

Geneva Convention Humane Treatment of Detainees Summary

**Geneva Convention (Humane Treatment of Detainees)
CD 113 / Version 2004
11 Jun 2004**

SECTION I. ADMINISTRATIVE DATA

All Courses Including This Lesson	<u>Course Number</u> 31E-POI	<u>Version</u> 2004	<u>Course Title</u> Detainee Operations
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Task(s) Taught(*) or Supported	<u>Task Number</u>	<u>Task Title</u>
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Reinforced Task(s)	<u>Task Number</u>	<u>Task Title</u>
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Academic Hours The academic hours required to teach this lesson are as follows:

	<u>Mobilization Hours/Methods</u>	
	1 hr	/ Conference / Discussion
Test	0 hrs	
Test Review	0 hrs	
Total Hours:		1 hr

Test Lesson Number	<u>Hours</u>	<u>Lesson No.</u>
	Testing (to include test review)	N/A

Prerequisite Lesson(s)	<u>Lesson Number</u>	<u>Lesson Title</u>
	None	

Clearance Access Security Level: Unclassified
Requirements: There are no clearance or access requirements for the lesson.

Foreign Disclosure Restrictions FD7. This product/publication has been reviewed by the product developers in coordination with the Fort Leonard Wood, Missouri 65473 foreign disclosure authority. This product is NOT releasable to students from foreign countries.

References

<u>Number</u>	<u>Title</u>	<u>Date</u>	<u>Additional Information</u>
FM 100-14	Risk Management	23 Apr 1998	
FM 27-10	The Law of Land Warfare	18 Jul 1956	

Student Study Assignments

Instructor Requirements One primary instructor.

Additional Support Personnel Requirements

<u>Name</u>	<u>Stu Ratio</u>	<u>Qty</u>	<u>Man Hours</u>
None			

Equipment Required for Instruction

<u>Id Name</u>	<u>Stu Ratio</u>	<u>Instr Ratio</u>	<u>Spt</u>	<u>Qty</u>	<u>Exp</u>
None					

* Before Id indicates a TADSS

Materials Required

Instructor Materials:

NOTE: Based on available qualified instructors, facilities and equipment, the instructor may use computer-assisted powerpoints with projection screen or VGTs (Vu-graphs) with overhead projector.

Film "The Law of Land Warfare"

Student Materials:

None

Classroom, Training Area, and Range Requirements

Ammunition Requirements

<u>Id</u>	<u>Name</u>	<u>Exp</u>	<u>Stu Ratio</u>	<u>Instr Ratio</u>	<u>Spt Qty</u>
None					


Instructional Guidance

NOTE: Before presenting this lesson, instructors must thoroughly prepare by studying this lesson and identified reference material.

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Army Core Values have been integrated into this lesson to promote assimilation of Human Relations training. Particular attention must be given to values identified with the lesson. Instructors must be role models and mentors to help soldiers assimilate ACV by noting the values and their associated behaviors as appropriate during this training.

Proponent Lesson Plan Approvals

<u>Name</u>	<u>Rank</u>	<u>Position</u>	<u>Date</u>
	MSG	SR Corrections Technical Advisor	11 Jun 2004

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SECTION II. INTRODUCTION

Method of Instruction: Conference / Discussion
 Instructor to Student Ratio is: _____
 Time of Instruction: 5 mins
 Media: -None-

Motivator **Note:** Show Slide #1 (Geneva Convention (Humane Treatment of Detainees))

As a tough and combat ready United States soldier you may one day be involved in an armed conflict against a hostile force: therefore, it is important that you pay close attention to this instruction of Law of Land Warfare.

Terminal Learning Objective **NOTE:** Inform the students of the following Terminal Learning Objective requirements.

At the completion of this lesson, you [the student] will:
Note: Show Slide #2 (TLO)

Action:	Understand customary and treaty law as it applies to the conduct of Land Warfare.
Conditions:	In a classroom and given information on the Hague and Geneva Convention and customary Law of War.
Standards:	Be able to apply the principles of the Law of Land Warfare.

Safety Requirements None

Risk Assessment Level Low - This class is assigned a risk level of LOW Potential risk: produced locally

Environmental Considerations **NOTE:** It is the responsibility of all soldiers and DA civilians to protect the environment from damage.
 It is the responsibility of all soldiers and DA civilians to protect the environment from damage. Units/installations will prepare an environmental risk assessment using the before, during, and after checklist and the risk assessment matrices contained in the *Unit Leader's Handbook for Environmental Stewardship* (TC 5-400, Chapter 5). The checklist should be supplemented locally using state and local environmental regulations applicable to your area.

Evaluation None

Instructional Lead-In During the next hour you must identify customary and treaty law applicable to the conduct of Land Warfare. You will receive an explanation and we will discuss Law of Land Warfare while seated in this classroom. Upon the completion of this instruction, you will be able to identify your responsibility for your conduct during the time of war.

Value Note: As a captor of Prisoners of War, you will be tested to the limits of your being. The prisoners will attempt to get you to compromise your core values for their gain. Living up to all of the Army values will bring honor to yourself, your fellow soldiers, the Army, and your country.

SECTION III. PRESENTATION

NOTE: Inform the students of the Enabling Learning Objective requirements.

NOTE: Show Slide #3 (ELO A)

A. ENABLING LEARNING OBJECTIVE

ACTION:	Understand the Laws of War
CONDITIONS:	In a classroom environment with a conference/discussion.
STANDARDS:	Be familiar with the following 1. The principles, spirit, and intent of the Hague and Geneva Conventions. 2. The Law of War prohibiting unnecessary destruction. 3. The Law of War requiring humane treatment of prisoners of war (POWs), other captured and detained personnel, and civilians. 4. The obligation not to commit war crimes. 5. The obligation to report all violators of the Law of War. 6. The significant provisions of the Geneva Convention relative to the treatment of Prisoners of War (POWs).

1. Learning Step / Activity 1. Law of Land Warfare

Method of Instruction: Conference / Discussion
Time of Instruction: 40 mins
Media: -None-

NOTE: Show Slide # 4 thru # 7(Hague and Geneva Conventions)

a. The purpose of this period of instruction is to explain that the Hague and Geneva Conventions and the customary Law of War require that we, as American soldiers--

- (1) Will not inflict unnecessary destruction or suffering in accomplishing our military mission.
- (2) Will treat prisoners of war, other captured and detained personnel, and civilians humanely.
- (3) Will not obey an order whose execution is a crime in violation of the Law of War.
- (4) Are personally responsible for unlawful acts committed by ourselves.
- (5) Are entitled to humane treatment if we are captured or detained by the enemy.

b. We will discuss the history and background of these conventions, some of their specific provisions, and how these rules of warfare apply to the armed forces. Also,

together we will learn the legal rules which: (1) limit the ways in which we can fight wars; (2) tell us how we must treat captured or detained persons, and how the enemy must treat captured or detained American soldiers. As we shall see, these rules protect both those who are fighting and those who are not fighting by safeguarding certain basic rights. Observing these rules will encourage the enemy to do the same, increase the chance that he will surrender, and make the return to peace easier. In the second half, we will explain the specific responsibilities of the soldier to obey these rules and to report violations.

c. Rationale. Each of us has a personal stake in knowing about these conventions and in understanding how they work, for we are required to obey them, as well as other rules of international law, just as we must obey the Uniform Code of Military Justice. International treaties, no less than Congressional statutes like the UCMJ, are under our Constitution, the supreme law of the land. If we fail to comply with these conventions, we may face trial and punishment or other disciplinary action.

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

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

b. In the last one hundred years, however, nations have also adopted specific rules concerning the treatment of all persons who fall into the hands of a military force. We can be proud that the United States was a leader in adopting for our military forces rules which recognized that the enemy was a human being, that unnecessary destruction or suffering must not occur, and that captured persons are entitled to certain fundamental human rights, regardless of their prior conduct or beliefs.

During the Civil War, President Lincoln issued General Order 100, which provided for humane treatment of captured enemy soldiers. This order had been written by Dr. Francis Lieber and became known as the Lieber Code. Since then, those principles have been expanded and incorporated in other national and international bodies of law. The Hague Conventions of 1907 and the Geneva Convention of 1949 represent the major efforts by the countries of the world to reduce to written form certain basic concepts of the Law of War. These Conventions do not replace the customary, or unwritten, Law of War, but merely reinforce and supplement it. The United States has signed the Hague and Geneva Conventions. We have solemnly pledged to honor and self-respect, we must fulfill that pledge.

NOTE: Show Slide # 8 and # 9(**Prohibitions on targets**).

a. The customary Law of War and Hague Convention No. IV, entitled "Respecting the Laws and Customs of War of Land," establish rules which limit the kinds of targets we can attack and the weapons we can use. In accordance with these Hague provisions, appropriate military commanders issue rules of engagement which tell soldiers where, when, and what they can shoot. These rules may differ from one combat zone to another. They are often classified, because they normally apply to

the actual combat operation in a specific area. These rules of engagement must at least meet the requirements of the Hague Regulations. The Hague Regulations prohibit the destruction or the seizure of enemy property unless imperatively demanded by the necessities of war. Let us assume, for example, that you are conducting a search in a built-up area. As you go from one building to another, you discover a few weapons. But in one home you see some interesting art objects—hand-carved figures, for instance—and you decide to take one. Would that be a crime? YES. By taking it you would violate the Law of War and the Uniform Code of Military Justice. You have no right to take such property. If during the same search, you deliberately smash dishes, burn books, and scatter clothing, you would also violate the Law of War by destroying property when militarily unnecessary. Let's consider another example. During a search in a rural village, you dare your buddy to see who can shoot a farmer's cow first, or who can shoot a candle on an outdoor religious shrine. Who would lose these games? Both of you. You both would be violating the Law of War and the Uniform Code of Military Justice, and both of you would be prosecuted.

b. Under the provisions of the Hague Convention, a military target or a place occupied by a combatant force can be attacked; however, the attack or shelling by any means whatsoever of undefended towns, villages, dwellings, or buildings is prohibited. This means that military targets can be attacked whenever they are located, but a town with no military targets must be spared. Furthermore, in attacking a military target, suffering and destruction must be held to the minimum necessary to accomplish the mission, and any excessive destruction or suffering not required to accomplish the objective would be illegal as a violation of the Law of War. Let's look at some examples which illustrate these rules. You are in a defensive position just outside a small village. You receive sniper fire, apparently from a single building within the village. Immediately, without checking with a higher commander, you call in all available artillery and destroy the entire village. By doing so, you have violated the Law of War (1) by using excessive force not required to neutralize the sniper fire and (2) by causing unnecessary suffering by destroying much more than the military target. You might have accomplished your mission by calling for a direct fire weapon such as a tank or an antitank gun, or by using small arms or automatic weapons within your resources to neutralize the sniper. As another example, consider the pilot returning from a mission with some unused bombs. Not wanting to land with the bombs, he decides to drop them on a village which he believes to be undefended, but sympathetic to the enemy. By doing so, the pilot also has used force indiscriminately, without any military necessity, and violated the Law of War.

c. We should also remember that in attacks and shellings, all necessary measures must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes. The same applies to historic monuments, hospitals, or other places where the sick and wounded are collected, even if the sick and wounded are enemy soldiers. If such buildings are being used for military purpose, however, they are legitimate targets. For example, you could not loot or ransack a pagoda during a search, but you would shell it if it was being used by the enemy to store weapons and ammunition.

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

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

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

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

NOTE: Show Slide # 10 (Illegal tricks and methods).

a. The Law of War prohibits certain treacherous acts. For instance, there were occasions in World War II when the Nazis improperly identified buildings as hospitals and certain areas as protected areas, but really used the buildings or areas for direct military purposes such as observation posts, troop billets, defensive positions, or ammunition storage. Another example of an illegal trick would be pretending to surrender in order to facilitate an attack upon an unsuspecting enemy. Such tactics are prohibited because they destroy the basis for the restoration of peace short of the complete destruction of one side or the other. Buildings being used for military purposes, but improperly marked, may be attacked. Moreover, buildings such as hospitals may often be located close to legitimate military targets. An attack on a legitimate target which unavoidably causes incidental damage to other facilities is not a violation of the Conventions or Customary Law. Nevertheless, we should always keep in mind the principle that one should cause no greater destruction of enemy property than necessary to accomplish the military mission.

NOTE: Show Slide # 11 and # 12 (Prohibitions on weapons).

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

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

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

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

These principles have established the illegality of the use of irregularly shaped bullets, such as dum-dum bullets; projectiles filled with glass; and any substances or projectiles that would tend to inflame a wound. Use of these weapons is always illegal. Our government conducts extensive tests on all weapons:

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

NOTE: Show Slide # 13 thru # 15 (Humane treatment of noncombatant).

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

b. But, you ask, what does it mean to treat someone humanely? If you treat such people as you would like to be treated if you were captured or detained, you will be treating them humanely. Remember that a POW is in your protective custody, and you cannot harm him. While this is a good rule of thumb to remember, the Conventions provide as a minimum that persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those who can no longer fight because of sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth, wealth, or any other similar criteria.

The wounded and sick must be collected and cared for. Furthermore, certain acts are and shall remain prohibited at any time and in any place whatsoever. These include: (1) Violation to the life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture; (2) taking of hostages; (3) outrages upon personal dignity, in particular humiliating and degrading treatment; (4) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees recognized as indispensable by civilized peoples.

NOTE: Show Slide # 16 thru # 20 (Rights to which prisoners of war (POW) are entitled).

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

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

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

c. Religious Freedom. We are entitled to practice our religious faith. The Convention provides that all prisoners of war shall enjoy complete freedom in the exercise and observance of their religious faith. Chaplains or others with ministerial training who are captured must be allowed to minister freely among prisoners.

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

e. Other Privileges. We are entitled to send and receive mail. Each prisoner must be allowed to write a minimum of two letters and four postal cards per month. We may also receive parcels containing foodstuffs, clothing, and educational, religious, or recreational material. We are allowed to have a prisoners' representative. The Geneva Prisoner of War Convention provides that in camps containing officer prisoners, the senior officer shall be recognized as the prisoners' representative.

Indeed, it is the responsibility of the senior US military person present to assume command of all US personnel confined within a particular camp unless otherwise provided by pertinent service directives. In camps that do not contain officers, the prisoners' representative is elected by the prisoners by secret ballot every six months. It is the duty of such prisoners' representative to further the physical, spiritual, and intellectual well-being of those he represents.

In addition, he supervises their welfare and represents the prisoners before the military authorities, the Protecting Power, the International Red Cross, and similar organizations. If captured or detained by the enemy, we are entitled to humane treatment. Specifically, the Geneva Prisoner of War Convention requires our captors to feed, shelter, and care for us. Furthermore, we can--even while held as prisoners of war--practice our religion and send and receive mail and other items. These are our basic rights as prisoners of war. Now, what are your obligations as a prisoner of war?

f. Interrogation. What information must be given to our captor? The 1949 Geneva Prisoner of War Convention provides that a prisoner of war must give only his full name, rank, date of birth, and service number. This is all the information our captor may demand. No method of torture, mental or physical, may be used to obtain even this information from us, and certainly may not be used to obtain any additional information.

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

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

Now, I have covered a lot of points, and although you remember them now, you may not if you are ever captured and held as a prisoner of war. Let me point out here that

Article 41 of the Convention on Prisoners of War provides for the posting of a copy of the constitution and its annexes, including any specific agreements, all to be in the prisoner's own language, at places where all may read them. In addition, copies are to be supplied, on request, to prisoners who do not have access to the copy which is posted. This should make it possible to clear up any doubts as to provisions which you cannot remember from instruction.

NOTE: Show Slide # 21 (**Humane treatment of POWs**).

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

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

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

NOTE: Show Slide # 22 thru # 24 (**Humane treatment of civilians**).

While conducting a sweep operation through an enemy village, we round up men, women, and children many of whom we suspect of being the parents, wives, and children of enemy soldiers or enemy sympathizers. Can we execute them and burn their homes: (1) as a warning to other enemy sympathizers, and (2) in retaliation for their suspected participation in the war effort? **NO**. Under Article 27 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, the civilian population of the country in conflict is entitled to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They must be protected especially against all acts or threats of violence and against insults and public curiosity. Women should be especially protected against any attack on their honor, in particular against enforced prostitution, rape, or any other form of sexual assault. Under the UCMJ, a soldier convicted of rape may be sentenced to death.

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

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

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

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

NOTE: Show Slide # 25 (Responsibilities of US soldiers to obey the law of war).

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

NOTE: Show Slide # 26 thru #28 (Criminal violations of the law of war).

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

b. In addition to the grave breaches of the Geneva Convention, the following acts-called simple breaches - are also war crimes:

- (1) Using poisoned or otherwise forbidden arms or ammunition, such as dum-dum bullets.
- (2) Pretending to surrender as a trick.
- (3) Mutilation of dead bodies, such as cutting off ears.
- (4) Firing on localities which are undefended and without military significance, such as churches or hospitals.
- (5) Abuse of or firing on the flag of truce.
- (6) Misuse of the Red Cross emblem, such as using a medical evaluation helicopter to transport combat troops.
- (7) Use of civilian clothing by troops to conceal their military identity during battle.
- (8) Improper use of privileged buildings for military purposes, such as using a church steeple as an observation post.
- (9) Poisoning of wells or streams.
- (10) Pillage, looting, or purposeless burning of homes.
- (11) Compelling prisoners of war to perform prohibited labor, such as removing mines or digging defensive positions.
- (12) Killing, without proper legal trial, spies or other captured persons who have committed hostile acts.
- (13) Compelling civilians to perform prohibited labor, such as carrying mortars.
- (14) Violation of surrender terms.
- (15) Taking and keeping a captured enemy soldier's personal property, such as a wallet or watch, as a war trophy.
- (16) Use of an enemy prisoner as point man on a patrol.

We have discussed many of these acts before. We know that they are prohibited. Furthermore, this list is not complete; it only contains examples. According to FM 27-10, every violation of the Law of War is technically a war crime for which the violator may be punished.

NOTE: Show Slide # 29 and # 30 (**Responsibility of the commander**).

The legal responsibility for the commission of war crimes frequently can be placed on the military commander as well as his subordinates who may have actually committed the crime. Since a commander is responsible for the actions of those he commands, he can be held as guilty party if his troops commit crimes pursuant to his command; or if he knows or should know, through reports or other means reasonably available to him, that those under his command are about to commit war crimes, and he fails to take those reasonable steps available to him to prevent their commission. The commander may also be held responsible if he knows or should have known of the alleged commission of a war crime by his subordinates, and he fails to take

reasonable steps to promptly investigate and, if appropriate, bring to trial and punish the perpetrators of the offense.

NOTE: Show Slide # 31 thru # 36 (**Criminal orders and individual responsibility**).

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

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

There is always the question of what to do if it seems to be a situation of "my life or his." For example, you are on patrol with six men and capture an enemy soldier. It's burdensome to take him with you. To turn him loose would jeopardize the lives of all of the patrol. Your patrol leader orders you to execute him. Do you do it? **NO**. In an emergency, a helicopter can and frequently does carry "one more body." If a prisoner is important, you leave a couple of the patrol members and evacuate the prisoner first. If you are leaving the area on foot rather than by air, and if the prisoner is willing, he can be given the job of carrying medical or food supplies, or assisting your own wounded. He can be tied, and gagged, and forcibly taken along with the patrol; especially if the patrol is on its way back from a mission. He can be tied, gagged, and left where his own forces can find him after the patrol moves out of the area. If you are going to come back by the same general route, he can be hidden and picked up on your return.

The first point is that in this situation you must consider many factors, such as: (1) How close is friendly support? (2) How important is the prisoner? (3) What is the condition of the patrol? (4) How long has the patrol been out and what is its mission? (5) Does the presence of that individual indicate that your mission has already been compromised by the enemy? These are only some of the factors which you need to know before you make a decision. Although the decision to execute, to murder the prisoner, is an easy one, it is the wrong decision. It is also a war crime and a violation of the UCMJ, and under no circumstances will such an act be tolerated. Even carrying out an order is not a defense to a charge of murder. If you murder a prisoner, you can be tried and executed.

In actual combat, there are always effective alternatives which are legal, humane, and which fit the military situation. The alternatives to murder are limited only by your imagination, and generally will help better accomplish your mission. Any prisoner is important for intelligence purposes. The prisoner who is murdered to make life a little easier for six men may have been a supply officer who could have disclosed the location of a large ammunition cache, the seizure of which would save the lives of hundreds of US soldiers. So far we have discussed orders which could never be justified. They would always be criminal, and an American soldier should always disregard such orders. If you obey a criminal order, you can be tried and punished.

In some cases, orders which would be legal in some situations may be illegal in others. The rules of engagement will guide your actions. These rules set out those targets which you may attack. By knowing these rules you will be able to act properly in different situations. If you disobey the rules of engagement, you can be tried and punished for disobedience orders. The disobedience may also be a war crime for which you can be tried and punished. Let's look at an example. An order to shell enemy soldiers located in a village is legal, even though some civilians may be injured and their homes and livestock destroyed. Suppose, however, that we are conducting a cordon and search operation in the same village. Orders to burn down all the buildings in the village, to kill off all the livestock, and to shoot down everything that moves are criminal orders. You must disregard such criminal orders.

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

But just suppose you are given a criminal order: "shoot every man, woman, and child in sight." Obviously that is a criminal order. What do you do? Firstly, and most importantly, you should try to get the order rescinded by informing the person who gave it that the order violates the Law of War. If he persists, you must disregard such a criminal order. This takes courage, but if you fail to do so, you can be tried and punished for committing a criminal act in violation of the Law of War. No one can force you to commit a crime, and you cannot be court-martialed or given any other form of punishment for your refusal to obey.

The lack of courage to disregard a criminal order, or a mistaken fear that you could be court-martialed for disobedience of orders, is not a defense to a charge of murder, pillage, or any other war crime. The Code of Conduct states, "I am an American fighting man, responsible for my actions, and dedicated to the principles which make my country free." The American soldier who follows the Code should have no problem with the criminal orders. Further, you have a second step to take if a criminal order results in a violation of the Law of War. You must report such violation to the appropriate authorities. Let us discuss this obligation to report in more detail.

NOTE: Show Slide # 37 and # 38 (Obligation to report violations of the law of war).

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

While a soldier should normally report through his chain of command, you may hesitate to do so if someone in the chain above you was involved in the alleged crime, or if for some other reason you feel that such channels would not be effective. At such times, there are other officers to whom you can report or with whom you may properly discuss any possible violation of the Law of War. You can always, for example, file a report with the local office of the Inspector General, or with the Inspector General himself. The Inspector General can effectively investigate such reports. You can always report suspected crimes to the office of the Provost Marshal, the military police. Like the IG, the Provost Marshal has an organization whose members have the knowledge and skill to investigate reports alleging a violation of the Law of War. You may also discuss the problem with a Judge Advocate, a military lawyer who knows the Law of War and how it applies. Many soldiers prefer to discuss problems with the chaplain, and this is an accepted way to report violations of the Law of War. Your chaplain can assist you in properly giving your information to the appropriate authority.

The staff officer who receives a report alleging a violation of the Law of War must, of course, take appropriate steps to report or investigate. While staff officers may have different internal procedures by which they process reports of alleged war crimes, each must at least ensure that the commander he serves is advised of the allegation and that the next higher command is also advised of the report and the actions taken. To whomever the soldier decides to go, he should report any suspected violation immediately. Evidence is lost and witnesses disappear unless an investigation is begun promptly. Moreover, an early investigation will quickly dispel any mistaken charges.

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

NOTE: Show Slide # 39 and # 40 (Illegal means of interrogation).

a. Now let's look at an example which illustrates the meaning of inhumane treatment. Suppose you capture a wounded and hungry enemy soldier who you think knows the location of enemy units in the area. Can you deny him food and medical treatment until he tells you what you want? The answer is NO. The Geneva Convention that protects prisoners of war prohibits forcing the prisoner into giving "information of any kind whatever." If we cannot withhold food or medical care from the prisoner, it follows that we cannot torture information out of him in any other way. Here again the Convention is explicit and the language of the Convention provides--

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

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

NOTE: Conduct a check on learning and summarize the learning activity.

CHECK ON LEARNING: Conduct a check on learning and summarize the ELO.

NOTE: Show Slide # 41 (Summary)

SECTION IV. SUMMARY

Method of Instruction: <u>Conference / Discussion</u>
Instructor to Student Ratio is: _____
Time of Instruction: <u>5 mins</u>
Media: <u>-None-</u>

Check on Learning

Determine if the students have learned the material presented by soliciting student questions and explanations. Ask the students questions and correct misunderstandings.

Review / Summarize Lesson

1. Summary

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

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

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

2. Clarify student questions.

3. Value reinforced: **Honor**

4. Closing Statement: You, as members of the United States Army, are legally bound by the principles of the Hague and Geneva Conventions. By obeying these laws, you will act as legally responsible representatives of the United States.

SECTION V. STUDENT EVALUATION

**Testing
Requirements**

None

**Feedback
Requirements**

NOTE: Feedback is essential to effective learning. Schedule and provide feedback on the evaluation and any information to help answer students' questions. Provide remedial training as needed.

Appendix A - Viewgraph Masters (N/A)

Appendix B - Test(s) and Test Solution(s) (N/A)

Appendix C - Practical Exercises and Solutions (N/A)

Appendix D - Student Handouts (N/A)