; Art. 21 para 1 RegEx CultPropConv).

930. Protective personnel may, without legitimate reason, be deprived neither of their identity card nor of their armllets (Art. 21 para 4 RegEx CultPropConv).

931. Cultural property (Art. 10 CultPropConv) and transport under **special protection** - as authorized and as emergency transport (Art. 12,13 CultPropConv) - as well as improvised refuges (Art. 11 RegEx CultPropConv) shall bear the **distinctive emblem repeated three times** (Art. 17 para 1 CultPropConv). The emblem shall be arranged in

a triangular form, with one shield below and two shields above (Art. 16 para 2 CultPropConv).

932. During an international armed conflict, the use of the distinctive emblem for any other purpose than that of the protection of cultural property is forbidden (Art. 17 para 3 CultPropConv).

933. In general it shall be left at the discretion of the competent authorities to select a proper place for affixing the distinctive emblem to cultural property.

934. Distinctive emblems placed on vehicles of transport must be clearly visible in daylight from the air as well as from the ground (Art. 20 para 2 RegEx CultPropConv).

935. In the case of immovable cultural property under special protection the emblem shall be placed at the entrance of the building concerned (Art. 20 para 2 lit. b RegEx CultPropConv).

936. In the case of a centre containing monuments under special protection the emblems shall be placed at regular intervals to indicate the perimeter of the centre containing monuments (Art. 20 para 2 lit. a RegEx CultPropConv).

Chapter 10 The Law of Armed Conflict at Sea

I. General

1. Definitions

1001. The term **ship** means manned surface and submarine vessels. The term **aircraft** means all manned means of transport that are or can be used in the air above the sea or land.

1002. Warships are ships belonging to the naval forces of a state and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appear in the Navy List, and manned by a crew who are under regular military discipline. Warships need not be armed.

1003. Government ships are ships owned or operated by a state and used only on governmental noncommercial Service (e.g. customs and police vessels, state yachts).

1004. Merchant vessels are ships other than warships as defined in paragraph 1002 and used exclusively for commercial or fishery purposes or profit passenger transport (no matter if they are private or owned or controlled by the state) or private ships of non-commercial character (e.g. yachts). The mere fact that a merchant vessel is armed does not change its legal Status, unless it fulfils the conditions described in paragraph 1025.

1005. Merchant ships changed into warships in accordance with the VIIIth Hague Convention of 1907, thus fulfilling the conditions of the definition of warships described in paragraph 1002, have the same Status as warships. The state which changes a merchant ship into a warship has to notify this as soon as possible on its list of warships.

1006. Support ships are ships with civilian crew owned or operated by the government - i.e. government ships as defined in paragraph 1003 - and which perform support Services for the naval forces without being warships.

1007. Military Aircraft are all aircraft belonging to the armed forces of a state bearing external marks distinguishing such aircraft of their nationality. The commanding soldier must be a member of the armed forces, and the crew must be subject to military discipline. Military aircraft do not need to be armed.

1008. State aircraft are all aircraft belonging to or used by the state and serving exclusively state functions (e.g. in customs or police service).

1009. Civilian aircraft are all aircraft other than military aircraft as described in paragraph 1007 and state aircraft as described in Paragraph 1008, serving the exclusively civil transport of passengers or cargo.

2. Scope of Application

1010. The scope of application of the law of armed conflict at sea, i.e. the space in which acts of naval warfare within the meaning of paragraph 1014 may be performed comprises:

- the territory of the parties to the conflict accessible for naval forces,

- the internal waters, the archipelagic waters and the territorial sea of the parties to the conflict,
- the high seas including exclusive economic zones (except the areas mentioned in section 219 above) and
- the airspace over these land and sea areas.

1011. Internal waters are waters on the landward side of the baseline of the territorial sea. **Archipelagic waters** are waters on the landward side of archipelagic baselines. The **territorial sea** comprises the waters on the seaward side of the baseline or archipelagic baseline in a breadth not exceeding 12 nautical miles. The so called **contiguous zone** does not belong to the territorial sea.

1012. Exclusive economic zones may not be extended more than 200 nautical miles from the baselines which are relevant for the landward limitation of the territorial sea. While coastal states and archipelagic states exercise full sovereignty within their internal waters, archipelagic waters and territorial sea, they have only certain sovereign rights in the exclusive economic zone. The latter does not belong to the high seas, but third states also enjoy freedom of navigation and overflight and certain other freedoms within the exclusive economic zone. Hence as a matter of principle for naval warfare purposes the exclusive economic zone of neutral or non-belligerent states belongs to the high seas. The rights of coastal and archipelagic states must, however, be taken into due consideration.

1013. The **high seas** comprise all parts of the sea which do not belong to the exclusive economic zone, the territorial sea, the internal waters or archipelagic waters. The high seas also comprise the continental shelf of neutral or nonbelligerent states. The rights of coastal and archipelagic states must, however, be taken into due consideration.

3. Acts of Naval Warfare, Competences, and Principles

a) Acts of Naval Warfare, Competences

1014. Acts of naval warfare within the meaning of this chapter are the use of weapons including the (special) means and methods of naval warfare and the following measures of economic warfare at sea:

- visiting and searching
- ordering to take a specific course,
- capture of ships,
- requisitioning of cargo,
- bringing in,
- confiscation, and
- blockade.

1015. The following vessels and units are **competent to perform acts of naval warfare**:

- warships and other units of naval forces,
- military aircraft, and
- units of land and air forces.

1016. The following vessels and persons may not perform acts of naval warfare:

- state ships other than warships, even when carrying out support Services for the naval forces,
- state aircraft other than military aircraft,
- merchant ships,
- fishing boats and other civil ships,
- civil aircraft, and
- prize crews of captured ships.

The crews of all ships and aircraft are, however, entitled to defend themselves against attacks by enemy forces.

b) Principles of Naval Warfare

1017. Without prejudice to other conditions described in this chapter the following principles shall be observed in all acts of naval warfare, in particular the use of arms:

- The right of the parties to the conflict to adopt means and methods of warfare is not unlimited.
- Neither the civilian population nor individual civilians as such may be the objective of attacks.
- The parties to the conflict shall at all times distinguish between combatants and non-combatants.
- Attacks shall be limited strictly to military objectives. The definition of military objectives described in chapter 4 is applicable also in naval warfare.
- In planning or deciding upon acts of war at sea or in the air all parties to the conflict shall ensure that all feasible precautions are taken in accordance with international law applicable in armed conflicts to avoid losses of civilian lives and damage to civilian objects.
- Ships and aircraft which surrender, e.g. by turning down the flag or by any other means of clear surrender, shall not be attacked any longer.
- After each battle the parties to the conflict shall without delay take all feasible actions to search for and rescue the shipwrecked, wounded and sick, to protect them against deprivation and mal-treatment, to ensure necessary care, as well as to search for the dead and to prevent them from pillage.

1018. Ruses of war are permissible also in naval warfare. Unlike land and aerial warfare, naval warfare permits the use of false flags or military emblems (Art. 39 para 3 AP I). Before opening fire, however, the true flag shall always be displayed.

1019. Perfidy is prohibited also in naval warfare. In particular, it is prohibited to misuse the emblem of the Red Cross or to give a ship, in some other way, the looks of a hospital ship for the purpose of Camouflage. It is also prohibited to make improper use of other distinctive signs equal in Status with that of the Red Cross (Art. 45 GC II; Art. 37 AP I) and of the flag of truce, or to feign surrender or to feign distress by sending a distress signal or by the crew taking to life rafts. In addition, the principles described in Section 472 apply.

1020. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the **natural environment**, (Art. 35 para 3 API).

II. Military Objectives and Protected Objects in Armed Conflict at Sea

1. Enemy Warships and Military Aircraft

1021. Without prejudice to the principles applicable in the law of armed conflict at sea enemy warships, military aircraft may be **attacked, sunk** or **seized** at any time, without warning. Such ships should, as far as circumstances permit, be sunk only after the crews and ships' papers have been brought to a safe place. Upon requisition such ships and the cargo on board become **war booty** and property of the seizing state, since they do not fall under prize law. Members of the crew falling into the hands of the adversary become **prisoners of war**. The same applies to persons on board who accompany the armed forces.

2. Enemy Merchant Ships, their Cargo, Passengers and Crew

a) Enemy Merchant Ships

1022. In principle, the enemy character of a merchant ship is determined by the **flag** the ship is entitled to fly (Art. 57 LondonDecl 1909).

1023. In relation to enemy merchant ships all acts of **economic warfare at sea** may be performed, without consideration of the cargo and its owner. The same applies in principle to other sea going private vessels, such as yachts and pleasure-boats, subject to particular provisions of protection. The prize law also applies to wrecks and to unfinished new ships. After the capture of an enemy merchant vessel it must be decided in a **prize court procedure** whether the capture was lawful. Upon confirmation by the prize court the ship becomes property of the capturing state.

1024. A merchant ship belonging to one of the parties to the conflict located in enemy ports at the commencement of the hostilities shall be allowed to depart freely within a reasonable time limit. It may be furnished with a pass permitting it to proceed to its port of destination or any other port indicated (Art. I HC VI). Merchant ships unable, owing to circumstances of *force majeure*, to leave the enemy port within the period fixed, or which have not been allowed to leave, cannot be confiscated. The belligerent may only detain such ships subject to the obligation to return them after the armed conflict or requisition them on payment of compensation (Art. 2 HC VI). These rules do not affect merchant ships whose design shows that they are intended for conversion into warships (Art. 5 HC VI).

1025. Without prejudice to the principles applicable in the law of armed conflict at sea enemy merchant ships are **military objectives** and may be attacked at any time without warning, if they are:

- engaging in acts of war, e.g. laying mines, mine-sweeping, cutting submarine cables and pipelines, visiting, searching or attacking other merchant ships;
- making an effective contribution to military action, e.g. by carrying military materiel, troop carrying or replenishing;
- incorporated into or assisting the enemy's intelligence system, subject to, where necessary, a prior political determination;
- sailing under convoy of enemy warships or military aircraft;
- refusing an order to stop or actively resisting visit, search or capture or
- engaging in any other activity bringing them within the definition of a military objective.

1026. Enemy merchant ships may only be destroyed if it is impossible to bring them into a port of one's own ally and without having first brought the passengers, crews, and ships' papers to a safe place (Art. 2 LondonProt 1936). The ship's boats are not regarded as a safe place unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board (Art. 2 LondonProt 1936). Where possible, the personal belongings of the passengers and crew shall also be recovered.

b) Cargo of Enemy Merchant Ships

1027. The enemy or neutral character of cargo is determined by the nationality of the owner or, if the owner is a stateless person, by his residence (Art. 57 LondonDecl 1909). In the case of organizations and companies, their seat is relevant. Where after the outbreak of hostilities enemy ownership of goods is transferred during transport they retain their enemy character until they reach their destination (Art. 60 LondonDecl 1909).

1028. Enemy cargo on board enemy ships may be requisitioned and confiscated no matter whether such cargo is contraband or whether it is state or private property.

1029. Neutral cargo on board enemy ships is free. Such cargo may, however, be requisitioned and confiscated if:

- it is contraband, e. g. goods designated for the adversary and apt to be used for war purposes;
- if the ship is breaching a blockade, except if the freighter proves that at the time of loading he neither knew nor ought to know of the intention to breach the blockade; or if it is
- sailing under convoy of enemy warships or engaging in any other activity bringing them within the definition of a military objective.

1030. The private and official **postal correspondence** found on board enemy ships is inviolable. If a ship conveying such postal correspondence is captured the captor shall see to it that the correspondence is forwarded without delay (Art. I HC XI). Before sinking

a ship postal correspondence shall as far as possible be recovered and forwarded.

The enemy ship itself, even if it is a mail ship, shall be liable to capture. The prohibition relating to the seizure of postal correspondence does not apply to postal consignments destined for or proceeding from a blockaded port. Parcels are exempt from seizure as far as they are destined for neutral persons and do not contain any contraband. The captor shall be entitled to open mail bags and to inspect their contents. Inviolability shall not apply to contraband contained in letter post.

1031. The following objects shall **not be confiscated**:

- objects belonging to the passengers or the crew of a captured ship and intended for their personal use;
- materiel exclusively intended for the treatment of the wounded and sick, the prevention of disease or for religious purposes, provided that the transport of such materiel has been approved by the capturing party (Art. 35 GC I; Art. 38 GC II);
- Instruments and other materiel belonging to relief societies;
- cultural property;

- postal correspondence of the national Prisoner of War Information Bureaux (Art. 122 GC III) and the Central Prisoners of War Information Agency (Art. 123 GC III);
- postal consignments and relief shipments destined for prisoners of war and civilian internees as well as postal consignments dispatched by these persons;
- relief shipments intended for the population of occupied territory, provided that the conditions attached by the capturing party to the conveyance of such shipments are observed (Art. 59 GC IV); and
- relief shipments intended for the population of any territory under the control of a party to the conflict other than occupied territory (Art. 70 AP I).

c) Crews and Passengers of Enemy Merchant Ships

1032. The captains, officers and crews of enemy merchant ships, if they are nationals of the enemy state, become prisoners of war (Art. 4 A N° 5 GC III), unless they promise in writing not to undertake, while hostilities last, any service connected with the armed conflict (Art. 6 HC XI). If they prove that they are nationals of a neutral state, they do not become prisoners of war (Art. 5 HC XI). The provisions on releasing crew members do not apply if the ship has been engaging in any activity bringing it within the definition of a military objective.

1033. Passengers of enemy merchant ships shall, in general, be released. Passengers who have taken part in hostilities or are travelling to join the enemy armed forces may be detained. They become prisoners of war if they belong to one of the categories enumerated in Article 4 of the Third Geneva Convention. Should any doubt arise as to whether they belong to any of these categories, they enjoy the protection of prisoners of war until such time as their Status has been determined by the competent tribunal (Art. 5 GC III). Passengers who are members of the enemy armed forces shall be made prisoners of war.

3. Protected Enemy Vessels (except hospital ships and ships under similar protection)

1034. The following enemy ships enjoying special protection may neither be attacked nor seized:

- vessels carrying materiel intended exclusively for the treatment of **wounded and sick** or for the prevention of disease, provided that the particulars regarding the consignment have been approved (Art. 38 GC II),
- vessels carrying **relief goods** for the civilian population of an occupied territory, provided that the conditions connected with the transport are fulfilled (Art. 23 GC IV),
- vessels that, with the consent of the belligerent parties, are carrying relief consignments for the civilian population of territory under the control of a party to the conflict other than occupied territory (Art. 70 AP I),
- vessels used exclusively for fishing along the coast or **small boats** employed in local trade (Art. 3 HC XI),
- vessels charged with religious, non-military scientific, or philanthropic missions (Art. 4 HC XI),
- vessels engaged exclusively in the transfer of **cultural property** (Art. 14 CultPropConv),
- vessels used exclusively for the transport of **parlementaires** or exchanging prisoners of war (**cartel ships**),

- vessels which are furnished with an acknowledged **letter of safe conduct**, provided that they observe the reservations imposed on them, and
- without prejudice to the right to seize **passenger ships** in the high seas used exclusively for the transport of civilians while engaged in such a transport. The right to stop and search such ships remains unaffected.

1035. The special protection ends if such vessels do not comply with conditions lawfully imposed upon them, if they abuse their mission or are engaged in any other activity bringing them under the definition of a military objective.

4. Protected Enemy Aircraft (except medical aircraft)

1036. The provisions of Sections 1034 and 1035 are also relevant for **enemy aircraft** serving the enumerated purposes and operating exclusively in established corridors. Such aircraft may be requested to land on the ground or water to be searched.

5. Other Protected Objects

1037. Submarine cables and pipelines connecting occupied territory with neutral territory shall not be seized or destroyed. Submarine cables and pipelines connecting parts of the territory of a party to the conflict or the territories of parties to the conflict or the territories of parties to the conflict and Neutrals may be interrupted within the scope of application of the law of naval warfare in case of military necessity.

6. Targets on Land

1038. With reference to targets on land the following rules apply subject to the provisions on the protection of the civilian population and the general principles of the law of naval warfare: The bombardment of **defended localities, ports and buildings** situated on hostile coasts is permitted. The mining of ports and coastal installations alone do not suffice to justify any bombardment (Art. I HCIX). Military objectives located within **undefended localities or ports** may be bombarded if there are no other means available to destroy these objectives, and when the local authorities have not complied with the summons to destroy them within a reasonable period of time (Art. 2 HC IX). The absence of such summons may be justified by urgent military reasons. If there is a possibility to have these objectives destroyed by landing forces, bombardment shall not be permissible.

III. Special Provisions Concerning Means and Methods of Naval Warfare

1. Mine Warfare

a) Kinds of Mine Warfare, Principles

1039. In laying mines the following kinds are distinguished:

- **protective mining**, i.e. laying mines in friendly territorial and internal waters;
- **defensive mining**, i.e. laying mines in international waters for the protection of passages, ports and their entrances;
- **offensive mining**, i.e. laying mines in hostile territorial and internal waters or in waters predominantly controlled by the adversary.

1040. Any mode of mine laying, be it prior to or after the beginning of an armed conflict, shall be subject to the principles of effective surveillance, risk control and warning (HC

VIII). In particular, all feasible measures of precaution shall be observed for the safety of peaceful navigation.

b) Mine Laying Prior to the Beginning of an Armed Conflict

1041. Protective mining is already permissible in times of crises, subject to the right of innocent passage of foreign ships through territorial waters. If it is indispensable for the protection of its security and if the ships have appropriately been warned, the coastal state may temporarily prohibit innocent passage through specific parts of its territorial waters. In the case of straits serving international navigation there is no right of protective mining in times of crisis.

c) Mine Laying During an Armed Conflict

1042. During an armed conflict **protective mining** is permissible without the limitations applicable prior to its beginning. As a matter of principle, **defensive mining** is permissible only after the beginning of the armed conflict; the shipping lanes of neutral and non-belligerent states shall be kept open to an appropriate extent, if military circumstances so permit. **Offensive mining** is permissible only in the exercise of the right of individual or collective self-defence (Article 51 of the UN Charter), which presupposes an armed attack. Acts of aggression below the threshold of an armed attack do not suffice as a motive. Offensive mining may not serve the only purpose of interdicting merchant shipping.

d) Duties after the Cessation of Hostilities

1043. At the close of hostilities the conflicting parties have to do their utmost to remove, for the sake of safe shipping, the mines they have laid (Art. 5 HC VIII).

2. Torpedoes

1044. Torpedoes which have missed their mark must become harmless (Art. I HC VIII). When using torpedoes, action shall be taken to ensure in accordance with the principles of naval warfare that only military objectives and not other ships and objects are damaged.

3. Missiles

1045. For the use of **missiles** including **cruise missiles** at sea the general principles of the law of naval warfare apply.

4. Submarine Warfare

1046. Submarines shall be subject to the same rules of international law as are surface vessels (Art. I LondonProt 1936).

1047. Merchant ships which meet the requirements of a military objective may be attacked and sunk also by submarines without prior warning. A submarine intending to capture a hostile merchant ship which does not meet the requirements of a military objective must first surface. It may not sink the merchant ship without having first brought the passengers, crew and ship's papers to a safe place (Art. 2 LondonProt 1936). If the merchant ship refuses to stop on being duly summoned or puts up active resistance to visit or search, the submarine shall be allowed to attack without warning.

5. Maritime Exclusion Zones

1048. A maritime exclusion zone is a distinct area of the sea and the air space above that area in which a party to the conflict exercises extensive rights of control and prohibits access to ships and aircraft. Its **purpose** is to facilitate identification of military objectives and defence against hostile acts, but not to attack the war economy of the adversary. A difference is made between static and movable exclusion zones. A **static exclusion zone** comprises a space in three dimensions designed by coordinates, i.e. a distinct area of the sea and the air space above that area. A **movable exclusion zone** comprises the space in three dimensions around units of the naval forces, thus it changes its position when the unit moves.

Example: During World War II both England - in the Skagerrak – and Germany - around the British Isles - established maritime exclusion zones.

1049. The establishment of **static maritime exclusion zones** being an exception under international law is permissible only under the following preconditions:

- The establishment of the maritime exclusion zone must be effective. Hence so many units of the air forces and naval forces must be charged with the insurance of the exclusion zone that there is sufficient chance to meet all vessels entering that zone.
- The size and duration of as well as the rights claimed in exclusion zones shall, by no means, exceed legitimate national security and defence requirements. Vessels in the exclusion zone must be allowed an appropriate time to leave it.
- The boundaries of exclusion zones, the restrictions to be placed on sea and air traffic within and above these areas and the control measures to be taken shall be determined according to the principles of military necessity and proportionality. As far as military considerations permit, particular passages in which only the right to stop and search is exercised shall be held free for neutral vessels.
- The size, the exact boundary lines and the duration of the existence of an exclusion zone shall be announced in public. If an exclusion zone is divided into subzones, it is necessary to define the extent of restrictions and the boundaries of each individual subzone.

1050. The establishment of **movable maritime exclusion zones** is permissible only if they are announced in public in general form. In the announcement the requested rights shall be determined. The size of movable maritime exclusion zones, the limitations of sea and air traffic in and above them, and the control measures to be enforced are to be determined according to the principles of military necessity and proportionality. The use of weapons in such zones shall be limited to military objectives.

6. Blockade

1051. A blockade is a means to interdict an enemy coast or an enemy port so that vessels and aircraft are prevented from entering and departing. The purpose of blockades is to cut off an enemy coast from its logistics without directly meaning to conquer this coast. Starvation of the civilian population as a method of warfare is prohibited (Art. 49 para 3 in connection with Art. 54 para 1 AP I). It is also prohibited to hinder relief shipments for the civilian population (Art. 70 AP I). **1052.** A blockade shall be declared and notified by the government of the party to the conflict concerned or by a commander authorized by this government (Art. 8 LondonDecl 1909). It shall also be notified to the neutral powers (Art. 11 LondonDecl 1909). Any extension and lifting of the

blockade shall be declared and announced in the same manner (Art. 12 LondonDecl 1909). A declaration of blockade shall contain the following details:

- day on which the blockade begins;
- geographical boundaries of the blockaded coastal strip;
- the days of grace granted to neutral ships for departure (Art. 9 LondonDecl 1909).

1053. A blockade, in order to be binding, must be **effective** (Art. 4 ParisDecl 1856). It must be maintained by armed forces sufficient to prevent access to the blockaded coast. Also **long distance blockades** are permissible, i.e. the interdiction and control of the enemy coast by armed forces keeping a longer distance from the blockaded coast. A blockade shall be considered to be effective if ship-to-shore logistics are cut off. Air transport need not be stopped. A barricade achieved by other means, e.g. by ships scuttled in the entrance, does not constitute a blockade. Neither will the mining of coasts and ports compensate for the presence of warships even if all movements are temporarily stopped by the mines. The effectiveness of a blockade is not doubted if the blockading force is temporarily withdrawn on account of bad weather (Art. 4 LondonDecl 1909) or for hot pursuit of a blockade-runner. A blockade which ceases to be effective is no longer binding. The blockade shall end with the repulse of the blockading forces by the enemy or with their complete or partial destruction, even if new forces are charged with this task without delay. In this case the blockade must be declared and notified anew (Art. 12 LondonDecl 1909).

IV. Hospital Ships

1. General

1054. The following ships and boats enjoy special protection in naval warfare in accordance with the following provisions, so that they shall not be attacked, sunk or captured under any circumstances:

- military hospital ships (Art. 22 GGII),
- hospital ships operated by national Red Cross and Red Crescent societies, officially recognized relief societies, or private persons, no matter whether they are member of a party to the conflict or citizens of a state not party to the conflict (Art. 24, 26 GC II),
- coastal rescue craft operated by a state or by officially recognized relief societies, as far as military necessity permits (Art. 22, 24 GC II), and
- ships specially designed to transport wounded and sick civilians (Art. 21 GC IV; Art. 22 AP I).

2. Conditions of Protection, Identification

1055. Hospital ships are ships exclusively designed to assist, treat and transport the wounded, sick and shipwrecked. Their names and descriptions shall be notified to the parties to the conflict not later than ten days before they are employed for the first time (Art. 22 GC II).

1056. Hospital ships shall be distinctively marked as follows:

- all exterior surfaces shall be white;
- the distinctive emblem of the Red Cross shall be painted once or several times on each side of the hull and on the horizontal surfaces as large as possible, so as to be clearly visible from the sea and from the air;

- a white flag with a red cross shall be flown as high as possible and visible from all sides.

In addition, all hospital ships shall fly their national flags; neutral ships shall further hoist the flag of the party to the conflict whose direction they have accepted (Art. 43 GC II). As far as possible, their painting and distinctive emblems shall be rendered sufficiently visible at night. Other identification Systems, e.g. internationally recognized light, radio and electronic Signals, are also permissible (Art. 5-6 Annex I AP I). Lifeboats of hospital ships, coastal rescue boats and all small craft used by the medical Service shall be marked in the same manner as hospital ships (Art. 43 para 3 and 4 GC II; Art. 23 para 1 AP I).

3. Rights and Obligations

1057. Hospital ships shall afford assistance to all the wounded, sick and shipwrecked without distinction of nationality (Art. 30 GC II). They shall by no means be employed for any military purposes.

1058. Hospital ships may be equipped with radio Systems. They may not, however, possess or use a secret code for their wireless or other means of communication (Art. 34 GC II). Permissible is also (Art. 35 GC II):

- the use of apparatus designed to facilitate navigation or communication;
- the transport of medical supplies and personnel over and above the ship's requirements (Art. 35 GC II);
- the use of portable arms by the personnel of a hospital ship for the maintenance of order, for their own defence or that of the wounded and sick;
- the carrying of portable arms and ammunitions taken from the wounded, sick or shipwrecked and not yet handed over to the proper Service; and
- the taking on board of wounded, sick or shipwrecked civilians (Art. 22 para 1 AP I).

1059. Any hospital ship in a port which falls into the hands of the adversary shall be authorized to leave the said port (Art. 29 GC II). During and after an engagement, hospital ships will act at their own risk. Hospital ships shall not hamper the movements of the combatants (Art. 30 GC II).

1060. While hospital ships are not liable to capture, they are subject to the right of control and visit accorded to the parties to the conflict (Art. 31 GC II). Any warship may request the handing-over of the wounded, sick and shipwrecked by hospital or other ships, no matter which nationality such ships have, provided that the state of health of the wounded and sick allows such action and that the receiving warship can provide the facilities necessary for medical treatment (Art. 14 GC II; Art. 30 AP I).

1061. The belligerents are not obliged to accept assistance from hospital ships. They may order them off, make them follow a certain course, control the use of their means of communication, and, if the gravity of the circumstances so requires, detain them for a period of up to seven days (Art. 31 para 1 GC II). A commissioner may temporarily be put on board to monitor the execution of such Orders (Art. 31 para 2 GC II). For the purpose of control, the parties to the conflict may also send neutral observers on board (Art. 31 para 4 GC II).

4. Discontinuance of Protection

1062. If such ships are misused for military purposes or act in any other way contrary to their obligations, in particular by clearly resisting an order to stop, to turn away or to follow a distinct course, they lose their protected Status, after due warning has been given (Art. 34 GC II).

5. Personnel and Crew

1063. The religious, medical and hospital **personnel of hospital ships** and their crews shall be respected and protected; they may not be captured during the time they are in the Service of the hospital ship, whether there are wounded and sick on board or not (Art. 36 GC II).

1064. The personnel of hospital ships, including the crew shall wear a white armlet bearing the distinctive emblem. Their armlets or identity cards may not be taken away from them (Art. 42 GC II).

Chapter 11 The Law of Neutrality

I. General

1101. Neutrality (from the Latin ne-uter = not either) is defined in international law as the **status** of a state which is not participating in an armed conflict between other states. The consequence of the neutral status are rights and duties in the relationship between the neutral state on the one hand and the parties to the conflict on the other.

1102. Sources of the international law of neutrality are customary law and - for certain questions - international conventions (HC V; HC XIII).

1103. The United Nations Charter and decisions of the Security Council based on the Charter may in certain circumstances modify the traditional law of neutrality. Hence, particular rules that vary from the traditional law of neutrality apply to **sanctions** of the United Nations. The law of neutrality, however, has not generally been invalidated by the United Nations Charter.

1104. Under general international law every state is free to participate in an armed conflict or not. A state may, however, in accordance with current law, participate only on the side of the victim of an armed attack (collective self-defence), not on the side of the aggressor.

1105. If a state assumes already in peacetime a legal Obligation to remain neutral in the event of an armed conflict, we speak of **permanent neutrality**. It requires that already in peacetime the neutral state does not commit itself militarily in any way and does not commit any acts which would render it unable to fulfill its obligations as a neutral in an armed conflict.

Examples: The permanent neutrality of **Switzerland** has existed since the 1815 Congress of Vienna.

To be distinguished from such a legal Obligation is a policy of neutrality.

1106. Except for the rules which in the case of a legally founded permanent **neutrality** apply already in peacetime, the neutrality of a state **begins** with the outbreak of an armed conflict of considerable size between other states.

1107. The neutral Status **ceases** with the end of the armed conflict or by the neutral state becoming a party to the conflict. However, neither limited actions of armed defence of neutrality nor breaches of single duties of neutrality by the state by themselves result in that state having to be considered a party to the conflict.

II. The Rights and Duties of Neutrals

1. General Provisions

1108. The territory of a neutral state is inviolable. It is prohibited to commit any act of war on such territory (Art. I HC V).

1109. A neutral state is bound to resist any violation of its neutrality, if necessary by force (Art. 5 HC V; Art. 2, 9, 24 HC XIII). This Obligation is, however, limited by the international prohibition of the use of force. Legally permitted are only such measures of defence of neutrality which are also justified as self-defence against an armed attack.

1110. A neutral state may not **support** any of the parties to the conflict. It is especially prohibited to supply warships, ammunition and war materiel of any other kind (Art. 6 HC XIII). Humanitarian relief to victims of the conflict, even where such relief is rendered only to the victims of one party, is no breach of neutrality (Art. 14 HC V).

1111. A neutral state may in no case take part in acts of war of the parties to the conflict.

1112. State practice has modified the former conventional rule that a neutral state is not bound to prohibit **export and transit of war materiel** by private persons for the benefit of one of the parties to the conflict (Art. 7 HC V). To the extent to which arms export is subject to control by the state, the permission of such export is to be considered as unneutral Service.

1113. Citizens of neutral states may, at their own risk, enter into the service of one of the parties to the conflict (Art. 6 HC V). In such a case, they must be treated like nationals of the respective party to the conflict (Art. 17 HC V). The prohibition of the recruitment, use, financing and training of mercenaries shall be observed (Art. 47 AP I; 1989 Mercenary Convention; see above Section 303).

1114. It is prohibited to **recruit** and raise troops on neutral territory to assist one of the parties to the conflict (Art. 4 HC V).

2. War on Land

1115. Troop or supply movements must not be carried out on neutral territory (Art. 2 HC V). The neutral state may allow the transit of **wounded persons and relief goods** (Art. 14 HC V).

1116. It is not considered as unneutral Service if a neutral state permits the use by a party to the conflict of generally accessible **means of Communications** on its territory. The neutral state must not, however, install or permit on its territory special means of communication for a party to the conflict (Art. 3 HC V).

1117. Neutral states must intern forces of the parties to the conflict trespassing on neutral territory (Art. 11, 12 HC V). Escaped **prisoners of war** who are allowed to remain in the territory of the neutral state, may be assigned a specific place of residence (Art. 13 HCV).

3. Naval War are a)

General

1118. The internal waters, the archipelagic waters and the **territorial sea** of neutral states must be respected (Art. 1 HC XIII). It is prohibited to commit any act of war in such waters (Art. 2 HC XIII).

1119. The parties to the conflict are forbidden to use neutral ports or territorial waters as a base of naval operations (Art. 5 HC XIII).

1120. Acts of war may be committed neither in **neutral waters nor** on neutral territory (Art. 2 HC XIII). The acts of war which are forbidden include the overall exercise of the law of prize, such as stop, visit and search, Orders to follow a specific course, and capture of merchant ships (Art. 2 HC XIII).

1121. When a ship has been captured by a party to the conflict in the waters of a neutral state, the latter must employ, as long as the prize is still within its jurisdiction, all means at its disposal to release the prize and its crew. The prize crew must be interned (Art. 3 para 1 HC XIII).

1122. A neutral state may demand the release of a ship captured within its waters even if the ship has already left these territorial waters (Art. 3 para 2 HC XIII).

1123. If a ship of a neutral state takes **wounded, sick or shipwrecked** persons on board, it must, to the extent required by international law, ensure that these persons take no further part in hostilities (Art. 15 GC II).

1124. As regards the laying of **underwater mines**, neutral states are subject to the same safety regulations as are the parties to the conflict (Art. 4 para 1 HC VIII). They must notify the **location** of the minefields to the governments of maritime states without delay (Art. 4 para 2 HC VIII).

1125. A neutral state is bound to employ all means at its disposal to **prevent the fitting out or arming of any vessel** within its jurisdiction which it has reason to believe is intended to engage in acts of war against a foreign power. It is also bound to prevent the departure of any vessel that has been adapted entirely or partly within its jurisdiction for use in war (Art. 8 HC XIII).

b) Innocent Passage, Transit Passage and Archipelagic Sea Lanes Passage

1126. The passage by warships of parties to a conflict and by prizes through the territorial sea and archipelagic waters of a neutral State is no violation of neutrality (Art. 10 HC XIII). While **transit passage** through international straits and **archipelagic sea lanes passage** include the right of overflight (Art. 38; 53 LOS Convention) and the right of passage in submerged mode, such rights do not exist for innocent passage outside these routes. The right of innocent passage is subject to the following provisions.

1127. On principle, **warships** of the parties to a conflict are not permitted to remain in **neutral ports**, roadsteads or territorial waters for more than twenty-four hours. The neutral state may prolong this period or altogether prohibit such vessels from remaining in its waters (Art. 12 HC XIII). Warships of parties to the conflict may not extend their stay beyond the permissible time except on account of damage or stress of weather. They must depart as soon as the cause of the delay has ceased to exist (Art. 14 HC XIII).

1128. In neutral ports and roadsteads, warships of the parties to the conflict may only carry out such repairs as are absolutely necessary to **restore their seaworthiness**. Restoring the combat readiness of these ships cannot be cause for extending the

permissible duration of their stay. Activities to increase their fighting capability are also prohibited (Art. 17 HC XIII).

1129. Warships of the parties to the conflict may neither complete their **Crews** nor replenish or increase their **armament** or their military supplies in neutral territorial waters (Art. 18 HC XIII).

1130. Warships of the parties to the conflict may only **revictual** in neutral ports and roadsteads to bring up their supplies to the normal peace Standard (Art. 19 HC XIII).

1131. In neutral ports and roadsteads warships of the parties to the conflict may only ship sufficient **fuel** to enable them to reach the nearest port in their own country (Art. 19 HC XIII). These ships may not again replenish their fuel supplies in a port of the same neutral state before the succeeding three months have passed (Art. 20 HC XIII).

1132. If a warship of a party to the conflict stays in a neutral port without being entitled to do so and does not leave this port notwithstanding notification, the neutral state may **detain the ship** and prevent it from departing throughout the duration of the armed conflict (Art. 24 HC XIII). The crew of the detained ship may also be detained. Its members may be left in the ship or brought either onto another vessel or ashore. In any case, a sufficient number of men for looking after the vessel must always be left on board,

1133. A prize may only be brought into a neutral port if it is absolutely necessary on account of **unseaworthiness of the prize**, stress of weather, or want of fuel or provisions. It must leave as soon as the circumstances which justified its entry are at an end (Art. 21 HC XIII).

1134. If, after the cause for its stay has ceased to exist, a prize does not leave even after it has been ordered to do so by the neutral authorities, the neutral state must seek to **release the prize** and its crew. The prize crew must be interned (Art. 21 HC XIII). The same rule applies when a prize has entered a neutral port without authorization (Art. 22 HC XIII).

1135. When **warships of several parties to the conflict** are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ships belonging to one party and the departure of the ships belonging to the other (Art. 16 HC XIII).

1136. A neutral state may allow warships of the parties to the conflict to employ its **pilots** (Art. 11 HC XIII). A neutral state is bound to prevent, within the means at its disposal, any violation of the rules of neutrality within its waters and to exercise such surveillance as is required for this purpose (Art. 25 HC XIII).

1137. A neutral state must apply impartially to the two parties to the conflict the conditions, restrictions, or prohibitions made by it with regard to the admission into its ports, roadsteads, or territorial waters, of warships or prizes belonging to the parties to the conflict (Art. 9 HC XIII). A neutral power may forbid a warship which has failed to

conform to its directions or which has violated its neutrality to enter its ports or roadsteads (Art. 9 HC XIII).

c) Control by Parties to the Conflict

1138. Warships of a party to the conflict are entitled to **stop, visit and search** merchant ships wearing the flag of a neutral state on the high seas and to control the contents and destination of their cargo.

1139. Warships of a party to the conflict may use only such force against neutral merchant ships as is necessary to exercise such control. In particular, neutral merchant ships which, although they are , subject to control by a party to the conflict, resist such inspection, may be **damaged or destroyed** if it is not possible to prevent them from continuing their voyage by any other means. The captain of the neutral ship shall be forewarned in an appropriate manner. Rescue of shipwrecked persons must be ensured.

1140. To simplify such inspection, a party to the conflict may, subject to the approval of the neutral state concerned, issue an inspection document (**navicert**) to the neutral vessel in the port of loading. A navicert issued by one party to the conflict is not binding on the other party to the conflict. The fact that a ship carries a navicert by another party to the conflict is no permissible argument for further measures of control.

1141. The right of control shall not apply to merchant ships wearing neutral flags when they are **escorted** by a neutral warship (**convoy**). In this case, however, a warship of a party to the conflict may request the commander of the neutral warship to provide information on the type and destination of the cargo.

1142. If the cargo contains **war-essential goods** destined for a port of an adversary, such goods may be **condemned** by the warship of the party to the conflict (**absolute contraband**). The parties to the conflict may notify to the neutral states lists of the goods which they deem to be war-essential. Any goods destined for the administration or the armed forces of the opposing party to the conflict will likewise be deemed to be contraband (**conditional contraband**).

1143. If the suspicion leading to a measure of control proves to be unfounded and if the neutral vessel has not contributed to raising the suspicion, the party to the conflict is obliged to pay for the damage caused by the delay of the voyage.

1144. A ship carrying contraband is subject to condemnation.

1145. The seized ship (**prize**) is to be brought as safely as possible to a port of the party to the conflict or of a state allied with that party. In that port the permissibility of the condemnation of both ship and cargo is to be judicially reviewed by a prize court.

1146. The parties to the conflict are not allowed to set up prize courts on neutral territory or on a vessel in neutral territorial waters (Art. 4 HC XIII).

d) Protection of Neutral Merchant Shipping

1147. Warships of neutral states may escort neutral merchant ships.

1148. On international shipping routes and on the high seas, warships of neutral states may **sweep mines** as necessary to ensure neutral shipping. Such minesweeping activities are no unneutral service to the adversary of the mine laying party to the conflict.

4. Aerial Warfare

1149. The airspace of a neutral state is inviolable (Art. 40 HRAW 1923).

1150. The parties to the conflict are forbidden to enter **neutral airspace** with military aircraft, rockets or other missiles (Art. 40 HRAW 1923).

1151. A neutral state is bound to **prevent violations** of its airspace. Aircraft which have entered such jurisdiction must be compelled to leave or to alight. The crews of alighted military aircraft of a party to the conflict must be interned (Art. 42 HRAW 1923).

1152. Medical aircraft may be permitted to overfly and land in the territory of a neutral state (Art. 37 GC I; Art. 40 GC II; Art. 31 AP I; Art. 17 HRAW 1923).

1153. Overflight and stopover require permission. The neutral state may place conditions and restrictions on the overflight of medical aircraft (Art. 37 para 2 GC I; Art. 40 para 2 GC II; Art. 31 API).

1154. The right of neutral aircraft to overfly the territory of the parties to the conflict is regulated by the general rules of international law on the protection of national airspace and the rules of international air traffic.

1155. For the control, seizure and condemnation of neutral aircraft above maritime areas and the treatment of their passengers and crew the relevant rules of naval warfare apply accordingly (Art. 35, 37 HRAW 1923). An aircraft which does not carry clearly visible national emblems of a neutral State may be treated as enemy aircraft.

Chapter 12 Enforcement of International Humanitarian Law

I. General

1201. Violations of international humanitarian law have been committed by the parties to nearly every armed conflict. Published reports as well as internal findings show, however, that the protective provisions of international humanitarian law prevented or reduced great suffering in many cases.

1202. The following factors can induce the parties to a conflict to counteract disobedience of the law applicable in armed conflicts and thus to enforce observance of international humanitarian law:

- consideration for public opinion;
- reciprocal interests of the parties to the conflict;
- maintenance of discipline;
- fear of reprisals;
- penal and disciplinary measures;
- fear of payment of compensation;
- activities of protecting powers;
- international fact-finding;
- the activities of the International Committee of the Red Cross (ICRC);
- diplomatic activities;
- national implementing measures;
- dissemination of humanitarian law; and
- the personal conviction and responsibility of the individual.

II. Public Opinion

1203. The presentation of a violation of international law in **public** may render an essential **contribution** to enforcing behaviour which is in compliance with international law. To this end, considering the global Information network, the media (press, broadcasting, television) and their aids (radio, satellites) can nowadays operate in an incomparably better and thus more efficient way than has been the case in previous armed conflicts. When offences against international law become known, each party to the conflict must expect that truthful enemy reports on its violations of international law will impair the fighting morale of its forces and the consent of its own population.

III. Reciprocal Interests of the Parties to the Conflict

1204. People complying with the provisions of international humanitarian law themselves can expect the adversary to observe the dictates of humanity in an armed conflict. No one shall be guided by the suspicion that soldiers of the other party to the conflict might not observe these rules. Soldiers must treat their opponents in the same manner as they themselves want to be treated.

IV. Maintenance of Discipline

1205. Ordering or tolerating violations of international law leads to doubts of the subordinates as of the justification of activities of the own side. It can undermine as well the authority of the military leader giving such an order and can jeopardize the **discipline** of the forces.

V. Reprisals

1206. The use of **reprisals** can cause an adversary acting contrary to international law to stop his violations of the law. Reprisals are permissible only in exceptional cases and only for the purpose of enforcing compliance with international law. They require a decision to be taken by the supreme political level (see Sections 476 -479 above).

VI. Penal and Disciplinary Measures

1207. Each member of the armed forces who has violated the rules of international humanitarian law must be aware of the fact that he can be prosecuted according to **penal or disciplinary** provisions.

1208. The four Geneva Conventions and Additional Protocol I oblige the contracting parties to make **grave breaches** of the protective provisions liable to punishment and to take all suitable measures to ensure compliance with the Conventions (Art. 49, 50 GC I; Art. 50, 51 GC II; Art. 129,130 GC III; Art. 146,147 GC IV; Art. 85 API).

1209. Grave breaches of international humanitarian law are in particular:

- indictable offences against **protected persons** (wounded, sick, medical personnel, chaplains, prisoners of war, inhabitants of occupied territory, other civilians), such as willful killing, mutilation, torture or inhumane treatment, including biological experiments, willfully causing great suffering, serious injury to body or health, taking of hostages (Art. 3, 49 - 51 GC I; Art. 3, 50, 51 GC II; Art. 3, 129,130 GC III; Art. 3, 146,147 GC IV; Art. 11 para 2, 85 para 3 lit. a AP I);
- **compelling** prisoners of war and civilians to serve in the forces of the adversary (Art. 129 - 131 GC III);
- **deportation, illegal transfer or confinement** of protected civilians (Art. 146-148 GC IV; Art. 50, 51, 57, 85 para 4 lit. a AP I);
- **starvation** of civilians by destroying, removing or rendering useless objects indispensable to the survival of the civilian population (e.g. foodstuffs, means for the production of foodstuffs, drinking water installations and supplies, irrigation works) (Art. 54 AP I; Art. 14 AP II);
- **destruction or appropriation** of goods, carried out unlawfully and wantonly without any military necessity (Art. 50 GC I; Art. 147 GC IV);
- launching an **indiscriminate** attack in the knowledge that such attack will have adverse effects on civilian life and civilian objects (Art. 85 para 3 lit. b AP I);
- launching an attack against **works or installations containing dangerous forces** (dams, dykes and nuclear electrical generating stations), expecting that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects (Art. 85 para 3 lit. c AP I; Art. 15 AP II);
- launching attacks against **non-defended localities**, demilitarized zones and neutralized zones (Art. 85 para 3 lit. d AP I; Art. 15 AP II);
- launching attacks against **defenceless persons** (Art. 85 para 3 lit. e API);
- unjustifiable delay in the repatriation of prisoners of war and civilians (Art. 85 para 4 lit. b AP I);
- practices of apartheid and other inhuman and degrading practices based on racial discrimination (Art. 85 para 4 lit. c API);
- extensive destruction of cultural property and places of worship (Art. 85 para 4 lit. d AP I; Art. 16 AP II);

- prevention of a fair and regular trial (Art. 3 para 3 lit. d GC I; Art. 3 para 1 lit. d GC III; Art. 85 para 4 lit. e AP I);
- perfidious (Art. 37 AP I) use of recognized **protective signs** (Art. 53 para 1 GC I; Art. 45 GC II; Art. 5 para 3 lit. f AP I; Art. 12 AP II);
- **use of prohibited weapons.**

1210. Serious violations of the rules of international humanitarian law are covered by the general subject matters identified in the German national penal code (Strafgesetzbuch – StGB), which particularly include offences against:

- life (§§ 211ff StGB);
- body and health (§§ 223 ff StGB);
- personal liberty (§§ 234 ff StGB);
- personal property (§§ 242 StGB);

as well as

- offences constituting a public danger (§§ 306 ff StGB); and
- offences committed in execution of official duties (§§ 331 ff StGB).

1211. According to § 125 of the Administrative Offences Act (Ordnungswidrigkeitengesetz), the misuse of the emblem of the Red Cross or of the heraldic emblem of Switzerland constitutes an administrative offence which is liable to a fine (see above Section 638).

1212. The abuse of distinctive emblems and names which, according to the rules of international law, are equal in Status to the Red Cross may also be prosecuted (§ 125 para 4 of the Administrative Offences Act).

1213. When a disciplinary superior learns about incidents substantiating suspicion that international humanitarian law has been violated, he shall clear up the facts and consider as to whether disciplinary measures are to be taken. If the disciplinary offence constitutes a criminal offence, he shall refer the case to the appropriate criminal prosecution authority when criminal prosecution seems to be indicated (§§ 28 para 1, 29 paras 2 and 3 of the Military Disciplinary Code in connection with Art. 87 para 3 AP I).

VII. Compensation

1214. A party to a conflict which does not comply with the provisions of international humanitarian law shall be liable to pay **compensation**. It shall be responsible for all acts committed by persons forming part of its armed forces (Art. 91 AP I; Art. 3 HC IV).

VIII. Protecting Powers and their Substitutes

1215. It is the duty of the parties to a conflict from the beginning of that conflict to appoint **Protecting Powers** to safeguard the interests of these parties (Art. 5 para 1 AP I). For this purpose, each party to the conflict shall designate a Protecting Power (Art. 8 para 1 GC I; Art. 8 para 1 GC II; Art. 8 para 1 GC III; Art. 9 para 1 GC IV). This party shall, likewise without delay and for the same purpose, permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse party. The International Committee of the Red Cross may assist in the designation of Protecting Powers (Art. 5 para 3 AP I).

1216. If there is no Protecting Power, the parties to the conflict must accept an offer of the International Committee of the Red Cross or of any other impartial and efficient organizations to act as a substitute (Art. 5 para 4 AP I).

1217. Protecting Powers and their substitutes shall have the duty of safeguarding the interests of the party to the conflict which has designated them and encouraging compliance with international humanitarian law in an impartial manner (Art. 5 AP I).

IX. International Fact-Finding

1218. The International **Fact-Finding Commission** (Art. 90 AP I) was established on 25 June 1991. It comprises of 15 independent members and shall enquire in States who have recognized the competence of the Commission into any incidents alleged to be a grave breach or at least a serious violation of the rules of international humanitarian law.

1219. In situations of serious violations, the contracting parties are further bound to act, jointly or individually, in cooperation with the United Nations and in conformity with the United Nations Charter (Art. 89 AP I).

X. The International Committee of the Red Cross

1220. The International Committee of the Red Cross (ICRC) is an independent, humanitarian organization based in Geneva. Its principal purpose is to provide protection and assistance to the victims of armed conflict. The members of the ICRC and its delegates acting in its name are Swiss citizens. The Geneva Conventions and their Additional Protocols recognize the special status of the ICRC and assign specific tasks for it to perform, including visiting prisoners of war and civilian internees, providing relief to the population of occupied territories, selecting and transmitting Information concerning missing persons (Central Tracing Agency), and offering its good Offices to facilitate the establishment of hospital and safety zones. The ICRC is altogether dedicated to work for the faithful application of the Geneva Conventions and their Additional Protocols. It endeavors to ensure the protection of military and civilian victims of armed conflict, and to serve as a neutral intermediary between belligerents. According to the Geneva Conventions the ICRC has a general right of initiative in humanitarian matters. Owing to its humanitarian activity which is guided by the **principles** of humanity, impartiality, neutrality, independence, voluntary Service, unity, and universality, the ICRC enjoys high respect and deserves support.

XI. Diplomatic Activities

1221. Compliance with international law may be enforced by way of protest, good offices, mediation, investigation and diplomatic intervention, be it by neutral states or by international bodies and religious or humanitarian organizations, and by sanctions decided by the United Nations Security Council.

XII. National Implementing Measures

1222. According to Art. 59 para 2 of the Basic Law of the Federal Republic of Germany international treaties become part of German law by passing a **Federal Act**. Art. 25 of the Basic Law states that **general rules** of international law are part of the national law, being directly applicable and taking precedence over all acts. This applies also to the basic principles of humanitarian law. The relative weakness of international measures to

secure the performance of obligations under humanitarian law calls for national implementing efforts among **which military manuals** are of particular importance.

XIII. Dissemination of Humanitarian Law

1223. Effective implementation is depending on **dissemination of** humanitarian law. Providing information about it is the necessary basis to create common consciousness and to further the attitude of the peoples towards a greater acceptance of these principles as an achievement of the social and cultural development of mankind.

XIV. Personal Responsibility of the Individual

1224. Each individual shall be responsible for realizing the aims of international humanitarian law and observing its provisions. Military leaders shall highlight this by their own behaviour. They shall make clear that everyone is requested by his conscience to stand up for the preservation of the law.