

FOR OFFICIAL USE ONLY



AUSTRALIAN DEFENCE FORCE PUBLICATION

OPERATIONS SERIES

ADFP 37

LAW OF ARMED CONFLICT

The information given in this document is not to be communicated either directly or indirectly, to the media or to any person not authorised to receive it.

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

ADFP 37, First Edition, 1996

Sponsored by:

Assistant Chief of the Defence Force (Operations)
Headquarters Australian Defence Force

Developed and Produced by:

Commandant
Australian Defence Force Warfare Centre

Published by:

Director Publishing and Visual Communications
Defence Centre - Canberra

^a Commonwealth of Australia 1996

This work is copyright. No material is to be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, for any purpose outside the course of Commonwealth employment, without the written permission of the publication sponsor.

FOR OFFICIAL USE ONLY



AUSTRALIAN DEFENCE FORCE PUBLICATION

OPERATIONS SERIES

LAW OF ARMED CONFLICT

Australian Defence Force Publication 37 (ADFP 37) - Law of Armed Conflict, is issued for use by the Australian Defence Force and is effective forthwith.

A handwritten signature in black ink, appearing to read "J.S. Baker".

J.S. BAKER
General
Chief of the Defence Force

August 1996

Headquarters
Australian Defence Force
Canberra ACT 2600

FOR OFFICIAL USE ONLY

AMENDMENT CERTIFICATE

1. Proposals for amendment of ADFP 37 are to be forwarded to:

Commandant
Australian Defence Force Warfare Centre
RAAF Base
WILLIAMTOWN NSW 2314
AUSTRALIA

2. An information copy of the proposed amendment is also to be forwarded to:

Assistant Chief of the Defence Force (Operations)
Headquarters Australian Defence Force
Russell Offices (M-B-42)
CANBERRA ACT 2600
AUSTRALIA

AUSTRALIAN DEFENCE FORCE PUBLICATIONS**OPERATIONS SERIES**

		STOCK NUMBER (NSN)
ADFP 1	<i>Doctrine</i>	7610-66-139-0587
ADFP 2	<i>Division of Responsibilities Within the Australian Defence Force</i>	7610-66-139-3520
Supplement 1	<i>International Interoperability Arrangements Handbook</i>	
ADFP 3	<i>Rules of Engagement</i>	7610-66-135-2263
ADFP 4	<i>Mobilisation Planning</i>	7610-66-139-4137
ADFP 6	<i>Operations</i>	7610-66-139-4138
Supplement 1	<i>Maritime Operations</i>	
Supplement 2	<i>Land Operations</i>	
Supplement 3	<i>Air Operations</i>	
ADFP 9	<i>Joint Planning</i>	7610-66-139-3518
Supplement 1	<i>ANZUS Planning Manual</i>	
Supplement 2	<i>Australia's Maritime Jurisdiction</i>	
ADFP 10	<i>Communications</i>	7610-66-139-4139
ADFP 11	<i>Offensive Support</i>	7610-66-139-4140
ADFP 12	<i>Amphibious Operations</i>	7610-66-139-4141
Supplement 1	<i>Amphibious Operations Handbook</i>	
ADFP 13	<i>Air Defence and Airspace Control</i>	7610-66-139-4142
ADFP 14	<i>Air Transport</i>	7610-66-139-4143
ADFP 15	<i>Operations in a Nuclear, Biological and Chemical Environment</i>	7610-66-139-4144
ADFP 17	<i>Joint Exercises and Training</i>	7610-66-139-4145
Supplement 1	<i>Umpiring Handbook</i>	
ADFP 18	<i>Maritime Procedures</i>	
ADFP 19	<i>Intelligence</i>	7610-66-139-4147
ADFP 20	<i>Logistics in Support of Joint Operations</i>	7610-66-139-4148
ADFP 21	<i>Movements</i>	7610-66-139-4149
ADFP 22	<i>Sea Transport</i>	7610-66-139-4150
ADFP 23	<i>Strategic Strike Operations (Targeting)</i>	7610-66-139-4151
ADFP 24	<i>Electronic Warfare</i>	7610-66-139-4152
ADFP 25	<i>Psychological Operations</i>	7610-66-139-4153
ADFP 29	<i>Surveillance and Reconnaissance</i>	7610-66-139-4154
ADFP 31	<i>Beach Intelligence</i>	7610-66-139-3159

FOR OFFICIAL USE ONLY

ADFP 37

vi

ADFP 37	<i>Law of Armed Conflict</i>	7610-66-139-4155
Supplement 1	<i>Commanders' Guide</i>	7610-66-139-4156
ADFP 39	<i>Airborne Operations</i>	7610-66-139-4156
ADFP 41	<i>Defence Public Information Policy During Periods of Tension and Conflict</i>	7610-66-133-6630
ADFP 43	<i>Evacuation Operations</i>	7610-66-139-4157
ADFP 44	<i>Civil Military Cooperation</i>	
ADFP 45	<i>Special Operations</i>	7610-66-139-4158
ADFP 53	<i>Health Support</i>	7610-66-139-3258
ADFP 56	<i>Explosive Ordnance Disposal</i>	7610-66-139-4159
TACAID	<i>Tactical Airborne Information Document</i>	

STAFF DUTIES SERIES

ADFP 101	<i>Glossary</i>
ADFP 102	<i>Defence Writing Standards</i>
ADFP 103	<i>Abbreviations and Military Symbols</i>

FOR OFFICIAL USE ONLY

FOREWORD

1. ADFP 37 - Law of Armed Conflict promulgates guidance to commanders for the planning and conduct of ADF operations in armed conflict and details responsibilities and obligations for ADF members.
2. This publication complements ADFP 1 - Doctrine and ADFP 2 - Division of Responsibilities Within the Australian Defence Force. These publications specify doctrine for the planning and conduct of ADF operations and the division of responsibilities within the ADF both for operations and administration in support of operations.
3. The law of armed conflict (LOAC) is that part of international law which regulates the conduct of armed hostilities between States. LOAC encompasses all international law with respect to the conduct of armed conflict and its provisions are binding on Australia and individual members of the ADF.
4. It is essential that ADF commanders are aware of their legal duties and responsibilities under LOAC and that operational planning and the conduct of operations comply with LOAC.
5. The Director-General Defence Force Legal Services is the publication sponsor and Commandant Australian Defence Force Warfare Centre (ADFWC) is responsible for its continued development, amendment and production. Further information on ADFP is promulgated in Defence Instructions (General) ADMIN 20-1 - *Production and Control of Australian Defence Force Publications*.
6. ADFP 37 Supplement 1 - *Commanders' Guide* will be an annotated version of ADFP 37. Supplement 2 will contain key documents, treaties, conventions and protocols.
7. Every opportunity should be taken by users of this publication to examine its contents, applicability and currency. If deficiencies or errors are found, amendment action should be taken. ADFWC welcomes any assistance, from whatever source, to improve this publication.
- 8. ADFP 37 is not to be released to foreign nationals or foreign countries without the written approval of the Assistant Chief of the Defence Force (Operations).**

CONTENTS

	Page	
Cover	-	
Authorisation Page	-	
Amendment Certificate	iii	
Australian Defence Force Publications Operations and Staff Duties Series	v - vi	
Foreword	vii	
Contents	ix - xv	
Main International Treaties on the Law of Armed Conflict	xvii - xix	
Acronyms and Abbreviations	xxi	
Glossary	xxiii - xxvi	
Symbols of Protection	xxvii	
Distribution List (back of publication)	DL-1	
	Paragraph	
CHAPTER 1	INTRODUCTION AND HISTORICAL BACKGROUND	
	INTRODUCTION	
	General	101-3
	Domestic Law	104
	International Law	105-6
	Sources of International Law	107-11
	HISTORICAL BACKGROUND	
	THE MODERN LAW OF ARMED CONFLICT	
	Hague Law	118-19
	Geneva Law	120-1
	Naval Warfare	122-4
	Air Warfare	125-7
	ARMED CONFLICT	
	International Armed Conflict	128
	Non-international or Internal Armed Conflict	129
	OPERATIONS LAW	
	ROLE OF THE UNITED NATIONS	
CHAPTER 2	PRINCIPLES OF THE LAW OF ARMED CONFLICT	
	INTRODUCTION	
	BASIC PRINCIPLES OF THE LAW OF ARMED CONFLICT	
	Military Necessity	206
	Unnecessary Suffering	207
	Proportionality	208-9
	DISTINCTION	
	RULES OF ENGAGEMENT AND LAW OF ARMED CONFLICT	
CHAPTER 3	APPLICATION OF THE LAW OF ARMED CONFLICT	
	Parties to Whom Law of Armed Conflict Applies	301
	United Nations Charter	302
	Resort to War	303
	International Armed Conflict	304-5
	Non-international Armed Conflict	306-8
	Beginning and End of Application	309-10

CHAPTER 4**WEAPONS**

INTRODUCTION	
PROHIBITED WEAPONS	
General	404
Weapons Calculated or Modified to Cause Unnecessary Suffering	405
Poison	406
Non-detectable Fragments	407
Exploding Small Arms Projectiles	408
Environment Altering Weapons	409
Gas	410
Bacteriological Warfare	411
Chemical Weapons	412-13
Biological Weapons	414
LIMITATIONS ON LAWFUL WEAPONS	
General	415
Incendiary Weapons	416-18
Sea Mines	419
Land Mines, Booby Traps and Other Devices	420-3
Land Mines	424-5
Booby Traps	426-8
Other Devices	429
NUCLEAR WEAPONS	
ROCKETS, MISSILES AND BOMBARDMENT	

CHAPTER 5**TARGETING**

INTRODUCTION	
Targeting Principles	503
APPLICATION OF LAW OF ARMED CONFLICT	
PRINCIPLES TO TARGETING	
Distinction	504
Military Necessity	505-7
Unnecessary Suffering	508
Proportionality	509-11
PERSONNEL	
Combatants	512-16
Noncombatants	517-18
Prisoners of War	519-23
MILITARY OBJECTIVES	
CIVILIANS AND CIVILIAN OBJECTS	
Definitions	529-30
Protection of Civilians and Civilian Objects	531-4
Collateral Damage	535-6
OBJECTS AFFORDED SPECIAL PROTECTION	
Medical Units and Facilities	538-9
Religious, Cultural and Charitable Buildings and Objects	540-2
Civil Defence Establishments	543
Dams, Dykes and Nuclear Power Stations	544
Environment	545

CHAPTER 5 (Contd)	OFFENSIVE SUPPORT AND STRIKE OPERATIONS	
	Precautions in Attack	548-51
	Axes	552
	Defensive Locations	553
	Terrorisation of Civilian Population	554
	Non-lethal Bombardment	555
	DUTIES OF AUSTRALIAN DEFENCE FORCE COMMANDERS	
	Annex:	
	A. Australia's Declarations of Understanding to the Addition Protocols	
CHAPTER 6	MARITIME OPERATIONS AND THE LAW OF ARMED CONFLICT	
	INTRODUCTION	
	DEFINITIONS	
	Archipelagic Sea Lanes Passage	604
	Archipelagic State	605
	Auxiliary Vessel	606
	High Seas	607
	Innocent Passage	608
	Innocent Passage in Archipelagic Waters	609
	International Waters	610
	Vessel	611
	Warship	612
	AREAS OF NAVAL OPERATIONS	
	General Area of Naval Operations	613-15
	Immediate Area of Naval Operations	616-17
	PASSAGE RIGHTS DURING ARMED CONFLICT AT SEA	
	Internal Waters, Territorial Sea and Archipelagic Waters	618-21
	International Straits and Archipelagic Sea Lanes	622-5
	MEANS AND METHODS OF ARMED CONFLICT AT SEA	
	Means of Armed Conflict at Sea	627-31
	Methods of Armed Conflict at Sea	632-6
	RESTRICTIONS ON TARGETING	
	MEASURES OF NAVAL WARFARE AGAINST TRADE	
	Visit and Search of Merchant Vessels	646-7
	Exemptions from Visit and Search of Merchant Vessels	648-9
	Contraband	650-3
	Capture of Enemy Vessels and Goods	654-6
	Capture of Neutral Merchant Vessels and Goods	657-9
	Blockade	660-7
	RESCUE AND CARE OF THE WOUNDED, SICK AND SHIPWRECKED IN ARMED CONFLICT AT SEA	
	FURTHER READING	
CHAPTER 7	LAND OPERATIONS AND THE LAW OF ARMED CONFLICT	
	INTRODUCTION	
	METHODS OF COMBAT	
	Stratagems and Ruses	702
	Perfidy	703
	Improper Use of Protective Symbols and Emblems	704-5

CHAPTER 7 (Contd)	Quarter must be Granted	706
	Persons 'Hors de Combat'	707-8
	Starvation and Devastation - Scorched Earth	709-12
	Protection of the Environment	713-16
	Espionage and Sabotage	717-23
	Assassination	724-5
	Non-defended Locality	726-31
	Siege Warfare	732-6
	Demilitarised Zone	737
	Civil Affairs	738
	Law of Armed Conflict Profiles	739
	PROPERTY ON THE BATTLEFIELD	
	Destruction or Seizure of Civilian Property	740-1
	Booty	742
	Pillage	743

Annex:

- A. Law of Armed Conflict Profile Format

CHAPTER 8	AIR OPERATIONS AND THE LAW OF ARMED CONFLICT	
	INTRODUCTION	
	DEFINITIONS	
	CONTROL OF AIRSPACE	
	Legal Division of the Oceans and Airspace	807
	Outer Space	808
	Status of Military Aircraft and Personnel	809-12
	Air Navigation Rights	813-16
	Navigation in International Airspace	817-19
	Air Defence Identification Zones	820-3
	Security Zones	824-5
	Exclusion Zones	826-7
	Interception of Aircraft	828
	Neutral Airspace during Armed Conflict	829-31
	METHODS OF COMBAT	
	Targeting	832-3
	Precision Guided Weapons	834
	Quarter must be Granted	835-9
	Propaganda	840-1
	RESTRICTIONS ON THE USE OF AERIAL WEAPONS	
	AIR-TO-AIR OPERATIONS	
	Parachutists and Downed Airmen	847-50
	Search and Rescue Operations	851
	Civil Aircraft and Occupants	852-5
	Medical Aircraft	856-9

CHAPTER 9	PROTECTED PERSONS AND OBJECTS
INTRODUCTION	
PROTECTED SYMBOLS	
Red Cross and Red Crescent	905-6
Other Protective Symbols	907-8
Identity Cards	909
White Flag	910
LOSS OF PROTECTED STATUS	
PROTECTION FOR CIVILIANS AGAINST THE EFFECTS OF HOSTILITIES	
Basic Rule	912-13
Definition of Civilian	914
Journalists	915
Definition of Civilian Objects	916
Protection of Civilians and Civilian Objects	917-24
Relief Operations for Civilians	925
SPECIALLY PROTECTED OBJECTS	
Cultural Objects	926
Cultural Property	927-8
Objects Indispensable to Survival	929-32
Installations Containing Dangerous Forces	933-8
Protected Zones and Localities	939-43
GENERAL PROTECTION OF ALL PERSONS AFFECTED BY ARMED CONFLICT	
Basic Human Rights	944-5
Protection of Women, Children and Families	946-7
Free Passage of Relief Supplies	948
RULES FOR THE TREATMENT OF PROTECTED PERSONS	
Protected Persons	950-2
General Treatment of Protected Persons in Both Own Territory and Occupied Territory	953
Treatment of Foreigners in a Territory of a Party to the Conflict	954
THE ENVIRONMENT	
Civil Defence	955-6
Tasks	957-8
General Protection	959-60
Identification	961
Australian Civil Defence Agencies	962
MEDICAL PERSONNEL, TRANSPORT AND FACILITIES	
Medical Personnel	963-8
Medical Facilities and Transports	969-71
Medical Facilities	972-6
Medical Transport	977-82
Chaplains and Religious Personnel	983
Wounded, Sick and Shipwrecked	984-5
Collection of Wounded, Sick and Shipwrecked	986-9
Treatment of Wounded, Sick and Shipwrecked	990-3

FOR OFFICIAL USE ONLY

ADFP 37

xiv

CHAPTER 9	MISSING AND DEAD	
(Contd)	Search for Missing and Dead	994
	Missing Persons	995-7
	The Dead	998-9-104

Annexes:

- A. Protective Symbols
- B. Identity Card for Medical/Religious Personnel
- C. Identity Card for Civil Defence Personnel

CHAPTER 10 PRISONERS OF WAR AND DETAINED PERSONS

INTRODUCTION	
Prisoner of War Status	1003-6
PROTECTION OF PRISONERS OF WAR	
Special	1008-10
Violations	1011-12
PRISONER OF WAR CAMPS	
RULES OF CAPTIVITY	
Identity Cards	1019-20
Interrogation	1021-2
Articles and Equipment	1023-4
Quarters, Food and Clothing	1025-7
Medical and Hygiene	1028-9
Religious, Intellectual and Physical Activities	1030-1
Labour	1032-5
Prisoner Representatives	1036
DISCIPLINARY AND JUDICIAL SANCTIONS	
Disciplinary Punishment	1040
Judicial Sanctions	1041-4
Repatriation	1045-7
Effect of Repatriation	1048

Annexes:

- A. Identity Card for a Person Who Accompanies the Armed Forces
- B. Capture Card for Prisoner of War

CHAPTER 11 RIGHTS AND DUTIES OF NEUTRALS

INTRODUCTION	
Neutral Status	1103
Primary Rights and Duties of Neutral States	1104-5
Neutrality and the United Nations Charter	1106
Neutrality and its Relationship to Regional and Collective Security Arrangements	1107
NEUTRAL TERRITORY	
Neutral Land Territory	1109-15
NEUTRAL WATERS	
Neutral Internal Waters	1118-21
Neutral Territorial Waters	1122
Neutral International Straits	1123
Neutral Archipelagic Waters	1124-5
Neutral Airspace	1126-7

FOR OFFICIAL USE ONLY

CHAPTER 11	NEUTRAL COMMERCE	
(Contd)		
	NEUTRAL PERSONS AND PROPERTY	
	Neutral Nationals and Property in Belligerent Territory	1130-1
	Neutral Nationals or Property in a Theatre of War	1132
	Neutral Nationals in Occupied Territory	1133
	Loss of Neutral Status	1134
	BREACH OF NEUTRALITY	
CHAPTER 12	OCCUPATION	
	INTRODUCTION	
	COMMENCEMENT AND TERMINATION OF BELLIGERENT OCCUPATION	
	Commencement	1202
	Termination	1203-4
	GENERAL EFFECTS OF OCCUPATION	
	Limits on Legislative Power of Occupying Power	1205
	Annexation Prohibited	1206
	Maintenance of Public Order	1207
	ADMINISTRATION OF OCCUPIED TERRITORY	
	Law Applicable in Occupied Territory	1209-12
	Occupying Force Exempt from Local Laws	1213
	Welfare Measures	1214-15
	Relief Measures	1216
	Population Movements into Occupied Territory Prohibited	1217
	EFFECTS OF OCCUPATION ON THE POPULATION	
	Rights of Inhabitants of Occupied Territory	1218-19
	Control of Persons in Occupied Territory	1220-1
	Compulsory Labour	1222-3
	ENEMY PROPERTY IN OCCUPIED AREA	
	Pillage Prohibited	1224
	Confiscation	1225
	Seizure	1226-7
	Requisition	1228-31
CHAPTER 13	COMPLIANCE	
	Yamashita Principles	1303
	Commander's Responsibilities	1304
	Legal Advisers	1305
	Individual Responsibility	1306
	Reporting Law of Armed Conflict Breaches	1307
	Unilateral Compliance	1308
	Reprisals	1309-11
	War Crimes	1312-13
	Breaches	1314-15
	TRAINING	

**MAIN INTERNATIONAL TREATIES ON THE
LAW OF ARMED CONFLICT**

Below are the internationally recognised abbreviations which are used throughout ADFP 37.

St Petersburg	Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 grams Weight. St Petersburg, 29 November-11 December 1868.
H. Decl	Declaration Concerning Expanding Bullets. The Hague, 29 July 1899.
H. III	Convention Relative to the Opening of Hostilities. The Hague, 18 October 1907.
H. IV	Convention Respecting the Laws and Customs of War on Land. The Hague, 18 October 1907.
H. IV. R	Regulations Respecting the Laws and Customs of War on Land. The Hague, 18 October 1907.
H. V	Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The Hague, 18 October 1907.
H. VI	Convention Relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities. The Hague, 18 October 1907.
H. VII	Convention Relating to the Conversion of Merchant Ships into Warships. The Hague, 18 October 1907.
H. VIII	Convention Relative to the Laying of Automatic Submarine Contact Mines. The Hague, 18 October 1907.
H. IX	Convention Concerning Bombardment by Naval Forces in Time of War. The Hague, 18 October 1907.
H. X	Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention. The Hague, 18 October 1907.
H. XI	Convention Relative to Certain Restrictions with Regard to the Exercise of the Right of Capture in Naval War. The Hague, 18 October 1907.
H. XIII	Convention Concerning the Rights and Duties of Neutral Powers in Naval War. The Hague, 18 October 1907.
H. XIV	Declaration Prohibiting the Discharge of Projectiles and Explosives from Balloons. The Hague, 18 October 1907.
London Decl	Declaration Concerning the Laws of Naval War. London, 26 February 1909 (not ratified by any signatory).
Oxford	The Laws of Naval War Governing the Relations Between Belligerents. Manual adopted by the Institute of International Law (Oxford Manual of Naval War). Oxford, 9 August 1913.
H. AW	Rules of Air Warfare. Drafted by a Commission of Jurists at The Hague, December 1922-February 1923 (this was not adopted in a binding form).

FOR OFFICIAL USE ONLY

ADFP 37

- G. BC Protocol for the Prohibition of the use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Geneva, 17 June 1925.
- Havana Convention on Maritime Neutrality. Havana, 20 February 1928.
- Washington Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact). Washington, 15 April 1935.
- London PV *Proces-verbal* relating to the Rules of Submarine Warfare set forth in Part IV of the Treaty of London of 22 April 1930. London, 6 November 1936.
- G. I Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949 (First Geneva Convention).
- G. II Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949 (Second Geneva Convention).
- G. III Convention Relative to the Treatment of Prisoners of War. Geneva, 12 August 1949 (Third Geneva Convention).
- G. IV Convention Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (Fourth Geneva Convention).
- H. CP Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954, with:
- H. CP. R Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954.
- H. CP. P Protocol for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954.
- ENMOD
Treaty 1977 United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. New York, 18 May 1977.
- G. P.I Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). Geneva, 8 June 1977 (Additional Protocol 1).
- G. P. II Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II). Geneva, 8 June 1977 (Additional Protocol 2).
- G. CW Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects. Geneva, 10 October 1980, with:
- G. CW. P.I Protocol on Non-detectable Fragments (Protocol I). Geneva, 10 October 1980.
- G. CW. P.II Protocol on Prohibitions or Restrictions on the use of Mines, Booby Traps and Other Devices (Protocol II). Geneva, 10 October 1980.
- G. CW. P.III Protocol on Prohibitions or Restrictions on the use of Incendiary Weapons (Protocol III). Geneva, 10 October 1980.

FOR OFFICIAL USE ONLY

ADFP 37

xix

- LOSC 82 1982 United Nations Law of the Sea Convention.
- SPNFZ South Pacific Nuclear Free Zone. Raratonga, 1985.
- CWC Chemical Weapons Convention. Paris, 13 January 1993.

ACRONYMS AND ABBREVIATIONS

ADF	Australian Defence Force
ADFP	Australian Defence Force Publication
ADIZ	air defence identification zone
CDF	Chief of the Defence Force
COMAST	Commander Australian Theatre
DFDA	Defence Force Discipline Act
EEZ	exclusive economic zone
EMA	Emergency Management Australia
EZ	exclusion zone
FIR	flight information region
ICAO	International Civil Aviation Organisation
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
LOAC	law of armed conflict
MEZ	maritime exclusion zone
MIA	missing in action
nm	nautical mile
NCO	noncommissioned officers
NOTAM	notice to airmen
OFOF	orders for opening fire
PW	prisoners of war
RAAF	Royal Australian Air Force
RAN	Royal Australian Navy
ROE	rules of engagement
SES	State Emergency Services
UN	United Nations
1982 LOSC	1982 Law of the Sea Convention

GLOSSARY

archipelagic waters

Those waters enclosed by archipelagic baselines drawn in accordance with article 47 of the United Nations Convention on the Law of the Sea (UNCLOS). The sovereignty of an archipelagic state extends to the waters enclosed by the baselines, regardless of their depth or distance from the coast, as well as the associated seabed, subsoil and airspace.

Other aspects of archipelagic States, their rights and waters are addressed in Part IV of UNCLOS.

armed conflict

Conflict between States in which at least one party has resorted to the use of armed force to achieve its aims. It may also embrace conflict between a State and organised, disciplined and uniformed groups within the State such as organised resistance movements.

attacks

Acts of violence against the adversary, whether in offence or defence.

belligerent

A State or other entity engaging in armed conflict, also combatants in some contexts.

civil defence

Mobilisation, organisation and direction of the civil population, designated to minimise by passive measures the effects of enemy action against all aspects of civil life.

civil defence organisations

Those establishments and other units which are organised or authorised by the competent authorities of a party to the conflict to perform any of the following tasks: warning, evacuation, management of shelters, management of blackout measures, rescue, medical services including first aid and religious assistance, firefighting, detection and marking of danger areas, decontamination and similar protective measures, provision of emergency accommodation and supplies, emergency assistance in the restoration and maintenance of order in distressed areas, emergency repair of indispensable public utilities, emergency disposal of the dead, assistance in the preservation of objects essential for survival and complementary activities necessary to carry out any of the tasks mentioned including, but not limited to, planning and organisation, and which are assigned and devoted exclusively for such tasks.

collateral damage

Incidental damage to persons, objects or locations arising out of combat action against a legitimate military objective.

combatants

All organised armed forces, groups and units (except medical service and religious personnel) who are under the command of a party to a conflict and are subject to an internal disciplinary system.

contiguous zone

In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:

- a. prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territorial sea; and punish infringement of the above laws and regulations committed within its territory or territorial sea.
- b. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

cultural property

Movable and immovable objects of sufficient artistic or religious importance to constitute the heritage of all people, including that which has been renovated or restored. Cultural property includes historical monuments, archaeological sites, books, manuscripts or scientific papers and the buildings or other places in which such objects are housed.

exclusive economic zone (EEZ)

An area beyond and adjacent to the territorial sea, subject to the specific legal regime established in Part V of UNCLOS, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions. The EEZ shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

feasible precautions

Precautions which are practicable or practically possible taking into account all circumstances ruling at the time including humanitarian and military considerations.

international straits

Straits which are used for international navigation between one part of the high seas or an EEZ and another part of the high seas or EEZ. In these straits all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an EEZ of similar convenience.

Part III of UNCLOS addresses straits used for international navigation in greater detail .

law of armed conflict

The international law regulating the conduct of States and combatants engaged in armed hostilities. Law of armed conflict (LOAC) is often termed 'law of war'.

levee en masse

Where the inhabitants of a country or territory spontaneously take up arms en masse to resist an invader, LOAC recognises them as combatants provided they do so when there has not been time to form themselves into organised units and they respect LOAC. Individuals acting on their own are not entitled to combatant status nor benefits or detriment flowing from that status.

medical personnel

Medical personnel include persons on the permanent staff of medical establishments and any person temporarily assigned to medical duties, such as soldiers who are carrying wounded from the battlefield. The underlying principle is that care of the wounded and sick (who are now noncombatant) is paramount and nothing should interfere with that care. All medical personnel, whether civilian or military, enemy or friendly are included in the category of noncombatants so long as they do not participate in hostilities.

medical transports

Any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a party to the conflict.

medical units

Establishments and other units, whether military or civilian, organised for medical purposes, namely the search for, collection, transportation, diagnosis or treatment including first aid treatment of the wounded, sick and shipwrecked or for the prevention of disease. The term includes hospitals and other similar units, blood transfusion centres, preventative medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary.

mercenary

A mercenary is any person who:

- a. is specially recruited locally or abroad in order to fight in an armed conflict;
- b. takes part in hostilities;
- c. is motivated to take part in hostilities essentially for the desire for private gain and is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party;
- d. is neither a national of a party to the conflict nor a resident of the territory controlled by a party to the conflict;
- e. is not a member of the armed forces of a party to the conflict; and
- f. has not been sent by a State which is not party to the conflict on official duty as a member of its armed forces.

merchant ship

A vessel engaged in mercantile trade except river craft, estuarial craft or craft which operate solely within harbour limits.

military objectives

Legitimate objects of attack and comprising:

- a. all combatants who have a capacity, and are willing, to fight;
- b. establishments, buildings and locations at which the armed forces or their materiel are located; and
- c. other objects which, by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage. The presence of noncombatants in or around a military objective does not change its nature as a military objective. Noncombatants in the vicinity of a military objective must share the danger to which the military objective is exposed.

national airspace and waters

Areas subject to the territorial sovereignty of individual nations. National waters comprise all those waters landwards of the outer limit of a nation's territorial sea. All airspace above national waters, including internal waters, territorial sea and archipelagic waters and territory is national airspace.

Protecting Power

The Geneva Conventions provide that the treatment of prisoners of war, interned civilians and inhabitants of occupied territory be monitored by a neutral nation known as a Protecting Power. As nations often disagree as to which nations are neutral or otherwise, the International Committee of the Red Cross has been authorised to perform some of the functions of the Protecting Power.

reprisal

An act, otherwise unlawful under the international law regulating armed conflict, utilised for the purpose of coercing an adversary to stop violating the recognised rules of armed conflict.

roadstead

Roadsteads are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly beyond the limits of the territorial sea, are included within the territorial sea. Roadsteads included within the territorial sea must be clearly marked on charts by the coastal or island nation.

rules of engagement

Directives issued by competent military authority which specify the circumstances and limitations under which Australian forces will initiate or continue combat engagement with other forces encountered.

shipwrecked

Persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility. These persons, provided they continue to refrain from any act of hostility, shall continue to be considered shipwrecked during their rescue until they acquire another status under the Geneva Conventions or Additional Protocols.

targeting

The process of identifying targets for possible engagement and determining the attack system to capture, destroy, degrade or neutralise them.

territorial sea

Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from the baselines.

Section 2 of Part II of UNCLOS addresses the limits of the territorial sea in greater detail.

transit passage

All vessels and aircraft have the right to unimpeded transit passage through and over straits used for international navigation. Transit passage must be continuous and expeditious and vessels and aircraft must not threaten or use force against nations bordering the strait. Transit passage is in the normal mode and includes activities such as fuel replenishment, submerged transit for submarines, organic flying operations and tactical manoeuvring.

United Nations Convention on the Law of the Sea (UNCLOS)

Much of what is now internationally accepted as the Law of the Sea is contained in the Official Text of the United Nations Convention on the Law of the Sea (with annexes and index) and the Final Act of the Third United Nations Conference on the Law of the Sea.

wounded and sick

Persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility.

CHAPTER 1

INTRODUCTION AND HISTORICAL BACKGROUND

INTRODUCTION

General

101. While it is the military objective of all commanders to win in battle, there must be limits to the means and methods which may be used. Commanders must be aware of their legal and moral obligation to prevent unnecessary injury and suffering and to alleviate as much as possible the calamities of war.

102. The law of armed conflict (LOAC) seeks to not only regulate the conduct of nations but also govern the behaviour and conduct of both combatants and noncombatants during times of armed conflict. LOAC is synonymous with the term 'the Laws of War'.

103. The main purposes of LOAC, which is part of international law, are to protect combatants and noncombatants from unnecessary suffering; to safeguard certain fundamental human rights of persons who fall into the hands of an enemy, such as prisoners of war, the sick and civilians; to ensure the distinction between combatants and noncombatants is maintained; and to facilitate the restoration of peace.

Domestic Law

104. Domestic law encompasses all those internal laws which govern the behaviour of persons within a nation. These laws, made by Australians are applied to Australian citizens, persons visiting Australia and in some cases may also apply to Australian nationals abroad. It is possible for Australian law to have extraterritorial operation. The Defence Force Discipline Act is an example of a domestic law which binds Australian Service personnel abroad and all members of the ADF serving within Australia. Furthermore, international law may become part of a nation's domestic law; the Australian Parliament's ratification of the 1949 Geneva Conventions and the 1977 Protocols Additional to the Geneva Conventions of 1949 (G.P. I and II), are two examples. In the absence of specific legislation, international law can generally be regarded as part of domestic law.

International Law

105. International law is concerned with the principles and rules of conduct which nations feel themselves bound to observe in their relationships with each other and which include:

- a. the rules of law relating to the functioning of international institutions or organisations, their relations with each other and their relations with states and individuals; and
- b. certain rules of law relating to individuals and non-state entities so far as the rights or duties of such individuals and non-state entities are the concern of the international community.

106. International law, then, is equally applicable to individuals as it is to sovereign states. In international law the term 'states' refers to nations which have been accepted as part of the international community. For simplicity the term 'nation' is used throughout this publication except in chapter 6 where it is necessary to refer to 'archipelagic states'.

Sources of International Law

- 107.** There are five generally recognised sources of international law:
- a. international custom, as evidence of a general practice accepted as law;
 - b. treaties and international conventions, whether general or particular, establishing rules expressly recognised by the international community;
 - c. the general principles of law recognised by civilised nations;
 - d. judicial decisions; and
 - e. the influences of the writings of the most highly qualified subject experts of the various nations.
- 108.** By far the most important sources of international law today are custom and treaties.
- 109. Customary International Law.** This encompasses those laws which represent the general and consistent practice among most nations with respect to a particular subject and are considered obligatory by nations. Custom becomes customary international law when, after a period of time, a practice is accepted by the international community as international law. Customary international law is the principal source of international law. All nations are bound by customary international law, although some nations refuse to recognise customary international law (eg Cuba and Mexico).
- 110. Treaties.** These are international agreements or commitments entered into by two or more nations. Agreements can be bilateral treaties, such as the Five Power Defence Arrangements, which comprise a number of bilateral treaties, or multilateral conventions such as the 1949 Geneva Conventions. Some treaties codify customary law while some broad multilateral treaties may eventually become customary international law which binds all nations regardless of whether they are party to the treaty or not.
- 111. Compliance with International Law.** While international law is often criticised because there is no central enforcement authority, breaches of international law can still have dire consequences. In the worst cases, armed conflict may result if two nations cannot resolve their differences through international law and diplomacy. International law has been extended to cover the actions not only of nations but also of individuals. International law provides stability in international relations and an expectation that certain acts or omissions will result in predictable consequences. Failure to observe international law will often involve greater political and economic costs than would compliance.

HISTORICAL BACKGROUND

- 112.** Human societies have always developed legal systems to govern their relations. This includes situations of conflict between groups. Early man and primitive societies had basic rules and ritualistic behaviour. As societies became more developed so did the rules. Agreements on the treatment of prisoners of war can be found in Egypt as far back as 1400 BC. There are also records of rules for humane treatment of noncombatants in some Indian states around 500 BC. A rudimentary form of international law was practised by Greek city states and the Romans. This included rules which regulated warfare. The rationale for these rules is the same today: to inflict unnecessary suffering can be counter productive; for example, actions such as poisoning wells would have detrimental effects which may destroy the gains of victory.

113. It is believed that the first systematic code of war was that of the Saracens, based on the Koran. During the Sixteenth Century, nation states emerged in Europe and a system of international law came into being. Part of this law was a code of chivalry; however, the desire for regulating war derived principally from national or personal interests rather than humanitarian concerns. For example, the conference called by Tsar Nicholas II in 1899 was motivated by the fact that Russia was falling behind in the nineteenth century arms race rather than by genuine humanitarian concerns. The modern LOAC originated from the medieval customary practices adopted by those taking part in battles.

THE MODERN LAW OF ARMED CONFLICT

114. The origins of the modern law of armed conflict can be traced to the battle of Solferino in 1859 in northern Italy. After witnessing the results of this battle a young Swiss merchant, Henri Dunant, wrote an influential book which described the carnage. The impact of this book and Dunant's subsequent efforts led to the formation of the Red Cross.

115. In 1864, the Swiss Government, at the urging of the Red Cross, convened the first conference on International Humanitarian Law (IHL). At this conference the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field' was drawn up and signed by 16 nations. Subsequent conferences in 1906, 1929 and 1949 further developed and refined IHL. The latest development has been the 1977 Additional Protocols (G.P. I and G.P. II) which were adopted in 1977. Australia is a party to all of these conventions and protocols.

116. Perhaps the most celebrated early attempt at codifying the customs and usages of war came with the American Civil War. In 1863, Dr Francis Lieber, an eminent lawyer, at the request of President Lincoln and in consultation with a board of officers, drew up a code of conduct titled Instructions for the Government of Armies of the United States in the Field'. This instruction established limits on a belligerent's means to wage war and identified military objectives as the only legitimate targets for deliberate attack.

117. An early agreement dealing with the means and methods of war was the Declaration of St. Petersburg in 1868 which prohibited the use of any projectile weighing less than 400 grams which was either explosive or charged with fulminating or inflammable substances. The principles stated in the preamble to the declaration are still relevant today:

'That the progress of civilisation should have the effect of alleviating as much as possible the calamities of war;

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would, therefore be contrary to the laws of humanity.'

Hague Law

118. Hague Law is a term used to describe the set of international laws which regulate the means and methods of warfare. It comprises a series of treaties which state what is, or is not legitimate in waging war. In 1899, Tsar Nicholas II of Russia in a note addressed to the diplomatic representatives at St. Petersburg called for a conference with the purpose of seeking `a real and lasting peace and above all, of limiting the progressive development of existing armaments'. While the conference failed in its main objective to limit armaments, it was partially successful. Three declarations were adopted, one prohibiting the discharge of projectiles from balloons, a second prohibiting the use of asphyxiating gases and a third prohibiting the use of expanding bullets. The most important achievement from this conference, however, was the Convention for the Pacific Settlement of International Disputes creating the Hague Permanent Court of Arbitration, and creating a list of judges from which the parties to a controversy might select the members of an arbitral tribunal for their particular case.

119. Subsequent conventions were the Hague Convention of 1907, the 1923 draft Hague Rules for Aerial Warfare (never formally adopted), the Gas Protocol of 1925, 1954 Hague Cultural Property Convention, 1972 Biological Weapons Convention, 1980 Conventional Weapons Convention and the 1993 Chemical Weapons Convention. G.P. I and G.P. II are not confined to humanitarian issues; they also address issues which are traditionally regarded as Hague Law. Much of Hague Law is accepted as customary international law and directly affects the use of combat power with special relevance to air power.

Geneva Law

120. In 1864 at the invitation of the Swiss Government, a conference was held in Geneva which drew up `the first Convention for the Amelioration of the Condition of the Wounded in Armies in the Field'. This convention was subsequently amended by the Geneva Conventions of 1906, 1929 and 1949, and by G.P. I. These agreements now constitute what is referred to as Geneva Law, which is fundamentally concerned with the relief of suffering of prisoners of war, the wounded and sick in the field, wounded, sick and shipwrecked mariners and civilians caught up in conflict.

121. The law of armed conflict thus developed along two separate streams, each named after the city where most of the relevant agreements were developed. Whereas Hague Law is concerned essentially with how operations are conducted, Geneva Law is concerned with the protection of persons not involved or no longer involved in the conflict. Generally speaking, Geneva Law has become a more developed and less contentious body of law than Hague Law. In recent years, particularly since the completion and introduction of G.P. I and G.P. II, there has been a merging of the two bodies of law. The Protocols, linked to the Geneva Conventions, deal not only with the protection of victims of war but also with the means and methods of warfare, which were traditionally the domain of Hague Law. G.P. I deals with international armed conflict while, for the first time, non-international armed conflict is addressed by G.P. II.

Naval Warfare

122. Prior to 1945 the conduct of naval warfare was relatively unlimited as to both goals and means. The Hague Conventions of 1899 and 1907 imposed some restrictions upon the methods of warfare employed but the primary goal of belligerent naval operations was the total destruction of opposing naval units. If armed conflict should occur, traditional rules of naval warfare as modified by the United Nations Charter and other customary developments will continue to apply.

123. In international conflicts since 1945, naval operations have reflected the limitations inherent in the international law concept of self defence. The scale of operations and weaponry have normally been adjusted to meet the threat posed. There are still no specific modern conventions or protocols dealing with naval warfare. In most cases requiring the use of force by naval units since 1945, political and legal constraints have dictated a graduated escalation of force in response to threats.

124. A more detailed explanation of the law with respect to naval operations is covered in chapter 6.

Air Warfare

125. Aerial bombardment has always been controversial. The first law which dealt with aerial bombardment, the Hague Peace Conference of 1899, simply prohibited the dropping of bombs from balloons. An attempt was made in 1923 to reach international consensus on aerial warfare, but the draft Hague Rules for Aerial Warfare were never formally adopted. During World War II, Air Marshal Harris believed that in `the use of aircraft in war there is, it so happens, no international law at all'. In Vietnam, considerable restraint was placed on United States air power by political directives. Some reasons why these directives were so restrictive was a misunderstanding of LOAC and a lack of authoritative and practical guidance.

126. More recently, G.P. I and G.P. II particularly have provided guidance. This body of law was applied by air planners of the Coalition forces during Operation Desert Storm in 1991. One of the major successes of Operation Desert Storm was the impressive result of the Coalition air effort, conducted in accordance with LOAC. The application of LOAC to strike operations is critical because of the potential for these operations to cause heavy and widespread damage.

127. A detailed explanation of the law with respect to air warfare is covered in chapter 8.

ARMED CONFLICT**International Armed Conflict**

128. The term `international armed conflict' refers to conflict between nations in which at least one party has resorted to the use of armed force to achieve its aim. It may also include conflict between a nation and an organised and disciplined force such as an armed resistance movement from another nation.

Non-international or Internal Armed Conflict

129. Non-international or internal armed conflict is defined in G.P. II as conflict which takes place within the territory of a nation between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over part of its territory as to enable them to carry out sustained and concerted military operations. The term does not apply to internal disturbances and tensions such as riots or isolated or sporadic acts of violence.

OPERATIONS LAW

130. Operations law is that domestic and international law associated with planning and execution of military operations in peacetime or during hostilities. It includes but is not limited to LOAC, human rights law, Australian and foreign domestic law, air law, law of the sea, counter-terrorist activities, overseas procurement, discipline, pre-deployment preparation (wills, power of attorney, etc), deployment (contracts, etc), status of forces agreements, operations against hostile forces, Services assisted and Services protected evacuation, aid to the civil power and civil-military matters (liaison, warning, coordination, etc).

ROLE OF THE UNITED NATIONS

131. In recent years, the increased role of the United Nations (UN) in world trouble spots has raised questions with respect to the application of the law of armed conflict to UN forces operating under a UN mandate. The UN General Assembly has passed a resolution dictating that principles of LOAC apply to UN operations. Australian troops deployed on peace operations are required to observe the principles of LOAC.

CHAPTER 2

PRINCIPLES OF THE LAW OF ARMED CONFLICT

INTRODUCTION

201. Law of armed conflict (LOAC) forms part of a larger body of international law. International law is made up of those principles and rules of conduct which nations feel themselves bound to observe and therefore commonly observe in their relations with each other. While the practical application of those principles and rules varies as they are tested against new (and often unforeseen) situations, and the detailed application of the rules is consequently continually evolving, the actual laws, in the majority of cases, are not disputed. LOAC was traditionally categorised as being either Hague Law or Geneva Law, the former relating to the actual means and methods of warfare while the latter related to humanitarian aspects of LOAC. Both these legal streams merged in G.P. I and G.P. II; the Protocols have combined the Hague and Geneva Law.

202. The development of LOAC has paralleled military capabilities developments. As more efficient means and methods of killing and destruction have been developed, LOAC has evolved to try and limit the suffering and damage caused by new weapons and consequent tactics developed to utilise them. The twentieth century, which has seen dramatic advance in weapons technology, has also seen the greatest development of LOAC. This development of LOAC has been influenced by the fact that at the beginning of the century approximately 10 per cent of people killed in warfare were noncombatants, compared with 90 per cent in the late twentieth century.

BASIC PRINCIPLES OF THE LAW OF ARMED CONFLICT

203. The basic principles of the LOAC are:

- a. military necessity,
- b. unnecessary suffering, and
- c. proportionality.

204. Unnecessary suffering is often also referred to as the principle of humanity. Traditionally, chivalry has been included in the list of principles but this is now classified as an element of the principle of unnecessary suffering and is not treated as a separate topic.

205. The three principles must be considered together in that no single principle can be considered in isolation from the other two. In other words, whilst military necessity may justify a particular action, the action may cause unnecessary suffering including civilian death, or damage may be totally disproportionate to the military advantage to be gained. If so, the action should not proceed despite the fact that military necessity suggests that it should because that factor is outweighed by the other two.

Military Necessity

206. The principle of military necessity states that a combatant is justified in using those measures, not forbidden by international law, which are indispensable for securing complete submission of an enemy at the soonest moment. Military necessity requires combat forces to engage in only those acts necessary to accomplish a legitimate military objective. It permits the killing of enemy combatants and other persons whose death is unavoidable. It permits the destruction of property if that destruction is imperatively demanded by the necessities of war. Destruction of property as an end in itself is a violation of international law. There must be a reasonable connection between the destruction of property and the overcoming of enemy forces. The principle cannot be used to justify actions prohibited by law, as the means to achieve victory are not unlimited. This also reflects the principle of war of *economy of effort*.

Unnecessary Suffering

207. The principle of unnecessary suffering forbids the use of means or methods of warfare which are calculated to cause suffering which is excessive in the circumstances. It has also been expressed as the infliction of suffering, injury or destruction not actually necessary for the accomplishment of legitimate military objectives.

Proportionality

208. The principle of proportionality provides a link between the concepts of military necessity and unnecessary suffering. In simple terms, the principle generally relates to the reduction of incidental injuries caused by military operations and requires that the losses and damage resulting from military action should be proportionate (ie not be excessive) in relation to the anticipated military advantage. It is self evident that the proportionality principle, together with the unnecessary suffering principle, dictates that civilians should not be made the object of attack, and that while civilian casualties may be an inevitable consequence of an attack, every effort must be made to spare them, and other parties who are noncombatants, from becoming adversely affected.

209. The principle of proportionality not only requires that an attacker must assess what feasible precautions must be taken to minimise incidental loss, but must also make a comparison between different methods or axes of attack so as to be able to choose the least excessively destructive method or axis compatible with military success. When making that assessment the attacker should naturally take into account likely friendly casualties.

DISTINCTION

210. Although not a basic principle, distinction is said to be a related principle and seeks to ensure that only legitimate military objects are attacked. Distinction has two components. The first, relating to personnel, seeks to maintain the distinction between combatants and noncombatants or civilian and military personnel. The second component distinguishes between legitimate military targets and civilian objects. Military operations must only be conducted against enemy armed forces and military objects. Noncombatants and civilian objects are protected from attack, that is, they are not legitimate objects of attack. LOAC therefore requires that belligerents maintain the clear distinction between armed forces and civilians taking no direct part in hostilities; that is, between combatants and noncombatants, and between objects that might legitimately be attacked and those protected from attack.

RULES OF ENGAGEMENT AND LAW OF ARMED CONFLICT

211. Rules of Engagement (ROE) provide authoritative guidance on the use of military force by the ADF. ROE will be issued by CDF to Commander Australian Theatre (COMAST). Joint Force Commanders will receive ROE from COMAST. ROE will include legal considerations and so will comply with LOAC.

212. ROE and their relationship with the law are rightly a matter of concern for planners and commanders. ROE do not form part of the law but it is important to clarify their relationship with the law. When Defence forces take part in conflict, any action is possible. LOAC, however, limits armed forces to those actions which are lawful and are therefore permissible. Government then places further limitations upon the ADF (for operational, political, diplomatic and legal reasons) and does so by the use of ROE. ROE do not override the inherent right of individual or unit self defence.

213. ADFP 3 - *Rules of Engagement* promulgates the agreed joint doctrine for the management and use of ROE by the ADF.

CHAPTER 3

APPLICATION OF THE LAW OF ARMED CONFLICT

Parties to Whom Law of Armed Conflict Applies

301. Nations are bound by the law of armed conflict (LOAC) either by way of an international agreement to which the nation has agreed to be bound or under customary international law. However, where LOAC is applicable in a particular conflict it is not only binding on nations but also on individuals, and in particular on the individual members of the armed forces of nations. LOAC must be applied without discrimination irrespective of which country is the aggressor and without any adverse distinction founded on race, nationality, colour, political, philosophical or religious opinions, sex, language, birth, social standing, wealth or any other criteria.

United Nations Charter

302. The United Nations (UN) Charter requires all nations to settle their international disputes by peaceful means and to refrain from the threat or use of force against the territorial integrity or political independence of other nations. However, the Charter does permit nations to engage in armed conflict in the exercise of the right of individual or collective self defence against aggression. An example of that right occurred with the initial international response to the armed invasion of Kuwait by Iraq where the UN affirmed 'the inherent right of collective self-defence, in response to the armed attack of Iraq against Kuwait'. In general, LOAC applies to such conflicts.

Resort to War

303. A formal declaration of war is not an essential condition for the application of LOAC. LOAC applies to any armed conflict (whether there is a declared war or not) and whether or not a state of armed conflict is recognised by all parties to the conflict. The Geneva Conventions also apply to all cases of partial or total occupation of the territory of a party to the Convention, even if that occupation meets with no armed resistance.

International Armed Conflict

304. LOAC applies to situations of international armed conflict. International armed conflict exists once there is positive identification by a state of an external enemy. That identification will be made when there are members of a foreign nation's military or paramilitary forces committing warlike acts in apparent furtherance of their government's policy. Whether there is an identified enemy will not be a political decision but is a matter of fact. Once the identification has been made, LOAC applies regardless of what political decisions may be made about the official recognition of a state of armed conflict. When there is not positive identification, civil law applies and the nature and extent of Australia's response is a political one.

305. The operation of LOAC gives inalienable legal rights to various categories of persons: wounded soldiers, civilian women and civil defence personnel. Those rights cannot be diminished or denied for political reasons. The duration and intensity of the conflict are not relevant to whether an armed conflict exists.

Non-international Armed Conflict

306. A non-international armed conflict is distinct from an international armed conflict because of the legal status of the entities opposing each other; the parties to the conflict are not sovereign states, but the Government of a single state in conflict with one or more armed forces within its territory.

307. The 1949 Geneva Conventions make provision for the application of certain basic humanitarian safeguards during armed conflicts which are not of an international character and which occur in the territory of one of the parties to the Conventions.

308. G.P. II develops and supplements Common Article 3 of the Geneva Conventions. Its provisions apply to all armed conflicts that are not covered by Article 1 of G.P. I and provide for humanitarian treatment in conflicts which take place solely within the territory of a party to the Protocol, (an internal armed conflict) and in which its armed forces and dissident armed forces or other organised armed groups under responsible command are involved. The Protocol specifically provides that situations of internal disturbances and tensions such as riots and other isolated and sporadic acts of violence are not armed conflicts.

Beginning and End of Application

309. The point of commencement of armed conflict is often open to argument, eg there may be no formal declaration of war. Similarly, the precise point at which hostilities are terminated may also be unclear. Although the clearest way of indicating a formal end to hostilities may be by way of a peace treaty, the conclusion of a formal peace treaty may not occur. Armed conflicts may also conclude on the declaration of a general armistice.

310. Article 3 of G.P. I does essentially govern, however, when the provisions of the Geneva Conventions and Protocols apply. Article 3 provides that the Conventions and Protocols apply from the beginning of any situation referred to in Article 1 of G.P. I and cease on the general close of operations. The application of the Conventions and G.P. I will also cease, in the case of occupied territory, on the termination of the occupation, notwithstanding that military operations may have ceased at an earlier time. Persons who continue to remain in the power of an adversary until repatriation will continue to benefit from the relevant provisions of the Conventions and Protocols until their final release, repatriation or re-establishment.

CHAPTER 4

WEAPONS

INTRODUCTION

401. Weapons, projectiles, materials and means of warfare which cause unnecessary injury or suffering are not permissible, that is, when the practical effect is to cause injury or suffering which is out of proportion to the military effectiveness of the weapon, projectile, material or means. Limitations on the use of weapons fall into two broad categories, namely:

- a. prohibited weapons, and
- b. the illegal use of lawful weapons.

402. While ADF members can be confident that their issued weapons do not violate the law of armed conflict (LOAC), care must be taken to ensure that they are used and employed in a manner that complies with LOAC. Weapon use will be unlawful under LOAC when it breaches the principle of proportionality by causing unnecessary injury or suffering.

403. In a major or extended conflict, ADF members could be called upon to utilise captured enemy weapons. While LOAC recognises that such weapons may be used (after enemy markings are removed and provided they do not cause unnecessary injury or suffering), prior command approval should normally be obtained if the captured weapon is not currently in the ADF inventory.

PROHIBITED WEAPONS

General

404. Some weapons and weapons systems are totally prohibited. These blanket prohibitions, which may be traced to treaty or customary international law, are justified on the grounds that the weapons in question are either indiscriminate in their effect or cause unnecessary suffering. Clarification of what constitutes indiscriminate use or effect is covered in chapter 5. Paragraphs 405 to 414 describe various types of illegal weapons.

Weapons Calculated or Modified to Cause Unnecessary Suffering

405. Weapons such as irregularly shaped bullets, projectiles filled with broken glass, bullets which have been scored, have had their ends filed, have been altered or which have been smeared with any substance likely to exacerbate a trauma injury are prohibited. 'Dum dum' bullets (those with a hard envelope that does not entirely cover the core or which have been pierced with incisions or which have had their points filed off) come within this category of weapon.

Poison

406. Poison or poisoned weapons are illegal because of their potential to be indiscriminate. So, for example, the poisoning or contamination of any source of drinking water is prohibited and the illegality is not cured by posting a notice that the water has been so contaminated or poisoned.

Non-detectable Fragments

407. Weapons which cause injury by the use of fragments which are undetectable by X-ray in the human body are prohibited.

Exploding Small Arms Projectiles

408. Bullets or other projectiles weighing less than 400 grams which are either explosive or contain fulminating or inflammable substances (exploding small arms projectiles) are prohibited. It should be noted however that tracer and incendiary ammunition are not prohibited.

Environment Altering Weapons

409. Environmental modification techniques having widespread, long lasting or severe effects are prohibited. Further details are contained in chapter 8.

Gas

410. Asphyxiating, poisonous or other gases are prohibited. Smoke grenades, smoke ammunition from indirect fire weapons and tank smoke ammunition, all primarily used to conceal position or movement or mask a target are not prohibited.

Bacteriological Warfare

411. Bacteriological methods of warfare are prohibited.

Chemical Weapons

412. Chemical weapons, which include toxic chemicals and their precursors (those chemicals which can cause death, permanent harm or temporary incapacity to humans or animals) and munitions or devices designed to carry such chemicals, are banned.

413. The use of riot control agents, including tear gas and other gases which have debilitating but non-permanent effects as a means of warfare is prohibited in armed conflict under the 1993 Chemical Weapons Convention. This does not mean riot control agents cannot be used in times of conflict (eg against rioting prisoners of war). Legal advice should be sought on the occasions when their use is considered.

Biological Weapons

414. Nations are prohibited from manufacturing, storing and using biological weapons. Both chemical and biological weapons are prohibited because they cause unnecessary suffering and may affect the civilian population in an indiscriminate fashion.

LIMITATIONS ON LAWFUL WEAPONS

General

415. All legal weapons are limited in the way in which they may be used. Specifically, no weapons may be used indiscriminately or in such a way as to cause unnecessary injury or suffering. Similarly, noncombatants and those who have not been or are no longer in the fight (sick and wounded, shipwrecked, medical personnel, chaplains and most civilians) must not be targeted. Limitations that apply to some specific and common weapons are explained in paragraphs 416 to 429.

Incendiary Weapons

416. Incendiary weapons include any weapon or munition which is designed to set fire to objects or to cause burn injury to humans through the action of flame, heat or a combination of the two caused by a chemical reaction of a substance delivered on a target. They include flame throwers, shells, rockets, grenades, mines, bombs and other containers of incendiary materials.

417. Incendiary weapons do not include munitions which have incidental incendiary effects such as illuminants, tracers, smoke or signalling devices; nor do they include munitions designed to combine penetration, blast or fragmentation effects with an additional incendiary effect, such as armour piercing projectiles, fragmentation shells, explosive bombs and similar combined effects ammunition in which the incendiary effect is not specifically designed to cause burn injury to humans, but to be used against military objectives such as armoured vehicles, aircraft and installations and facilities.

418. Specific rules prohibit the use of incendiary weapons:

- a. in all circumstances to attack the civilian population, individual citizens or civilian objects with air delivered incendiary weapons;
- b. in all circumstances to make any military objective located within a concentration of civilians the object of attack by air delivered incendiary weapons;
- c. to make any military objective located within a concentration of civilians the object of an attack by other than air delivered incendiary weapons, except where the military objective is clearly separated from the civilians and all feasible precautions are taken to minimise incidental loss of civilian life and damage to civilian objects (separation in this context can mean a barrier (such as an air raid shelter or a hill) or distance); and
- d. on forests or plant cover except when the forests or plant cover are either being used to cover, conceal or camouflage military objectives or are military objectives themselves (if it is necessary to use incendiaries on a forest to clear a field of fire or facilitate an advance or attack against an enemy, the forest has become a military objective and may legitimately be attacked).

Sea Mines

419. There are very few restrictions on the use of sea mines. Sea mines must be able to self neutralise if control over them is lost. Their location must be recorded. They must not be laid in neutral waters and when first laid in the territorial waters of the nation laying them, there must be provision for free exit of neutral shipping located in ports of the nation laying the mines. More detailed discussion concerning sea mines is contained in chapter 6.

Land Mines, Booby Traps and Other Devices

420. By way of contrast there are restrictions on the use on land mines. Land mines are generally treated as being similar to booby traps and other similar devices. The following paragraphs dealing with mines do not deal with any mines other than land mines.

421. All feasible precautions must be taken to protect civilians from the effects of land mines, booby traps and similar devices. They must not be directed at civilians nor may they be used indiscriminately. It is indiscriminate to place them so that they are not on or not directed at a military objective, to use a means of delivery which cannot be directed at a military target, or to place them so that they may be expected to cause excessive collateral damage, that is injury, loss or damage to civilians which is excessive in relation to the concrete and direct military advantage anticipated.

422. Land mines (other than remotely delivered mines), booby traps and similar devices must not be used in areas containing civilian concentrations if combat between ground forces is neither imminent nor actually taking place unless they are placed on, or in the vicinity, of an enemy military objective or there are protective measures for civilians such as warning signs, sentries, fences or other warnings to civilians.

423. The location of all pre-planned minefields and areas in which there has been large scale and pre-planned use of booby traps must be recorded. A record should also be kept of all other minefields, mines and booby traps so that they may be disarmed when they are no longer required.

Land Mines

424. Land mines are defined as any munition on, under or near the ground or other surface area and designed to be detonated by the presence, proximity or contact of a person or a vehicle and includes remotely delivered mines, that is, mines delivered by artillery, rocket, mortar or aircraft. Time delayed weapons are not land mines.

425. Remotely delivered land mines can only be used within the area of a military objective if their location can be accurately recorded and they can be neutralised when they no longer serve the military purpose for which they were placed in position. Either each mine must have an effective self neutralising or destroying mechanism or a remotely controlled mechanism designed to render the mine harmless or destroy it. If circumstances permit, effective advance warning should be given where remotely delivered mines are likely to affect civilians.

Booby Traps

426. Booby traps are objects which are designed to injure or kill and which explode when a person approaches or disturbs an apparently harmless object or performs an apparently safe act.

427. Booby traps which appear to be apparently harmless objects are prohibited. In particular they should not be attached to or associated with:

- a. internationally recognised protective emblems;
- b. corpses, casualties or the sick;
- c. burial, cremation sites or graves;
- d. medical facilities, equipment, supplies or transportation;
- e. children's toys or objects designed for feeding, health, hygiene, clothing or education of children;
- f. food or drink;
- g. kitchen utensils or appliances (except those in military establishments, locations or supply depots);
- h. objects of a religious nature;
- i. historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or
- j. animals or their carcasses.

428. Where booby traps are not prohibited, those that are used must not be designed to cause unnecessary injury or suffering.

Other Devices

429. 'Other devices' are manually emplaced munitions and devices designed to kill, injure or damage and which are activated either remotely or by time delay. Restrictions on the use of these other devices are as for land mines and booby traps.

NUCLEAR WEAPONS

430. The United Nations General Assembly has condemned nuclear weapons as illegal, although the international community itself is divided on this question. The nuclear powers have stated that nuclear weapons do not come under G.P. I. It would appear that although they are not specifically prohibited, they probably come within the general prohibition against means and methods of warfare causing unnecessary suffering or injury, which cause widespread long-term and severe damage to the natural environment and their use is therefore probably in breach of G.P. I, unless their effects are strictly limited. In 1985 Australia ratified the Treaty of Rarotonga, which brought into effect the South Pacific Nuclear Free Zone. Pursuant to the terms of this Treaty, Australia has undertaken to prevent the stationing of any nuclear explosive device on Australian territory. The treaty preserves Australia's right to decide whether to allow visits by foreign aircraft or ships which might be either nuclear-powered or nuclear-armed.

ROCKETS, MISSILES AND BOMBARDMENT

431. LOAC restrictions of proportionality and unnecessary suffering apply to all facets of aerial warfare. With the advent of modern technology many defence forces are now able to deliver weapons with much greater precision. However, nations are not obliged to use only precision munitions; attack by conventional, free-fall weapons or 'dumb' weapons is lawful provided that the overriding LOAC principles of proportionality and unnecessary suffering and other applicable rules are not violated.

CHAPTER 5

TARGETING

INTRODUCTION

501. The law of armed conflict (LOAC) will affect military decisions concerning targeting. These may range from what weapons to use against an objective, to whether an object or person is a legitimate military target. Attacks can only be directed against military objectives and all reasonable precautions must be taken to avoid civilian deaths and damage to civilian objects. Due regard must be paid to the principle of proportionality and all feasible precautions must be taken to gather relevant intelligence and ensure attacks are directed against military objectives.

502. This chapter will set out the legal rules applicable to all international armed conflict. Targeting in the three combat environments will be briefly outlined, but the specialised rules governing the conduct of combat on land, at sea and in the air are comprehensively covered in chapters 6, 7 and 8 respectively. This chapter should be also considered with chapter 4 - Weapons when making targeting decisions. For the purposes of this publication the following terms are defined:

- a. **Attacks.** Attacks are defined as acts of violence directed against an adversary. This includes both defensive and offensive operations.
- b. **Indiscriminate Attacks.** Indiscriminate attacks are those:
 - (1) which are either not directed against a specific military objective;
 - (2) or use a weapon that cannot be directed against a specific military objective; or
 - (3) the effect of which cannot be limited, as required by LOAC.

An example of an indiscriminate attack would be to bomb a city, town, village or area as though it were a single military objective when it contains a number of separate and distinct military objectives mixed in with a similar concentration of civilians and civilian objects. Similarly an indiscriminate attack is one which is expected to cause incidental loss, injury or collateral damage to civilians or civilian objects which is excessive in relation to the concrete and direct military advantage anticipated as a result of the attack.

- c. **Collateral Damage and Incidental Injury.** Collateral damage and incidental injury are damage to civilian property and incidental death or injury to civilians respectively which arises out of any attack against a legitimate military objective.

Targeting Principles

503. Targeting is premised on the basic principles set out in chapter 2. These principles lead to the following rules:

- a. the right to adopt means of defeating the enemy is not unlimited;
- b. attacks directed against the civilian population or civilian objects are prohibited; and
- c. distinction must be drawn between combatants and noncombatants, with every effort being made to avoid involving noncombatants in the conflict.

APPLICATION OF LAW OF ARMED CONFLICT PRINCIPLES TO TARGETING

Distinction

504. LOAC establishes a requirement to distinguish between combatants and civilians, and between military objectives and civilian objects. This requirement imposes obligations on all parties to a conflict to establish and maintain the distinction. Inherent in this requirement, and to make it effective, is the obligation not to use civilians to protect military objectives. Civilians may not be used as shields as the Iraqi President Saddam Hussein threatened to do on the eve of the Gulf War of 1991. Any party who uses civilians in this manner violates international law including its obligations to protect its own civilian population.

Military Necessity

505. As detailed in chapter 2, military necessity is one of the fundamental LOAC principles. The four factors critical to adherence to the concept of military necessity are:

- a. combatants can only use such force as is necessary to achieve a military objective,
- b. the use of such force cannot be prohibited by LOAC,
- c. the use of such force must result in the least expenditure of life and damage to property as is possible under the prevailing circumstances, and
- d. the force used is regulated by the user.

506. These factors are relevant to targeting decisions particularly if collateral damage is a possibility. While G.P. I does not define military necessity it does make a number of implied concessions to the principle. Article 51(5) provides, in the context of civilian protection, that unlawful indiscriminate attacks include any:

`... which may be expected to cause incidental loss of civilian life which would be excessive in relation to the concrete and direct military advantage anticipated.'

507. Despite the use of negative language, the implied concession to military necessity is the recognition that `the concrete and military advantage' to be gained from some attacks might outweigh collateral damage which might otherwise be considered excessive. This is one of the most delicate military judgments demanded of commanders by international law.

Unnecessary Suffering

508. Related to the principle of military necessity, and implicitly contained within it, is the principle of unnecessary suffering. This concept forbids any attack on an enemy which inflicts unnecessary suffering, injury or destruction. The principles applicable are that:

- a. the force used must not exceed the minimum required to achieve the military objective;
- b. there must be a valid military objective;
- c. destruction as an end in itself is prohibited;
- d. any destruction of property must contribute to the defeat of the enemy; and
- e. wanton killing and wilful infliction of suffering, as revenge, are prohibited.

Proportionality

509. Proportionality requires a commander to weigh the military value arising from the success of the operation against the possible harmful effects to protected persons and objects. There must be an acceptable relationship between the legitimate destruction of military targets and the possibility of consequent collateral damage.

510. Additional Protocol I and Proportionality. In relation to G.P. I, Australia has made a Declaration to the effect that the Australian Government's understanding is that references to military advantage in Articles 51(5)(b) and 57 mean:

`the advantage anticipated from the attack as a whole and not only from isolated or particular parts of the attack.'

511. In addition, the Declaration makes it clear that military advantage involves a number of considerations, including the security of attacking forces. The Australian Government's Declarations of Understanding also recognise that ADF commanders will, by necessity, have to reach decisions on the basis of their assessment of the information available to them at the relevant time. Australia's Declarations of Understanding to the Additional Protocols are at Annex A to this chapter.

PERSONNEL

Combatants

512. For LOAC purposes people are either combatants or noncombatants. Subject to the exceptions below, combatants are legitimate targets for attack whereas noncombatants are not. Combatants comprise all organised armed forces, groups and units (except medical service and religious personnel) which are under the command of a party to a conflict and are subject to an internal disciplinary system which enforces compliance with LOAC. They must also have a fixed distinctive sign recognisable at a distance and carry arms openly.

513. Enemy Identification. A member of the armed forces does not lose combatant status merely by operating covertly or as a guerrilla. That is, while combatants are normally expected to distinguish themselves from the civilian population by wearing a uniform, LOAC recognises that they do not have to wear a uniform on operations to retain their status as combatants. This is conditional on combatants who cannot so distinguish themselves because of the nature of hostilities, openly carrying arms during:

- a. each military engagement, and
 - (1) such times as they are visible to the adversary while engaged in a military deployment preceding the launching of an attack in which they are to participate.

514. Levee en Masse. Where the inhabitants of a country or territory spontaneously `take up arms' to resist an invader, LOAC recognises them as combatants provided they do so when there has not been time to form themselves into units and they respect LOAC. Individuals acting on their own are not entitled to combatant status nor the benefits or detriment flowing from that status.

515. Saboteurs. Targeting and LOAC aspects with respect to saboteurs, spies and espionage are covered in paragraphs 718 to 723.

516. Significance of Combatant Status. The significance of combatant status is that, subject to the qualifications listed in paragraphs 517 to 522, combatants are liable to attack and, if captured, must be treated as prisoners of war.

Noncombatants

517. Noncombatants may not be attacked, although LOAC recognises that, in certain circumstances, unavoidable noncombatant casualties may occur during operations.

518. Combatants who are unable to continue hostile action and refrain from attempting to do so must be treated in the same fashion as noncombatants. Prisoners of war, military personnel who are surrendering or attempting to surrender, and those who are wounded or sick must not be attacked. The basic principle is that any person who is hors de combat, whether by choice or circumstance, is entitled to be treated as a noncombatant provided they refrain from any further participation in hostilities.

Prisoners of War

519. Protected from the moment of their surrender or capture, prisoners of war must not be made the object of attack or reprisals. Similarly, prisoner of war camps and any transports used to convey prisoners of war are protected and may not be attacked. Military commanders should also ensure that prisoners of war are not located near military objectives and that they mark prisoner of war camps and transports with the protective distinctive emblem shown at Annex A to chapter 9. Chapter 10 contains a full description of the responsibilities associated with the care of prisoners of war and detained persons.

520. Civilians. Civilians must be protected from the dangers of military operations. They must not be the object of attack nor of acts or threats of violence which are intended to create terror. They must not be subjected to indiscriminate attacks. Further treatment of civilians is covered in paragraphs 529 to 536.

521. Medical Personnel. Included in the category of noncombatants are all medical personnel. They are protected so long as they do not participate in hostilities. The carriage of light individual weapons for self defence or for defence of wounded or sick in their care is not considered participation. Medical personnel include persons on the permanent staff of medical establishments and any person temporarily assigned to medical duties such as soldiers who are carrying wounded from the battlefield. The underlying principle is that care of the wounded and sick (who are now noncombatants) is paramount and nothing should interfere with that care.

522. Religious Personnel. Religious personnel, including military chaplains, are protected persons in the same way as are medical personnel. Religious personnel who participate directly in combat operations lose their protected status.

523. Civil Defence Personnel. People assigned exclusively to civil defence tasks, administration and transport are protected persons.

MILITARY OBJECTIVES

524. Only military objectives are legitimate objects of attack. During an armed conflict, and subject to the overriding considerations of proportionality and unnecessary suffering, the ADF may target any military objective.

525. Military objectives are those persons 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 neutralisation, in the circumstances ruling at the time, offers a definite military advantage. The objective must be measured by its effect on the whole military operation or campaign and the attack should not be viewed in isolation. Military advantage includes the security of friendly forces.

526. The presence of noncombatants in or around a military objective does not change its nature as a military objective. Noncombatants in the vicinity of a military objective must share the danger to which the military objective is exposed.

527. Military objectives may include a very wide range of persons, locations and objects. Some examples are:

- a. military equipment, units and bases;
- b. power stations, industry and transport facilities which support military operations;
- c. facilities which support or enhance command and control, such as communications facilities;
- d. all persons taking a direct part in hostilities, whether military or civilian;
- e. civilian aircraft, vessels, vehicles and buildings which contain combatants, military equipment or supplies;
- f. transportation systems for military supplies, transportation centres where lines of communication converge, rail yards, industrial installations producing materiel for combat forces, fuel dumps and distribution centres supplying military users, industrial installations that repair and replenish lines of communication and other economic targets the destruction, capture or neutralisation of which offers a definite military advantage;
- g. economic targets that indirectly but effectively support operations are also military objectives if an attack will gain a definite military advantage;
- h. areas of land which are of direct use to defending or attacking forces, eg land through which an adversary is likely to move its forces or which may be used as a forming up point preceding an attack; and
- i. objects, normally dedicated to civilian purposes, but which are being used for military purposes, eg a school house or home which is being used temporarily as a battalion headquarters.

528. In cases of doubt whether an object which is normally dedicated to civilian purposes, such as a church, is being used to make an effective contribution to military action, it should be presumed to be a civilian object.

CIVILIANS AND CIVILIAN OBJECTS

Definitions

529. G.P. I defines a civilian as 'any person who is not a member of the armed forces'. Similarly, the civilian population comprises all persons who are 'civilians'. In cases of doubt about civilian status, the benefit of the doubt must be given to the person concerned. A civilian has no general right to take part in hostilities.

530. G.P. I defines 'civilian objects' as all objects which are not military objectives. In cases of doubt about whether an object, normally dedicated to civilian purposes, is being used to make an effective contribution to military action, the presumption is that it is a civilian object. For this purpose, 'use' does not necessarily mean occupation. For example, if enemy soldiers use a school building as shelter from attack by direct fire, then they are clearly gaining a military advantage from the school. This means the school becomes a military objective and can be attacked.

Protection of Civilians and Civilian Objects

531. There is a fundamental rule that parties to a conflict must direct their operations only against military objectives. G.P. I expressly provides that the civilian population and civilian objects are to be protected against attack. Acts or threats of violence primarily intended to spread terror among the civilian population are prohibited. Reprisal actions against civilians are also prohibited.

532. Civilians are only protected as long as they refrain from taking a direct part in hostilities. Whether or not a civilian is involved in hostilities is a difficult question which must be determined by the facts of each individual case. Civilians bearing arms and taking part in military operations are clearly taking part in hostilities; civilians working in a store on a military air base may not necessarily be taking such a direct part. However, stores depots, supply columns and military installations are clearly military objectives which may be attacked, regardless of the presence of civilian workers.

533. Starvation of the civilian population as a method of warfare is forbidden. G.P. I expressly forbids attacks against objects that are indispensable to the survival of the civilian population. Examples given in the Protocol are: foodstuffs, agricultural areas, crops, livestock and drinking water installations. This prohibition relates to attacks made for the specific purpose of denying these items to the civilian population. Collateral damage to foodstuffs is not a violation of the rules as long as the intention was to gain a military advantage by attacking a military objective.

534. Towns, villages, dwellings or buildings which are undefended are also protected from attack.

Collateral Damage

535. Collateral damage may be the result of military attacks. This fact is recognised by LOAC and, accordingly, it is not unlawful to cause such injury and damage. The principle of proportionality dictates that the results of such action must not be excessive in light of the military advantage anticipated from the attack.

536. Commanders must take all practicable precautions, taking into account military and humanitarian considerations, to keep civilian casualties and damage to a minimum consistent with mission accomplishment. This is one of the most difficult decisions a commander will make and one of the most difficult to describe. The commander is required to make a reasonable and honest effort to minimise civilian injuries and damage after he has considered all the available information, and the requirement to complete the mission. Further guidance is set out in G.P. I and specialist legal advice may need to be sought when making targeting decisions which may cause collateral damage.

OBJECTS AFFORDED SPECIAL PROTECTION

537. Protected persons, objects and localities must not be attacked. Protected persons are those categories of persons classified as noncombatants described in paragraph 517 to 532. Particular classes of protected objects are described below.

Medical Units and Facilities

538. Medical units, materials and means of transportation are protected. This applies to any form of medical transportation, whether by sea, land or air. Medical units include hospital ships. Medical materials are any equipments and supplies which are exclusively used for the benefit of the wounded and sick. Civilian medical facilities are entitled to the same protection as military medical units. Military commanders should ensure that medical units and facilities are situated such that they are not endangered by military attacks.

539. The distinctive Red Cross or Red Crescent should be clearly displayed on all these facilities. If medical facilities are used for military purposes, inconsistent with their humanitarian purposes, the right to special protection is lost. Any medical facility is protected regardless of whether it is marked with either a Red Cross or Red Crescent. These distinctive protective symbols are shown in Annex A to chapter 9. Chapter 10 has further guidance on medical units and their protection.

Religious, Cultural and Charitable Buildings and Objects

540. Buildings devoted to religion, the arts, or charitable purposes; historic monuments; and other religious, cultural, or charitable facilities should not be attacked, provided they are not used for military purposes. It is the responsibility of the local population to ensure that such buildings are clearly marked with the distinctive emblem. These emblems are also shown in Annex A to chapter 9.

541. Cultural property is generally protected. This includes, but is not limited to, all buildings, locations, manuscripts, objects, works of art, archives, archaeological sites, historical documents and book collections which have any cultural significance. Also included in this category are places of worship which constitute the cultural or spiritual heritage of people.

542. Religious objects, including articles of a religious character and objects or equipment used exclusively by military religious personnel, for example, a chaplain's dedicated motor vehicle is also protected.

Civil Defence Establishments

543. Establishments and transport used exclusively for civil defence tasks, where organised and authorised by governmental authorities are also protected. Civil defence establishments should bear the distinctive international emblem which is shown at Annex A to chapter 9. Chapter 10 has further guidance on the protection of civil defence personnel and facilities.

Dams, Dykes and Nuclear Power Stations

544. These installations may not be made the object of an attack, if that attack would cause the release of dangerous forces which would cause losses amongst the civilian population. This is the position even if such installations are military objectives. Such objects should be identified using the distinctive emblems shown at Annex A to chapter 9. Failure to display the emblem does not remove the protection afforded the installation. In exceptional circumstances, the protection ceases if the installation is used in 'regular, significant and direct support of military operations'. In any case, such an attack must be the only feasible way to stop the support, and any such attack would be approved at the highest command level.

Environment

545. Those responsible for planning and conducting military operations have a duty to ensure that the natural environment is protected. Specific rules are in effect which protect the environment. In addition, the environment remains under the protection and authority of customary international law, principles of humanity and dictates of public conscience. Some of the specific rules are shown below.

- a. The natural environment is not a legitimate object of attack. Destruction of the environment, not justified by military necessity, is punishable as a violation of international law.
- b. It is prohibited to employ methods or means of war which cause widespread, long term and severe damage to the environment or may be expected to cause such damage and prejudice the health or survival of the population.
- c. The general prohibition on destroying civilian objects, unless justified by military necessity, also protects the environment.
- d. Attacks on forests or other types of plant cover with incendiary weapons are prohibited, unless such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.

- e. It is prohibited to use environmental modification techniques ie any technique for changing, through deliberate manipulation of natural process, the dynamics, composition or structure of the earth; including its biota (plant or animal life), lithosphere, hydrosphere and atmosphere, or of outer space; having widespread, long lasting or severe effects as the means of destruction, damage or injury to an enemy.
- f. Attacks against the environment by way of reprisal are prohibited.
- g. In times of armed conflict, parties to the conflict shall facilitate and protect the work of impartial organisations contributing to the prevention of damage, or repair of damage to the environment (eg civil defence organisations). This shall be done by agreement between the parties to a conflict or with the permission of a party to a conflict. Any such work shall be done with due regard to the security interests of the party concerned.
- h. In the event of breaches to the rules protecting the environment, commanders are required to stop the violations, take action to prevent further breaches and report violations to higher authority so further action can be taken.

OFFENSIVE SUPPORT AND STRIKE OPERATIONS

546. Offensive support and strike operations include the use of naval gunfire support, fire support from any ground-based weapon system other than small arms, and any air strike. In the Geneva Conventions and Protocols the use of these types of weapons and weapons systems is referred to as bombardment. Because of their potential to cause collateral damage, commanders should take particular care when carrying out offensive support or strike operations.

547. In order to ensure that any combat action complies with LOAC, there are a whole range of matters which must be considered in the targeting process but are also relevant to the planning of any type of military attack. These factors will influence the choice of axes, objects of attack, and the siting of defences, and include:

- a. clear identification of persons, objects or locations to be attacked to ensure as little risk as possible to protected persons, objects and locations, consistent with military advantage;
- b. a concrete and direct military advantage in any proposed course of action;
- c. the least possible collateral damage; and
- d. prohibitions on the use of weapons, projectiles or other means and methods of warfare that cause superfluous injury or unnecessary suffering.

Precautions in Attack

548. Attacks must only be made against military objectives. All reasonable precautions must be taken to avoid injury, loss or damage to civilians and civilian objects and locations. It is therefore important to obtain accurate intelligence before mounting an attack. While LOAC recognises that civilian casualties are unavoidable at times, a failure to take all reasonable precautions to minimise such damage may lead to a breach of those laws. The same principles apply to the risk of damage or injury to any other protected persons, places and objects.

549. Accordingly, the best possible intelligence is required concerning:

- a. concentrations of civilians;
- b. civilians who may be in the vicinity of military objectives;
- c. the nature of built-up areas such as towns, communities, shelters, etc;

- d. the existence and nature of important civilian objects and specifically protected objects; and
- e. the environment.

550. Civilians who are not directly involved in combat but are performing military tasks are not combatants. If they are killed or injured during an attack on a legitimate military objective there is no breach of LOAC provided the death or injury is not disproportionate to the direct and concrete military advantage anticipated from the attack. The presence of civilians on or near the proposed military objective (either in a voluntary capacity or as a shield) is merely one of the factors that must be considered when planning an attack.

551. When a planned attack is likely to affect the civilian population, those making the attack are required to give, if practicable, effective advance warning of the attack to the authorities or civilian population. This requirement must obviously be applied in a commonsense manner in light of all other factors. If the proposed action is likely to be seriously compromised by a warning then there is no requirement to provide any warning.

Axes

552. Objects and axes of attack should be chosen to minimise collateral damage wherever possible. Where a similar military advantage may be gained by attacking any one of several military objectives, the attack should be made against the objective which is likely to cause the least collateral damage. The same principle applies to choosing axes of advance or attack where more than one practicable and reasonable axis is available.

Defensive Locations

553. Defences and defensive positions should also be sited, if practicable, to avoid or minimise collateral damage. Ideally, all military objectives, including defensive positions, should be sited outside heavily populated areas. As in offensive operations, where a location or object may be equally successfully defended from any one of several defensive positions, LOAC requires that the defence should be conducted from the position which would cause the least danger to civilians and civilian objects.

Terrorisation of Civilian Population

554. Offensive support or strike operations against the civilian population for the sole purpose of terrorising the civilian population is prohibited.

Non-lethal Bombardment

555. The use of non-lethal technologies for bombardment is permitted if the technologies used and results expected comply with the general protection afforded the civilian population, noncombatants and civilian objects under LOAC. In addition, they must accord with any other LOAC rules which may impact on the use of chemical or biological agents. In the past, a common and successful tactic has been the use of radio broadcasts and pamphlet drops for propaganda purposes as part of psychological operations. These are permitted.

DUTIES OF AUSTRALIAN DEFENCE FORCE COMMANDERS

556. One of the most significant consequences of G.P. I has been the emphasis placed on commanders to comply with LOAC. The Protocol reminds commanders that, in the conduct of military operations, constant care must be taken to spare the civilian population and civilian objects to the maximum extent possible. This includes:

- a. removing civilians and civilian objects from the vicinity of military objectives;
- b. refraining from locating military objectives within or near densely-populated areas;

- c. taking precautions to protect civilians and civilian objects from the dangers of military operations;
- d. doing everything feasible to verify that objects being attacked are military objectives;
- e. taking all feasible precautions, in the choice of means and methods of attack, to minimise collateral damage; and
- f. refraining from launching any attack which may be expected to cause collateral injury, or collateral damage, which would be excessive in relation to the concrete and direct military advantage anticipated.

557. While some of the above obligations rest primarily on civilian authorities, the commander's responsibility is to protect those civilians under their control, and those who may be affected by any attacks that they plan or carry out.

Annex: A. Australia's Declarations of Understanding to the Addition Protocols

**AUSTRALIA'S DECLARATIONS OF UNDERSTANDING TO THE ADDITION
PROTOCOLS**

In depositing its instrument of ratification for Protocol 1, Australia hereby makes declarations of understanding in relation to Articles 5, 44 and 51 to 58 inclusive of the said Protocol.

It is Australia's understanding that in relation to Article 5, with regard to the issue whether, and in what measure, Protecting Powers may have to exercise any functions within the combat zone (such as may be implied by provisions in Parts II and IV of the Protocol), the role of the Protecting Power will be of a like character to that specified in the First and Second Conventions and Part II of the Fourth Convention, which apply mainly to the battlefield and its immediate surroundings.

It is the understanding of Australia that in relation to Article 44, the situation described in the second sentence of paragraph 3 can exist only in occupied territory or in armed conflicts covered by paragraph 4 of Article 1. Australia will interpret the word 'deployment' in paragraph 3(b) of the Article as meaning any movement towards a place from which an attack is to be launched. It will interpret the words 'visible to the adversary' in the same paragraph as including visible with the aid of binoculars, or by infra-red or image intensification devices.

In relation to Articles 51 to 58 inclusive it is the understanding of Australia that military commanders and others responsible for planning, deciding upon, or executing attacks, necessarily have to reach their decisions on the basis of their assessment of the information from all sources, which is available to them at the relevant time.

In relation to paragraph 5(b) of Article 51 and to paragraph 2(a)(iii) of Article 57, it is the understanding of Australia that references to the 'military advantage' are intended to mean the advantage anticipated from the military attack considered as a whole and not only from isolated or particular parts of that attack and that the term 'military advantage' involves a variety of considerations including the security of the attacking force. It is the further understanding of Australia that the term 'concrete and direct military advantage anticipated', used in Articles 51 and 57, mean a bonafide expectation that the attack will make a relevant and proportional contribution to the objective of the military attack involved.

It is the understanding of Australia that the first sentence of paragraph 2 of Article 52 is not intended to, nor does it, deal with the question of incidental or collateral damage resulting from an attack directed against a military objective.

CHAPTER 6

MARITIME OPERATIONS AND THE LAW OF ARMED CONFLICT

INTRODUCTION

601. The purpose of this chapter is to state the legal rules governing the conduct of hostilities at sea. The parties to an armed conflict at sea are bound by the principles and rules of international humanitarian law, already expounded in chapter 2.

602. The principles of necessity and proportionality apply equally to armed conflict at sea and require that the conduct of hostilities by a state should not exceed the degree and kind of force, not otherwise prohibited by the law of armed conflict (LOAC), required to repel an armed attack against it and restore its security.

DEFINITIONS

603. For LOAC purposes, the following definitions additional to those included in the glossary apply.

Archipelagic Sea Lanes Passage

604. An archipelagic state may designate archipelagic sea lanes suitable for continuous and expeditious transit by vessels and aircraft through and over the archipelago. Such sea lanes are defined by axis lines and ships and aircraft are not to deviate more than 25 nmile on either side of such axis lines except that in congested areas where this amount of sea room is not available, ships and aircraft must not navigate closer to the coast than 10 per cent of the distance between the nearest bordering islands. All vessels and aircraft may exercise the right of archipelagic sea lanes passage through these sea lanes. (The right of archipelagic sea lanes passage is the right to conduct continuous and expeditious transit of the archipelago in the normal mode of operation observing the same conditions applicable to transit passage through straits used for international navigation.) Where an archipelagic state has not designated archipelagic sea lanes, the right of archipelagic sea lanes passage may be exercised through all routes normally used for international navigation. Archipelagic sea lanes passage may not be suspended or obstructed by the archipelagic state.

Archipelagic State

605. An archipelagic state is a nation consisting wholly of islands.

Auxiliary Vessel

606. An auxiliary vessel is a vessel, other than a warship, that is owned by or under the exclusive control of the armed forces of a State and used for the time being on government non-commercial service.

High Seas

607. High seas are those waters seaward of declared territorial waters and exclusive economic zones.

Innocent Passage

608. All vessels may exercise the right of innocent passage in the territorial seas of foreign nations. The right of innocent passage entitles a vessel to traverse a foreign nation's territorial sea continuously and expeditiously without entering internal waters unless it is proceeding to or from internal waters. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state. Activities inconsistent with innocent passage include:

- a. the threat or use of force against the territorial integrity or political independence of the coastal state;
- b. any exercise or practice with weapons;
- c. intelligence collection activities;
- d. the carrying out of research or survey activities;
- e. the launching, landing or taking on board of military devices or aircraft; or
- f. any other activity not having a direct bearing on passage.

Innocent passage may be temporarily suspended by the coastal state in specified areas of the territorial sea if such suspension is essential for the protection of its security.

Innocent Passage in Archipelagic Waters

609. Vessels transiting archipelagic waters outside archipelagic sea lanes or routes normally used for international navigation, as the case may be, have the right of innocent passage through these waters. This right of innocent passage may be temporarily suspended by the coastal state for reasons essential to the protection of its security, including weapons practice and military exercises. Such a temporary suspension must be published in 'Notices to Mariners'.

International Waters

610. These waters include all areas of the ocean not subject to territorial sovereignty. All waters seawards of the territorial sea are international waters in which high seas freedoms of navigation and overflight apply. International waters thus include contiguous zones, exclusive economic zones (EEZ) and the high seas.

Vessel

611. Every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.

Warship

612. A ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of that State and whose name appears in the appropriate Service list or its equivalent, and manned by a crew which is under armed forces discipline.

AREAS OF NAVAL OPERATIONS

General Area of Naval Operations

613. Hostile actions by naval forces may be conducted in, on or over:

- a. the territorial sea and internal waters, the land territories, the EEZ, the continental shelf and, where applicable, the archipelagic waters of belligerent states;
- b. the high seas; and
- c. the EEZ, the contiguous zone and the continental shelf of neutral states (see chapter 11).

614. In carrying out operations, commanders should endeavour to avoid conducting hostile actions in marine areas containing:

- a. rare or fragile ecosystems; or
- b. the habitat of depleted, threatened or endangered species or other forms of marine life.

615. In carrying out operations in areas where neutral states enjoy sovereign rights or jurisdiction, belligerents shall have due regard for the legitimate rights and duties of those neutral states (see chapter 11).

Immediate Area of Naval Operations

616. Within the immediate area or vicinity of naval operations, a belligerent may establish special restrictions upon the activities of neutral vessels and aircraft and may prohibit altogether such vessels and aircraft from entering the area. Neutral vessels and aircraft which fail to comply with a belligerent's orders expose themselves to the risk of being fired upon or captured. This traditional belligerent right to control neutral vessels and aircraft in the immediate area or vicinity of naval operations should be distinguished from the concept of exclusion zones.

617. Within the immediate area or vicinity of naval operations, a commanding officer of a belligerent warship may exercise control over the communications of any neutral merchant vessel or aircraft whose presence might otherwise endanger the success of the belligerent operation. Legitimate distress communications by neutral vessels and aircraft should be permitted if they do not prejudice the success of operations.

PASSAGE RIGHTS DURING ARMED CONFLICT AT SEA

Internal Waters, Territorial Sea and Archipelagic Waters

618. Neutral waters consist of the internal waters, territorial sea, and, where applicable, the archipelagic waters of neutral states. Within and over neutral waters, including neutral waters comprising an international strait and waters in which the right of archipelagic sea lanes passage may be exercised, hostile actions by belligerent forces are forbidden. Hostile actions for this purpose include:

- a. attack on or capture of persons or objects located in, on or over neutral waters or territory;
- b. use as a base of operations, including attack on or capture of persons or objects located outside neutral waters, if the attack or seizure is conducted by belligerent forces located in, on or over neutral waters;

- c. laying of mines; and
- d. visit, search, diversion or capture.

These prohibitions on hostile actions by belligerent forces in neutral waters do not include the exercise of the right of unit self defence when units are subjected to a hostile act or demonstration of hostile intent. In such circumstances proportionate use of force in self defence may be exercised no matter where a unit finds itself.

619. In addition, belligerent forces may not use neutral waters as a sanctuary.

620. A neutral state may, without discrimination, place conditions on, restrict or prohibit the entrance to or passage through its internal waters, territorial waters and archipelagic waters outside archipelagic sea lanes by belligerent warships and auxiliary vessels. A neutral state may also, without jeopardising its neutrality, permit within its neutral waters:

- a. passage through its territorial sea and where applicable its archipelagic waters, by warships, auxiliary vessels and prizes of belligerent states;
- b. replenishment by a belligerent warship or auxiliary vessel of its food, water and fuel sufficient to reach a port in its own territory; and
- c. repairs of belligerent warships or auxiliary vessels found necessary by the neutral state to make them seaworthy but not to restore or increase their fighting strength.

621. A belligerent warship or auxiliary vessel may not extend the duration of its passage through neutral waters, or its presence in those waters for replenishment or repair, for longer than 24 hours unless unavoidable on account of damage or weather.

International Straits and Archipelagic Sea Lanes

622. The rights of transit passage and archipelagic sea lanes passage applicable to international straits and archipelagic waters in peacetime continue to apply in time of armed conflict. Belligerent and neutral surface ships, submarines and aircraft have the rights of transit passage and archipelagic sea lanes passage through, under and over all straits and archipelagic waters to which these rights apply. Neutral states may not suspend, hamper or otherwise impede the right of transit passage nor the right of archipelagic sea lanes passage.

623. A belligerent in transit passage through, under or over a neutral international strait, or in archipelagic sea lanes passage through, under or over neutral archipelagic waters, is required to proceed without delay, to refrain from the threat or use of force against the territorial integrity or political independence of the neutral littoral or archipelagic state and otherwise to refrain from any hostile actions or other activities not incidental to their transit.

624. Belligerents passing through, under or over neutral straits or archipelagic sea lanes are permitted to take defensive measures consistent with their security, including launching and recovery of aircraft, screen formation steaming, and acoustic and electronic surveillance. Belligerents in transit or archipelagic sea lanes passage may not, however, conduct offensive operations against enemy forces, nor use such neutral waters as a place of sanctuary or base of operations.

625. In time of armed conflict, belligerent and neutral surface ships and submarines also continue to have the right of non-suspendable innocent passage, ascribed to certain international straits by international law.

MEANS AND METHODS OF ARMED CONFLICT AT SEA

626. In conducting hostilities at sea, surface ships, submarines and aircraft are bound by the same principles and rules outlined in chapter 2. The use of weapons in armed conflict at sea must comply with the principles of necessity, unnecessary suffering and proportionality as well as the duty to avoid indiscriminate attacks and the taking of all reasonable precautions to avoid loss of civilian lives and damage to civilian objects. As with any armed conflict, the right of the parties to the conflict to choose the means or methods of warfare is not unlimited.

Means of Armed Conflict at Sea

627. Mines. Mines may only be used in armed conflict at sea for legitimate military purposes, including the denial of sea areas to the enemy. Mines may not be laid off coasts with the sole object of intercepting commercial shipping. The parties to the conflict shall not lay mines unless effective neutralisation occurs when they have become detached or control over them is otherwise lost. In the case of free floating mines, they should not be used unless they are directed against a military objective and they become harmless within an hour after loss of control over them.

628. Belligerents are to record the locations where they have laid sea mines to ensure accurate notification of danger areas to shipping of other states and facilitate subsequent removal or deactivation. Mining of neutral waters by a belligerent should not occur. Mining operations in the internal waters, territorial sea or archipelagic waters of a belligerent state should provide, when the mining is first executed, for free exit of shipping of neutral states. Where mines are laid in international waters, belligerents should pay due regard to the legitimate uses of international waters by providing safe alternative routes for passage of neutral shipping. Likewise, transit passage through international straits and archipelagic sea lanes should not be impeded by belligerent minelaying unless safe and convenient alternative routes are provided.

629. Following an armed conflict, parties to the conflict are obliged under international law to do their utmost to remove or render harmless the mines they have laid and to cooperate with other states and international organisations to remove sea mines and render them harmless.

630. Torpedoes. Torpedoes should only be employed in armed conflict at sea if they sink or otherwise become harmless when they have completed their run.

631. Missiles and Other Projectiles. These means of armed conflict at sea, including those with over the horizon capabilities, may be used in conformity with the principles of target discrimination contained in chapter 5.

Methods of Armed Conflict at Sea

632. Exclusion Zones. Maritime exclusion zones, (MEZ) variously referred to as defensive sea areas, total exclusion zones, maritime control areas or operational zones, are areas of ocean space from which a belligerent declares some or all types of ships or aircraft to be excluded. MEZ must be distinguished from EEZ which bear no relationship to armed conflict at sea. A MEZ may be moving or stationary and is sometimes declared to include the airspace above it. MEZ differ from the immediate area of naval operations because they normally encompass quite large water areas and are not confined to areas in the close vicinity of naval operations.

633. There is no specific international law treaty provision referring to MEZ, however, their use has acquired a degree of validity under customary international law. The International Military Tribunal at Nuremberg held that establishment of exclusion zones in which neutral merchant ships were subjected to a sink on sight policy was illegal. However, the Tribunal implicitly accepted the legitimacy of an exclusion zone in which belligerent merchant ships were subjected to a sink on sight policy where such ships were incorporated into the belligerent war effort.

634. The establishment of a MEZ does not relieve the belligerent of its duties under international humanitarian law to avoid adversely affecting the legitimate uses of defined areas of ocean space. Where a belligerent establishes a MEZ the following conditions should apply:

- a. The extent, location and duration of the zone and the measures imposed should not exceed what is strictly required by military necessity and the principle of proportionality.
- b. Due regard must be given to the rights of neutral states in their exercise of the legitimate uses of the seas.
- c. The commencement, duration, location and extent of the zone, as well as the restrictions imposed, must be publicly declared and appropriately notified to other states.
- d. Necessary safe passage through the zone for neutral vessels and aircraft should be provided:
 - (1) where the geographical extent of the zone significantly impedes free and safe access to the ports and coasts of a neutral state; or
 - (2) in other cases where normal navigation routes are affected, except where military requirements do not permit.

635. Ruses of War and Perfidy in Armed Conflict at Sea. The basic definitions applicable to ruses of war and perfidy in armed conflict on land also apply to these methods of warfare at sea. However, there are some methods of lawful and unlawful deception peculiar to the naval environment. Warships and auxiliary vessels may fly a false flag up until the moment of launching an attack but are prohibited from launching an attack whilst flying a false flag, and at all times from actively simulating the status of:

- a. hospital ships, small coastal rescue craft or medical transports;
- b. vessels on humanitarian missions;
- c. passenger vessels carrying civilian passengers;
- d. vessels protected by the United Nations flag;
- e. vessels guaranteed safe conduct between the parties, including cartel vessels;
- f. vessels entitled to be identified by the emblem of the Red Cross or Red Crescent; or
- g. vessels engaged in transporting cultural property under special protection.

636. Perfidious acts also include the launching of an attack while feigning;

- a. exempt, civilian, neutral or protected United Nations status; or
- b. surrender or distress by, eg sending a distress signal or by the crew taking to life rafts.

RESTRICTIONS ON TARGETING

637. As outlined in chapter 5, the principle of distinction applies equally to armed conflict at sea. Attacks must be directed only at military objectives. In common with land warfare, maritime military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage. Merchant vessels and civil aircraft are civilian objects unless they are military objectives. Principles of neutrality are described in chapter 11.

638. Enemy Warships and Military Aircraft. Enemy warships, auxiliary vessels and military aircraft are military objectives and may be attacked unless contained in the list of exempt categories of vessels and aircraft given below.

639. Enemy Merchant Vessels. Enemy merchant vessels may only be attacked if they meet the definition of military objective given above. The following activities may render enemy merchant vessels military objectives:

- a. engaging in belligerent acts on behalf of the enemy;
- b. acting as an auxiliary to an enemy's armed forces, eg carrying troops or replenishing warships;
- c. being incorporated into or assisting the enemy's intelligence gathering system;
- d. sailing under convoy of enemy warships or military aircraft;
- e. refusing an order to stop or actively resisting visit, search or capture;
- f. being armed to an extent that could inflict damage to a warship; and
- g. otherwise making an effective contribution to military action.

640. Enemy Civil Aircraft. Enemy civil aircraft may likewise only be attacked if they meet the definition of a military objective. The following activities may render enemy civil aircraft military objectives:

- a. engaging in acts of war on behalf of the enemy;
- b. acting as an auxiliary aircraft to an enemy's armed forces, eg transporting troops or military cargo or refuelling military aircraft;
- c. being incorporated into or assisting the enemy's intelligence gathering system;
- d. flying under the protection of accompanying enemy warships or military aircraft;
- e. refusing an order to identify itself, divert from its track, or proceed for visit and search to a belligerent airfield that is safe for the type of aircraft involved and reasonably accessible, or operating fire control equipment that could reasonably be construed as part of an aircraft weapon system, or on being intercepted clearly manoeuvring to attack the intercepting belligerent aircraft;
- f. being armed with air-to-air or air-to-surface weapons; or
- g. otherwise making an effective contribution to military action.

641. Neutral Merchant Vessels. Merchant vessels flying the flag of neutral states may not be attacked unless they:

- a. are believed on reasonable grounds to be carrying contraband or breaching a blockade, and after prior warning they intentionally and clearly refuse to stop, or intentionally and clearly resist visit, search or capture;
- b. engage in belligerent acts on behalf of the enemy;
- c. act as auxiliaries to the enemy's armed forces;
- d. are incorporated into, or assist the enemy's intelligence gathering system;
- e. sail under convoy of enemy warships or military aircraft; or
- f. otherwise make an effective contribution to the enemy's military action, eg by carrying military material, and it is not feasible for the attacking forces to first place passengers and crew in a place of safety.

642. The mere fact that a neutral merchant vessel is armed provides no grounds for attacking it.

643. Neutral Civil Aircraft. Civil aircraft bearing the marks of neutral states may not be attacked unless they:

- a. are believed on reasonable grounds to be carrying contraband and, after prior warning or interception, they intentionally and clearly refuse to divert from their destination, or intentionally and clearly refuse to proceed for visit and search to a belligerent airfield that is safe for the type of aircraft involved and reasonably accessible;
- b. engage in belligerent acts on behalf of the enemy;
- c. act as auxiliaries to the enemy's armed forces;
- d. are incorporated into or assist the enemy's intelligence gathering system; or
- e. otherwise make an effective contribution to the enemy's military action.

644. Classes of Vessels Exempt from Attack. The following classes of enemy vessels are exempt from attack:

- a. hospital ships;
- b. small craft used for coastal rescue operations and other medical transports;
- c. vessels granted safe conduct by agreement between the belligerent parties including:
 - (1) cartel vessels, eg vessels designated for and engaged in the transport of prisoners of war;
 - (2) vessels engaged in humanitarian missions including vessels carrying supplies indispensable to the survival of the civilian population, and vessels engaged in relief actions and rescue operations;
- d. vessels engaged in transporting cultural property under special protection;
- e. passenger vessels when engaged only in carrying civilian passengers;

- f. vessels charged with religious, non-military scientific or philanthropic missions (vessels collecting scientific data with likely military application are not protected);
- g. small coastal fishing vessels and small boats engaged in local coastal trade;
- h. vessels designed or adapted exclusively for responding to pollution incidents in the maritime environment;
- i. vessels which have surrendered; and
- j. life rafts and lifeboats.

645. The above vessels are exempt from attack only if they:

- a. are innocently employed in their normal role,
- b. submit to identification and inspection when required, and
- c. do not intentionally hamper the movement of combatants and obey orders to stop or move out of the way when required.

MEASURES OF NAVAL WARFARE AGAINST TRADE

Visit and Search of Merchant Vessels

646. In exercising their legal rights in international armed conflict at sea belligerent warships and military aircraft have a right to visit and search merchant vessels outside neutral waters in order to determine their character (enemy or neutral), the nature of their cargo, their manner of employment and other facts which bear on their relationship to the armed conflict. Historically, visit and search was considered the only legally acceptable method for determining whether a merchant vessel was subject to capture. It is now recognised that changes in warfare may render this method either hazardous or impracticable in some circumstances.

647. Procedures for Visit and Search. In the absence of special instructions issued during a period of armed conflict, the following procedures should be adhered to:

- a. In general, a belligerent's right of visit and search should be exercised with tact and consideration.
- b. Before summoning a vessel to lie to, a warship's own flag should be hoisted. The summons should be made by firing a blank charge, international flag signal or other recognised means. The summoned vessel, if neutral, is bound to stop, lie to and display its colours; if an enemy, it may resist by force, but thereby assumes all risks of resulting damage. On the other hand, a neutral merchant vessel is obliged not to resist the belligerent's right of visit and search.
- c. If a summoned vessel takes flight, it may be pursued and brought to by forcible means.
- d. When a summoned vessel is brought to, a boat with at least one officer is to be sent to conduct the visit and search. Arming of the officers and the boat's crew is left to the discretion of the commanding officer of the visiting ship.
- e. If visit and search at sea of a neutral merchant vessel is deemed hazardous or impracticable, the neutral vessel may be escorted by the summoning vessel, or by another vessel, to the nearest place where search may be made.

FOR OFFICIAL USE ONLY

ADFP 37

6-10

- f. A boarding officer should first examine a ship's papers in order to determine its character, ports of departure and destination, nature of its cargo and employment, and other essential facts. Ship's papers generally found on board a merchant vessel include:
 - (1) certificate of registry of nationality;
 - (2) crew list;
 - (3) passenger list;
 - (4) log book;
 - (5) bill of health;
 - (6) clearance;
 - (7) charter party, if chartered;
 - (8) invoices or manifest of cargo;
 - (9) bills of lading; and
 - (10) a consular declaration certifying the innocence of the cargo may be included.
- g. Evidence furnished by papers against a vessel may be taken as conclusive. Regularity of papers and evidence of innocence of cargo or destination furnished by papers are not necessarily conclusive, and if any doubt exists, the personnel of the vessel are to be questioned and a search made, if practical, of the ship or cargo. If search, under suspicious circumstances, does not satisfy a boarding officer, the vessel is to be captured and sent in for adjudication to the nearest port of the belligerent apprehending.
- h. Unless military security prohibits, the boarding officer must record in the log book the facts concerning the visit and search of the vessel, including the date and position. The entry in the log book should be authenticated by the signature and rank of the boarding officer. Neither the names of the visiting vessel nor the name and rank of the commanding officer are to be disclosed.

Exemptions from Visit and Search of Merchant Vessels

- 648.** A neutral merchant vessel is exempt from the right of visit and search, if:
- a. it is bound for a neutral port;
 - b. it is under the convoy of an accompanying neutral warship of the same nationality or a neutral warship of a state with which the flag state of the merchant vessel has concluded an agreement providing for such convoy;
 - c. the flag state of the neutral warship warrants that the neutral merchant vessel is not carrying contraband or otherwise engaged in activities inconsistent with its neutral status; and
 - d. the commander of the neutral warship provides, if requested by the commander of an intercepting belligerent warship or military aircraft, all information as to the character of the merchant vessel and its cargo as could otherwise be obtained by visit and search.

FOR OFFICIAL USE ONLY

649. In order to avoid the necessity of visit and search, belligerent states may establish reasonable measures for the inspection of cargo of neutral merchant vessels and certification that a vessel is not carrying contraband.

Contraband

650. Contraband consists of all goods which are destined for an enemy and which may be suspected to be of use in war. Contraband goods are divided into two categories; absolute and conditional. Absolute contraband consists of goods which are used primarily for war or goods whose very character makes them destined for use in war. Conditional contraband consists of goods which are equally suitable for use either for peaceful or warlike purposes. The distinction between absolute and conditional contraband is of declining importance, at least in major maritime conflicts, as there is a tendency to assume that all goods, which one party considers important enough to import during armed conflict must be some value to its war effort.

651. On the initiation of armed conflict, belligerents may declare contraband lists setting forth the classification of articles to be regarded as contraband, as well as the distinction to be made between goods considered as absolute contraband and those considered conditional. Goods consisting of absolute contraband are liable to capture if their destination is the territory belonging to or occupied by an enemy, or the armed forces of an enemy. It is immaterial whether the carriage of such goods is direct or involves trans-shipment or transport overland. In the case of absolute contraband, a destination of territory belonging to or occupied by an enemy or its armed forces, is presumed to exist when:

- a. the transporting vessel is to call at an enemy port before arriving at a neutral port for which the goods are documented;
- b. goods are documented to a neutral port serving as a port of transit to an enemy, even though the goods are consigned to a neutral; or
- c. goods are consigned 'to order' or to an unnamed consignee, but destined to a neutral state in the vicinity of enemy territory.

652. Goods consisting of conditional contraband are liable to capture if destined for the use of an enemy government or its armed forces. It is immaterial whether the carriage of such goods is direct or involves trans-shipment or transport overland.

653. Goods not on the belligerent's contraband lists are 'free goods', that is, not subject to capture. As a minimum, 'free goods' shall include:

- a. religious objects;
- b. articles intended exclusively for treatment of the wounded and sick and prevention of disease (particulars concerning the carriage of such articles must be transmitted to the adverse party and approved by it);
- c. clothing, bedding, essential foodstuffs, and means of shelter for the civilian population in general, and women and children in particular, provided there is not serious reason to believe that such goods will be diverted to other purposes, or that a definite military advantage would accrue to the enemy by their substitution for enemy goods that would thereby become available for military purposes;
- d. items destined for prisoners of war, including individual parcels and collective relief shipments containing food, clothing, education, cultural and recreational articles;
- e. goods otherwise specifically exempted from capture by international treaty or by special arrangement between the belligerents; and
- f. other goods not susceptible for use in armed conflict.

Capture of Enemy Vessels and Goods

654. Enemy vessels, whether merchant or otherwise, and goods on board such vessels may be captured outside neutral waters. Prior exercise of visit and search is not required. Categories of vessels exempt from capture correspond to those listed in paragraph 638. Capture of a merchant vessel is exercised by taking such vessel as a prize for adjudication. If military circumstances preclude taking such a vessel as a prize at sea, it may be diverted to an appropriate area or port in order to complete capture.

655. A captured enemy merchant vessel may, as an exceptional measure, be destroyed when military circumstances preclude taking, or sending such a vessel for adjudication, as an enemy prize, only if the following conditions are met beforehand:

- a. the safety of passengers and crew is provided for (for this purpose, the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured in the prevailing 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.);
- b. documents and papers relating to the prize are safeguarded; and
- c. if feasible, personal effects of the passengers and crew are saved.

656. The destruction of enemy passenger vessels carrying only civilian passengers is prohibited at sea. For the safety of the passengers, such vessels shall be diverted to an appropriate area or port in order to complete capture.

Capture of Neutral Merchant Vessels and Goods

657. Neutral merchant vessels are subject to capture outside neutral waters if they are engaged in any of the activities described in paragraph 638 or if it is determined, as a result of visit and search, or by other means, that they:

- a. are carrying contraband;
- b. are on a voyage especially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy;
- c. are operating directly under enemy control, orders, charter, employment or direction;
- d. present irregular or fraudulent documents, lack necessary documents, or destroy, deface or conceal documents;
- e. are violating regulations established by a belligerent within the immediate area of naval operations; or
- f. are breaching or attempting to breach a blockade.

Capture of a neutral merchant vessel is exercised by taking such vessel as a prize for adjudication. Goods on board neutral merchant vessels may only be captured if they are contraband (see paragraphs 640 to 643).

658. A neutral vessel, which is captured in accordance with the criteria given above may, as an exceptional measure, be destroyed when military circumstances preclude taking or sending such a vessel for adjudication as an enemy prize only if the following conditions are met beforehand:

- a. the safety of passengers and crew is provided for (for this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured in the prevailing sea and weather conditions by the proximity of the land, or the presence of another vessel which is in a position to take them on board);
- b. documents and papers relating to the captured vessel are safeguarded; and
- c. if feasible, personal effects of the passengers and crew are saved.

659. Every effort should be made to avoid destruction of a captured neutral vessel. Destruction shall not be ordered without there being entire satisfaction that the captured vessel can neither be sent into a belligerent port, nor diverted, nor properly released. The destruction of captured neutral passenger vessels carrying civilian passengers is prohibited at sea. For the safety of the passengers, such vessels should be diverted to an appropriate port to complete the capture.

Blockade

660. A blockade is a belligerent operation intended to prevent vessels of all states from entering or leaving specified coastal areas which are under the sovereignty, occupation, or control of an enemy. Such areas may include ports, harbours, the entire coastline or part of it. A blockade is accomplished by establishing a cordon which separates the enemy from international waters and airspace. A blockade by sea may be extended to include the airspace above those portions of the high seas in which the blockading forces are operating.

661. In order to be binding, a blockade must be established by a belligerent government. A blockade shall be declared and notified to all belligerents and neutral states. The declaration should include the date of commencement, duration, location, extent of the blockade and the period within which vessels of neutral states may leave the blockaded coastline. Notification of a blockade is an essential element in establishing whether a vessel or aircraft has breached a blockade.

662. A blockade must be effective. Its effectiveness is a question of fact. As a guide, however, a blockade should be maintained by a force sufficient to render ingress and egress from the blockaded area dangerous. The force maintaining the blockade may be stationed at a distance determined by military requirements. A blockade may be enforced and maintained by a combination of legitimate methods and means of warfare. A blockade must not bar access to or departure from neutral ports or coasts and must be applied equally to the vessels and aircraft of all states.

663. Vessels and aircraft are liable to capture for breach of blockade. Merchant vessels believed on reasonable grounds to be breaching a blockade may be captured. Merchant vessels which, after prior warning, clearly resist capture may be attacked. The liability of a blockade runner to capture begins with the commencement of its voyage or flight and terminates with the end of its journey.

664. Neutral warships and neutral military aircraft have no positive right of entry to a blockaded area. However, they may be allowed to enter or leave a blockaded area as a matter of courtesy. Permission to visit a blockaded area is subject to any conditions, such as the length of stay, that the blockading force may deem necessary and expedient. Neutral vessels and aircraft in urgent distress may be permitted to enter and leave a blockaded area under conditions prescribed by the commander of the blockading force.

665. The declaration or establishment of a blockade is prohibited if:

- a. it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or
- b. the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.

666. If the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must provide for free passage of such foodstuffs and other essential supplies, subject to:

- a. the right to prescribe the technical arrangements, including search, under which such passage is permitted; and
- b. the condition that the distribution of such supplies shall be made under the local supervision of a Protecting Power or a humanitarian organisation which offers guarantees of impartiality.

667. The blockading belligerent shall allow the passage of medical supplies for the civilian population or for the wounded and sick members of armed forces, subject to the right to prescribe technical arrangements, including search, under which such passage is permitted.

RESCUE AND CARE OF THE WOUNDED, SICK AND SHIPWRECKED IN ARMED CONFLICT AT SEA

668. General Rules. All possible measures are to be taken to search for and collect the shipwrecked, wounded and sick in armed conflict at sea and ensure their adequate care in accordance with the provisions of the G. II and G.P. I. Rescued personnel shall be respected and protected. The parties to an armed conflict at sea may agree for humanitarian purposes to create a zone in a defined area of the sea in which only activities consistent with those humanitarian purposes are permitted.

669. Protected Persons. Persons on board vessels and aircraft having fallen into the power of a belligerent or neutral shall be respected and protected. Members of the crews of hospital ships may not be captured during the time they are in the service of these vessels. Members of the crews of rescue craft may not be captured while engaging in rescue operations. Religious and medical personnel assigned to the spiritual and medical care of the wounded, sick and shipwrecked shall not be considered prisoners of war. They may however, be retained as long as their services are required for prisoners of war.

670. Nationals of an enemy state, in the context of armed conflict at sea are entitled to prisoner of war status if they are:

- a. members of the enemy's armed forces,
- b. persons accompanying the enemy's armed forces,
- c. crew members of auxiliary vessels,
- d. crew members of enemy merchant vessels, or
- e. crew members of neutral merchant vessels that have taken a direct part in the hostilities on the side of the enemy or served as an auxiliary of the enemy.

671. Nationals of a neutral state:

- a. who are passengers on board enemy or neutral vessels are to be released and may not be made prisoners of war unless they are members of the enemy's armed forces or have committed acts of hostility against the enemy,
- b. who are members of the crew of enemy warships or auxiliary vessels are entitled to prisoner of war status, and
- c. who are members of the crew of enemy or neutral merchant vessels are to be released and may not be made prisoners of war unless the vessel or the crew member has personally committed an act of hostility against the captor.

672. Medical Transports. In order to provide maximum protection for hospital ships from the moment of the outbreak of hostilities, states may beforehand give general notification of the characteristics of their hospital ships as specified in Article 22 of G. II. Hospital ships may be equipped with purely passive means of defence, such as chaff and flares. The presence of such equipment should be notified. In order to fulfil their humanitarian mission, hospital ships should be permitted to use cryptographic equipment provided such equipment is not used to transmit intelligence data nor in any other way to acquire military advantage.

FURTHER READING

673. Further detail on LOAC at sea is contained in the RAN publication, ABR 5179 - *RAN Manual of International Law*.

CHAPTER 7

LAND OPERATIONS AND THE LAW OF ARMED CONFLICT

INTRODUCTION

701. The purpose of this chapter is to state the legal rules concerning the conduct of military operations on land. Reference should be made to chapter 2 where the basic principles of the law of armed conflict (LOAC) are outlined. Chapter 4 - Weapons, chapter 5 - Targeting, chapter 9 - Protected Persons and Objects and chapter 10 - Prisoners of War and Detained Persons contain specific guidance on those particular areas.

METHODS OF COMBAT

Stratagems and Ruses

702. Ruses of war and the employment of measures necessary for obtaining information about the enemy and the enemy country are permissible. Ruses of war are used to obtain an advantage by misleading the enemy. They are permissible provided they are free from any suspicion of treachery or perfidy. Legitimate ruses include surprises, ambushes, camouflage, decoys, mock operations and misinformation. Psychological operations are also permitted.

Perfidy

703. Perfidy is forbidden. Acts which constitute perfidy are those inviting the confidence of an adversary, thus leading that adversary to believe that there is an entitlement, or an obligation, to accord protection provided under LOAC, with an intent to betray that confidence. Acts which constitute perfidy include feigning of:

- a. an intent to negotiate under a flag of truce or surrender;
- b. an incapacitation by wounds or sickness;
- c. civilian or noncombatant status; and
- d. protected status by the use of protective symbols, signs, emblems or uniforms of the United Nations or of neutral or other states not involved in the conflict.

Improper Use of Protective Symbols and Emblems

704. It is prohibited to improperly use the distinctive emblem of the Red Cross or Red Crescent. Deliberate misuse of other protective symbols and emblems, signs and signals, including the flag of truce and the protective emblem of cultural property, is also prohibited. Use of the distinctive emblem of the United Nations is prohibited except as authorised by the United Nations.

705. In armed conflict it is prohibited to use flags, military emblems, insignia or uniforms of neutral or other nations not party to the conflict. It is also prohibited to use the flags or military emblems, insignia or uniforms of the enemy while engaging in attacks or in order to shield, favour, protect or impede military operations. Enemy uniforms may otherwise be worn. Any soldier who is captured not wearing military uniform risks being treated as a spy.

Quarter must be Granted

706. It is prohibited to order that no prisoners will be taken, threaten an enemy that such an order will be given or conduct hostilities on the basis that no prisoners will be taken. Ambiguous orders, such as, 'take that objective at any cost' should be avoided.

Persons 'Hors de Combat'

707. Those who do not participate in hostilities must not be the direct object of an attack. Soldiers who are 'out of combat' and civilians are to be treated in the same manner and cannot be made the object of attack. A person is *hors de combatif* that person:

- a. is under the control of an enemy;
- b. clearly expresses an intention to surrender, or has been rendered unconscious, or is otherwise incapacitated; and
- c. abstains from any hostile act and does not attempt to escape.

708. Other persons who are not taking a direct part in hostilities are also considered to be out of combat. Those persons include medical personnel, chaplains and any person parachuting from an aircraft in distress.

Starvation and Devastation - Scorched Earth

709. Starvation of civilians as a method of warfare is prohibited. Objects indispensable to the survival of the civilian population cannot be attacked, destroyed, removed or rendered useless for the specific purpose of denying them for their sustenance value to the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works. This includes starving civilians or causing them to move away.

710. Foodstuffs and agricultural areas producing them, crops, livestock and supplies of drinking water intended for the sole use of the armed forces may be attacked and destroyed. Extreme care will need to be exercised when making some objectives a military target, eg drinking water installations, as such objects are hardly likely to be used solely for the benefit of armed forces.

711. When objects are used for a purpose other than sustenance of members of the armed forces and such use is in direct support of military action, attack on such objects is lawful unless that action can be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

712. It is permissible to destroy objects which are indispensable to the survival of the civilian population in the course of ordinary military operations only if it is militarily imperative to do so, for example, to destroy a wheat field to deny concealment to enemy forces, because this is a tactical measure and does not amount to a scorched earth policy. The ADF may embark on a scorched earth policy in territory under Australian control where imperative military necessity requires it to do so to protect Australian national territory from invasion. In circumstances other than for the defence of one's national territory it is still permissible, for example, to destroy a wheat field to deny concealment to enemy forces, because this is a tactical measure and does not amount to pursuing a scorched earth policy.

Protection of the Environment

713. Any method or means of warfare which is planned, or expected, to cause widespread, long-term and severe damage to the natural environment and thereby jeopardise the survival or seriously prejudice the health of the population is prohibited. In this context, 'long-term' means continuing for decades. Means or methods which are not expected to cause such damage are permitted even if damage results.

714. Australia, as a signatory to the United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) has undertaken not to engage in any military or hostile use of environmental modification techniques which would have widespread, long lasting or severe effects as the means of destruction, damage or injury to any other state which is a party to the Convention.

715. For the purposes of ENMOD, the terms 'widespread', 'long lasting', and 'severe' are interpreted as follows:

- a. 'widespread': encompassing an area on the scale of several hundred square kilometres;
- b. 'long lasting': lasting for a period of months, or approximately a season; and
- c. 'severe': involving serious or significant disruption or harm to human life, natural economic resources or other assets.

716. Environmental modification techniques are defined by ENMOD as any technique for changing, through deliberate manipulation of natural processes, the dynamics, composition or structure of the earth, including:

- a. animal and plant life (forbidding long-term defoliation and the like),
- b. the earth's crust (forbidding artificial earthquakes),
- c. the earth's water surface, and
- d. the gaseous envelope surrounding the earth.

Espionage and Sabotage

717. International law recognises the right of belligerents to employ spies and other secret agents to obtain information about the enemy. Espionage is the clandestine collection of information behind enemy lines or in the area of operations with the intention of communicating that information to a hostile party to the conflict. A member of an armed force who is in territory controlled by an adverse party to a conflict gathering, or attempting to gather, information is not considered as a spy if that person is wearing military uniform. Any person captured while engaging in espionage is not entitled to the status of prisoner of war and is liable to be tried by the civil courts of the adversary.

718. Sabotage is permitted if directed against a legitimate military objective. Saboteurs in uniform are combatants and entitled to prisoner of war status if captured. Civilian saboteurs or saboteurs not in uniform are not so protected. Generally speaking, saboteurs are persons operating behind the lines of the enemy to commit acts of destruction. If they are operating in civilian clothing they are liable to be treated as spies.

719. Members of forces participating in acts of espionage or sabotage should wear uniform whenever possible while in enemy or enemy-occupied territory. Otherwise, they run the risk of being treated as spies if captured.

720. Civilian residents of occupied territory who commit sabotage or espionage in that territory may be punished if captured. This does not apply to members of:

- a. national liberation movements engaged in a conflict seeking self-determination,
- b. resistance or properly organised guerrilla movements, and
- c. a *levée en masse* while acting in those capacities.

These people are to be treated as prisoners of war.

721. A person engaged in gathering intelligence and captured in an aircraft or vessel while dressed in civilian clothes may only be charged with espionage if they are engaged in such activities. However, the crew of an aircraft carrying spies cannot be treated as spies in the absence of clear evidence that they are spying.

722. Should combatants, including personnel from crashed aircraft, wear civilian clothing to facilitate escape, the burden of proving they are not spies is upon them. When the question arises as to whether a captive is to be treated as a prisoner of war, the person should be presumed to be a prisoner of war and given that status until the contrary is proved.

723. Persons assisting the escape of saboteurs, spies, aircrew or escaped prisoners of war are liable to face trial in accordance with the national laws of the belligerent against whose interests they have been acting, or if within occupied territory, in accordance with the law of the occupying authority. They may be accused of espionage even though their acts do not technically fall within this definition and may jeopardise any civilian or other protected status they may have. Offenders are entitled to a proper trial.

Assassination

724. Assassination is the sudden or secret killing by treacherous means of an individual who is not a combatant, by premeditated assault, for political or religious reasons. Assassination is unlawful. In addition, it is prohibited to put a price on the head of an enemy individual. Any offer for an enemy 'dead or alive' is forbidden. If prior information of an intended assassination or other act of treachery should reach the party on whose behalf the act is to be committed, that party should endeavour to prevent its occurrence.

725. The prohibition against assassination is not to be confused with attacks on individual members of the enemy's armed forces as those persons are combatants and are legitimate military targets.

Non-defended Locality

726. Military objectives within a non-defended locality, from which hostile acts are being conducted, can be attacked subject to weapon and targeting considerations set out in chapters 4 and 5. Otherwise, non-defended localities cannot be attacked.

727. A non-defended locality is any inhabited or uninhabited place near or in a zone where opposing armed forces are in contact and which has been declared by parties to the conflict as open for occupation by a party to the conflict. In order to be considered a non-defended locality, the following conditions must be fulfilled:

- a. all combatants, weapons and military equipment, must have been evacuated or neutralised;
- b. no hostile use is made of fixed military installations or establishments;
- c. no acts of hostility are to be committed by the authorities or the population; and
- d. no activities in support of military operations shall be undertaken.

728. The presence in this locality of protected persons and police forces retained for the sole purpose of maintaining law and order, does not change the character of a non-defended locality.

729. A non-defended locality may be declared by a party to the conflict. That declaration must describe the geographical limits of the locality and be addressed to the relevant party to the conflict which must acknowledge its receipt and from that time treat the locality as a non-defended locality unless the conditions for establishment of the locality are not met.

730. The parties to the conflict may also agree to grant the status of a non-defended locality to a particular area even if the conditions referred to in paragraph 727 are not fulfilled. Although there is no specific format or content for any such agreement, the principal points should be:

- a. the exact geographical limits of the area;
- b. the date and time of entry into force;

- c. duration;
- d. rules on marking the limits of the area and the type of marking to be used;
- e. persons authorised to enter the locality;
- f. if necessary, the methods of supervision; and
- g. the ultimate fate of the locality and the possible conditions under which the area may be occupied by enemy troops.

731. Non-defended localities are to be signposted and although the status may be lost when the conditions upon which it was established are no longer being satisfied, the locality shall continue to enjoy any other protection afforded by LOAC.

Siege Warfare

732. Attack on towns, villages, habitations or buildings which are undefended is prohibited unless they have become military objectives.

733. If the attack is likely to affect the civilian population, the commander of an attacking force shall give effective advance warning unless circumstances do not permit. If there are noncombatants in the locality, the anticipated collateral damage must not be excessive in relation to the concrete and direct military advantage expected to result from the bombardment. Buildings devoted to religion, art, science and charity, hospitals and places where the sick and wounded are collected, should not be made the specific subject of attack unless they are being used for military purposes, subject to warning requirements. The besieged population should indicate by visible signs the buildings or places to be protected and should notify the attacking force of these signs.

734. Diplomatic and consular personnel of a neutral nation should not be prevented from leaving a besieged place before hostilities commence. This privilege cannot be claimed while hostilities are in progress. Should they voluntarily decide to remain, they are subject to the same risks as other inhabitants.

735. The commander of the besieging force has the right to forbid all communications and access outside the besieged place. The opposing parties are required to try and conclude local agreements for the removal from besieged or encircled areas of wounded, sick, infirm and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas. Similar considerations are made for the passage of consignments of medical and hospital stores and objects necessary for the religious worship of civilians and of essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases.

736. The commander of a besieging force is not required to permit noncombatants to leave a besieged locality. A commander cannot direct fire at noncombatants who attempt to leave or enter a besieged place.

Demilitarised Zone

737. Demilitarised zones are areas in which, by express agreement between the parties to the conflict, military operations are not conducted. The aim of these zones is common to that of non-defended localities. The differences between the two areas relate to how they are established and their situation. A non-defended locality may be created by unilateral declaration, whereas a demilitarised zone is created by express agreement between the parties. From the commander's point of view, protection granted to each zone is identical. Therefore, as long as sufficient notice is given of the zones and they are adequately marked, they are protected from attack.

Civil Affairs

738. Commanders should give consideration to establishment of civil affairs units or teams to aid military operations by providing a means of communication between local authorities and military forces to assist in ensuring that planning and conduct of operations is in accordance with obligations under LOAC. Areas in which civil affairs teams or units may support commanders include:

- a. assisting the commander in meeting legal and moral obligations to the civilian population (eg liaison, advice, coordination, warning);
- b. advising the commander on civil affairs aspects of current and proposed plans and operations;
- c. advising the commander on actions to minimise civilian interference with military operations; and
- d. identifying and coordinating acquisition of local resources.

Law of Armed Conflict Profiles

739. LOAC profiles should be prepared where possible for populated areas within an area of operations, to be included in the operational planning process. A LOAC profile format is at Annex A.

PROPERTY ON THE BATTLEFIELD

Destruction or Seizure of Civilian Property

740. Public and Private Property. The destruction or seizure of civilian property, whether it belongs to private individuals or the state, to other public authorities or to social or cooperative organisations is permitted if imperative for military purposes. Otherwise such action is forbidden.

741. Municipal, Religious, Charitable and Cultural Property. The property of municipalities and that of institutions dedicated to religion, charity, education, the arts and sciences is treated as private property and any seizure or destruction of that property is prohibited. If that property is located in any area which is subject to seizure or bombardment, then it must be secured against all avoidable damage and injury.

Booty

742. All enemy military equipment captured or found on a battlefield is known as booty and becomes the property of the capturing state. Booty includes all articles captured with prisoners of war and not included under the term 'personal effects'. Personal effects are considered to be those items listed at paragraph 1023.

Pillage

743. Pillage, the violent acquisition of property for private purposes, is prohibited.

Annex: A. Law of Armed Conflict Profile Format

LAW OF ARMED CONFLICT PROFILE FORMAT

LOAC PROFILE FOR OPERATIONS IN THE AREA

1. Civilian Population:

- a. What is the populated area?
- b. What are the concentration centres of the population and what are their geographic parameters?
- c. What materials are used, in the majority of cases, for the construction of domestic dwellings?
- d. What objects are indispensable to the civilian population and where are they?

2. Protected Objects:

- a. What is the location, size, and construction of any hospital, medical centre, medical storage facility, research or health facility in the populated area or vicinity?
- b. What is the location and number of shrines, churches, religious objects or houses of worship?
- c. What is the location of any civil defence facility?
- d. What is the location and nature of the major:
 - (1) water supply systems including dams, reservoirs or dykes;
 - (2) power stations, both conventional and nuclear;
 - (3) transport systems, railheads, harbour facilities and airports;
 - (4) food distribution; and
 - (5) food production areas, for the civilian population?

3. Dangerous Substances/Hazards:

- a. Are there any bulk handling or storage facilities for:
 - (1) petroleum or other inflammable substances,
 - (2) explosives,
 - (3) chemicals or other toxic substances, or
 - (4) radioactive materials,the release of which will endanger the civilian population?
- b. Of the facilities mentioned above, which are located below ground level, at what depth, what is their construction and what would be the likely effects upon the civilian population should they be destroyed or damaged?

- c. Should they be damaged or destroyed, would any dams, dykes, channels or other systems either carrying domestic water supplies or withholding the effects of the ocean be likely to cause serious or catastrophic damage to the civilian population?
- d. Are there any medical or research facilities in the area which are likely to hold dangerous viruses or bacteria, the escape of which is likely to significantly risk the civilian population?
- e. Are there any other facilities, substances or materials not mentioned above which would cause irreparable consequences to the civilian population?

4. Law of Armed Conflict Guidance:

- a. Care is required in the planning of operations to avoid or minimise the damage to protected objects or inflicting casualties on the civilian population.
- b. The use of indirect fire or close air support should be avoided where the civilian population is concentrated.
- c. Immunity is to be given to targets which if damaged or destroyed will pose major environmental hazards.
- d. Damage from other dangerous substances stored in the vicinity of military objects should be limited to the immediate area so as to cause as few civilian casualties as possible and minimum damage to the environment.
- e. Commanders should be reminded that LOAC requires that if there is more than one military option open in achieving an objective, the option involving the least civilian casualties and collateral damage should be chosen.
- f. Commanders are prohibited from launching indiscriminate attacks.
- g. Further LOAC guidance is to be included depending on the nature of the operation.

CHAPTER 8

AIR OPERATIONS AND THE LAW OF ARMED CONFLICT

INTRODUCTION

801. An attempt was made in 1923 by some international jurists from a number of nations to reach international consensus on aerial warfare. These rules, which are referred to as the 1923 Draft Hague Rules for Aerial Warfare, were never formally adopted although some of the rules have now become part of customary international law. By the end of hostilities in 1945 there was little law of armed conflict (LOAC) relating specifically to the conduct of air warfare.

802. Since 1944 international law has developed to encompass the regulations of international aviation through the Convention on International Civil Aviation (Chicago Convention) and the formation of the International Civil Aviation Organisation (ICAO). In addition, G.P. I and G.P. II have included specific provisions which deal with air warfare and aircraft operations. This chapter addresses these general issues as they apply to the conduct of ADF air operations. Reference should also be made to the Air Force publication AAP 1003 - *Operational Law for RAAF Commanders*.

803. Airspace has traditionally been classified either as national or international airspace. This division closely follows the maritime regime whereby oceans are regarded as national waters or international waters. Air law and the law of the sea are closely related and an understanding of each is critical when planning and conducting ADF operations. LOAC considerations relating to maritime operations are covered in chapter 6.

DEFINITIONS

804. For LOAC purposes, the following definitions, not included in the glossary, are relevant:

aircraft

An aircraft is any machine that can derive support in the atmosphere from the reactions of the air; and includes any aeroplane, balloon, kite, airship or glider.

airspace

Airspace is the zone next to the earth consisting of atmosphere capable of sustaining flight. While there is no general agreement, the boundary with outer space is somewhere between the outermost reach of airborne aircraft (about 50 km) and the lower limit of spacecraft in orbit (about 80 km).

civil aircraft

Civil aircraft are any aircraft not classified as state aircraft.

military aircraft

Military aircraft are any aircraft belonging to the armed forces of a nation; they must bear external marks distinguishing nationality, be under command of an officer and be manned by a crew that is subject to armed forces discipline. All military aircraft are state aircraft.

national airspace and waters

Areas subject to the territorial sovereignty of individual nations. National waters comprise all those waters landwards of the outer limit of a nation's territorial sea. All airspace above national waters, including internal waters, territorial sea and archipelagic waters and Territory is national airspace.

outer space

That zone beyond airspace.

FOR OFFICIAL USE ONLY

ADFP 37

8-2

Protecting Power

The Geneva Conventions provide that the treatment of prisoners of war, interned civilians and inhabitants of occupied territory be monitored by a neutral nation known as a Protecting Power. As nations often disagree as to which nations are neutral or otherwise, the International Committee of the Red Cross has been authorised to perform some of the functions of the Protecting Power.

reprisal

An act, otherwise unlawful under the international law regulating armed conflict, utilised for the purpose of coercing an adversary to stop violating the recognised rules of armed conflict.

roadstead

Roadsteads are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly beyond the limits of the territorial sea, are included within the territorial sea. Roadsteads included within the territorial sea must be clearly marked on charts by the coastal or island nation.

rules of engagement

Directives issued by competent military authority which specify the circumstances and limitations under which Australian forces will initiate or continue combat engagement with other forces encountered.

shipwrecked

Persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility. These persons, provided they continue to refrain from any act of hostility, shall continue to be considered shipwrecked during their rescue until they acquire another status under the Geneva Conventions or Additional Protocols.

State aircraft

Any aircraft used by a nation's military, police and customs services. The definition also includes any aircraft under the control of the national government and used for public service. Examples of this latter category are national VIP transports and aircraft on special missions.

CONTROL OF AIRSPACE

805. International law recognises that the legal status of airspace is akin to that of a nation's territory, internal waters and territorial seas. Sovereignty extends to national airspace. The concept of territorial sovereignty includes the right to regulate, and if necessary prevent access, exit or transit of both personnel and aircraft, whether manned or not. This right in relation to civil aircraft has been modified by the provisions of the Chicago Convention.

806. Chicago Convention. In accordance with the Chicago Convention the aircraft of one nation may not enter another nation's airspace without permission. The Chicago Convention is primarily concerned with the regulation of civil aviation. State aircraft are generally not subject to its provisions and do not enjoy its privileges. Some nations have, however, concluded bilateral agreements which grant overflight rights to their respective state aircraft.

Legal Division of the Oceans and Airspace

807. An understanding of the legal division of the oceans is necessary so that aircrew are aware of the rights of aircraft which transit above these ocean space divisions. The legal regimes of airspace and oceans directly affect military operations because they determine the degree of control that a coastal nation may exercise over foreign aircraft and vessels within these zones. Details of the legal divisions of oceans are detailed in chapter 6, AAP 1003 and in the RAN Publication ABR 5179 - *RAN Manual of International Law*.

FOR OFFICIAL USE ONLY

Outer Space

808. Outer space, while not having a clearly defined boundary, is still recognised as a zone to which particular legal obligations apply. All nations enjoy equal access to outer space and none may claim it as national airspace or for exclusive use.

Status of Military Aircraft and Personnel

809. Military aircraft are classified as state aircraft under the terms of the Chicago Convention. This means that military aircraft are not subject to the provisions of the Chicago Convention and, therefore, the standards, practices and procedures of the ICAO do not apply. Likewise, military aircraft do not enjoy the overflight rights of civil aircraft accorded by the transit agreements negotiated under the Chicago Convention.

810. Nationality and Markings. A nation's aircraft, like its ships, bear the nationality of the country in which they are registered. Civil aircraft must bear markings indicating their nationality. Military aircraft must bear markings indicating both nationality and military status.

811. Immunity. Military aircraft, similar to warships, have sovereign immunity from foreign laws in relation to search and inspection. This means that military aircraft should not be boarded, searched or inspected by foreign authorities without permission. Because military aircraft require diplomatic clearance to enter another nation's airspace, they may be required to submit to search as a condition of entry.

812. Military Contract Aircraft. Civilian aircraft which are contracted to support ADF operations are not normally regarded as state or military aircraft. If used exclusively by the ADF, civil aircraft could be designated as state aircraft and thus enjoy sovereign immunity, and not be subject to ICAO regulation. However, only military aircraft can exercise the combat rights of a belligerent. Examples of such rights include attacking military objectives and overflying enemy territory. Civilian owned and registered aircraft would enjoy the rights of a military aircraft if they carried the markings of a military aircraft, were manned by ADF personnel and were used for national tasks.

Air Navigation Rights

813. General Principles. Military and civil aircraft are free to operate in international airspace without interference. Civil aircraft are able to enter another nation's airspace without diplomatic clearance, if they have followed ICAO procedures. The Chicago Convention reaffirmed the principle that every nation has complete sovereignty over its national airspace. Crew of military aircraft must always seek permission to enter another nation's airspace. This may be a specific clearance or general permission granted by agreement. The clearance can be made conditional and any aircraft entering national airspace are subject to the agreed terms and conditions. Aircraft in distress are entitled to such measures of assistance as are necessary and practicable.

814. Innocent Passage. Unlike warships which have right of innocent passage in other nations' territorial seas, aircraft have no right of innocent passage through the airspace over those territorial seas.

815. Archipelagic Sea Lanes Passage. All aircraft and ships enjoy the right of archipelagic sea lanes passage in designated archipelagic sea lanes. The right of archipelagic sea lanes passage is the right to conduct expeditious and continuous transit in the normal mode of operation, observing the same conditions applicable to transit passage through international straits. This right of transit exists even if the nation has not declared such sea lanes. In common with vessels, aircraft can use all routes normally used for international navigation, to transit the archipelago in the absence of designated archipelagic sea lanes.

816. Innocent Passage in Archipelagic Waters. Unlike vessels, aircraft have no right of innocent passage over archipelagic waters outside archipelagic sea lanes.

Navigation in International Airspace

817. International airspace is that airspace over the high seas, exclusive economic zones, contiguous zone and territory not subject to territorial sovereignty (eg the Arctic). International airspace is open to aircraft of all nations. Accordingly, military aircraft are free to operate in international airspace without interference from any other nation. While in international airspace, military aircraft are free to engage in normal flight operations, including weapons testing and firing, surveillance, intelligence gathering, and support of naval activities. All such operations must be conducted with due regard to the safety and rights of other aircraft and vessels.

818. ICAO Flight Procedures. ICAO flight procedures are established under the terms of the Chicago Convention. As military aircraft are generally not subject to this convention, they are not bound by ICAO regulations, other than the requirement to operate with due regard to the safety of civil aircraft'. It is ADF practice to follow ICAO procedures, unless operational circumstances dictate otherwise. Operational circumstances which may not lend themselves to ICAO flight procedures include security contingencies and classified missions.

819. Flight Information Regions. Flight information regions (FIR) are defined areas within which flight information and alerting services are provided. FIR are established by ICAO for the safety of civil aviation and encompass both national and international airspace. As a matter of policy, ADF aircraft on routine missions follow ICAO procedures and utilise FIR services. Acceptance by a nation's government of responsibility for a FIR does not grant that government sovereignty over that international airspace. Furthermore military aircraft retain the right to transit international airspace without interference and are not required to use FIR services.

Air Defence Identification Zones

820. An air defence identification zone (ADIZ) is a defined area within which civil aircraft are required to identify themselves. The legal basis for such zones is the right of nations, under the Chicago Convention, to establish conditions and procedures for entry into their national airspace. These zones are established above the high seas adjacent to the coast, and over the territorial sea, land and territory. Declaration of an ADIZ does not constitute a claim of any sovereign rights. Australia, from time to time, has declared an ADIZ for military exercise purposes. Nations which have standing ADIZs are Indonesia (over Java), United States, Japan, Canada and France.

821. ADIZ Procedures. An aircraft approaching an ADIZ can be required to identify itself as a condition of entry to national airspace. ADIZ regulations generally require aircraft, bound for national airspace, to file flight plans and periodic position reports. Failing voluntary identification, aircraft can expect to be identified by intercept aircraft. The declaration of an ADIZ does not confer on an intercepting pilot the right to engage an aircraft. Rules of Engagement (ROE) will provide guidance on the circumstances in which an aircraft may be engaged. There is no right to require an aircraft to identify itself if it does not intend to enter national airspace. These procedures reflect the peacetime position. In the case of imminent or actual hostilities, a nation may take self defence measures which will affect overflight in international airspace.

822. Promulgation of an ADIZ. The activation of an ADIZ is effected by promulgation through military and civil agencies. In Australia, Air Services Australia, in concert with Headquarters Australian Theatre, promulgates ADIZs by the issue of Notices to Airmen.

823. In order to avoid exposing a medical aircraft to unnecessary harm, international law allows nations that operate medical or prisoner of war transport aircraft to enter into agreements with belligerents and neutrals to ensure safe passage of the aircraft over foreign territory.

Security Zones

824. In the interests of safety, any nation may declare a temporary closure, or warning area, on and over the high seas to advise other nations of the conduct of hazardous activities. These warnings are cautionary, not mandatory. International law does not recognise the right of any nation to restrict the right of navigation of military aircraft in international airspace. Pursuant to the inherent right of national or collective self defence, some nations have legitimately declared exclusion zones (EZ) in times of conflict. The United Nations (UN) has also sanctioned air EZ over Bosnia and parts of Iraq, following Security Council resolutions, in an effort to protect areas from attack.

825. Claims of Security Zones. Some nations have asserted claims that purport to restrict the activities of military aircraft and warships in so-called 'security zones' that extend beyond national airspace. These zones have no basis in international law, in times of peace. Under international law, these types of security zones are restricted to times of conflict. In these circumstances, customary international law does not determine the extent of security zones, beyond having a requirement that they be reasonable in relation to the needs of national security.

Exclusion Zones

826. In situations of international conflict and times of tension, a nation is entitled, under the UN Charter, to exercise measures of individual or collective self defence against an imminent threat of armed attack or an actual armed attack. On many occasions this century, nations have declared an EZ in areas adjacent to national territory, invoking the principle of individual or collective self defence.

827. An EZ is an area declared by a nation, or military force, into which entry by designated forces is prohibited. An EZ may be stationary or moving. Neutral aircraft and ships should avoid such zones; those that enter navigate at their own risk. The use of EZ is expected to increase, as not only nations but also the UN, seek ways to localise conflicts. Because assessment of the acceptability of EZ will depend on a number of factors, clear guidance on the legal acceptability of an EZ is difficult, as each situation is unique. In times of conflict a belligerent is not barred from using force outside the zone to eliminate enemy threats. Further guidance on the use of EZ can be obtained from ADFP 3 - *Rules of Engagement* and ADF legal advisers.

Interception of Aircraft

828. Where national airspace is violated by intrusion without permission it is considered that the following rules reflect current international law:

- a. Intruding aircraft must obey all reasonable orders to land at a determined place, to turn back or to fly on a prescribed course.
- b. In attempting to control the movement of an intruding aircraft an intercepting aircraft may not expose the intruder to unnecessary or unreasonable danger. The 'reasonableness' of the action must be determined by such factors as the character of the intruding aircraft, its probable motives for intrusion, the possibility of control without the use of force, the proximity of the aircraft to important installations and the frequency of previous intrusions.
- c. In peacetime, when there is no reason to believe the intrusion is hostile or harmful to the security or other appropriate interests of the nation, the intruder may not be attacked merely because it disobeys orders to land. On the other hand, if the intruder's intentions are unknown and cannot reasonably be ascertained, the intruder may, after disregarding appropriate warnings, be required to land. The Chicago Convention stipulates that 'contracting states' are to: 'refrain from the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of the aircraft must not be endangered'.

Neutral Airspace during Armed Conflict

829. The national airspace of a neutral nation must be respected by belligerents. ADF aircraft should avoid overflying airspace of a neutral country without permission during times of armed conflict. However, archipelagic sea lanes and transit passage overflight are two exceptions. If a belligerent aircraft enters neutral airspace without permission the neutral nation is obliged to take appropriate action to expel it. If a neutral nation repeatedly fails to assert the territorial integrity of its airspace, a belligerent nation may be justified in taking appropriate action against another belligerent nation inside neutral airspace on the basis of self-defence.

830. In times of armed conflict neutral nations may impose conditions and restrictions impartially on belligerent aircraft entering their national airspace. If a belligerent military aircraft enters neutral airspace without permission and must land in that territory (whether because of disability or at the direction of the neutral nation), the aircraft and its crew will be interned by the neutral state until the cessation of hostilities.

831. ADF medical aircraft that are engaged solely in humanitarian functions must have prior approval to overfly or land in neutral territory. If permission is not obtained, the law is uncertain and the practice of nations varies. The most widely accepted view is that aircraft which violate neutral airspace may be asked to land by the nation in whose airspace they are flying. If their protected status is confirmed by subsequent search they are to be allowed to proceed. If a violation has occurred then aircraft and crews are to be held until the conclusion of hostilities.

METHODS OF COMBAT

Targeting

832. LOAC principles of proportionality, military necessity and unnecessary suffering determine which targets may be attacked by military aircraft. Target selection is based on current intelligence and information. However, aircrew have a special and personal responsibility, under the Additional Protocols, to ensure LOAC compliance when they acquire information that was not available at the planning stage. For example, aircrew may be ordered to bomb what the mission planner believes to be a command and control centre. If, in the course of the mission, the command and control centre is displaying an unbrieved symbol of protection, eg Red Cross symbol, then aircrew must refrain from completing their attack. The Red Cross symbol indicates the facility is a protected installation and is immune from attack unless intelligence, or higher authority, determines that the facility has lost its protected status because the emblem is being misused.

833. As targeting decisions have the potential to lead to extensive collateral damage, air planners and commanders need to pay close attention to LOAC considerations which will impact on their decisions. Guidance on targeting is provided in chapter 5.

Precision Guided Weapons

834. The existence of precision guided weapons, such as GBU 10 and Harpoon missiles, in a military inventory does not mean that they must necessarily be used in preference to conventional weapons even though the latter may cause collateral damage. In many cases, conventional weapons may be used to bomb legitimate military targets without violating LOAC requirements. It is a command decision as to which weapon to use; this decision will be guided by the basic principles of LOAC; military necessity, unnecessary suffering and proportionality.

Quarter must be Granted

835. It is illegal to order that no prisoners will be taken, to make a threat that such an order might be given or to conduct hostilities on this basis.

836. LOAC forbids the killing or wounding of an enemy who, in good faith, surrenders or is otherwise 'hors de combat' (out of combat). Surrenders in air combat are rarely offered. Nevertheless, actions or signals which suggest surrender should be respected. The surrendered aircraft should then be escorted to a suitable landing place.

837. Although relatively rare, surrenders by defecting enemy aircrew of military aircraft do offer valuable intelligence and psychological opportunities, and should be encouraged.

838. Disabled enemy aircraft in air combat are frequently pursued to destruction because of the difficulty of verifying their true status and inability to enforce surrender. Although disabled, the aircraft may or may not have lost its combat capability. Moreover, it may still represent a valuable military asset. If an aircraft in distress is clearly 'hors de combat' from the information known to the attacking force at the time, then its destruction offers no military advantage, and the attack should be broken off to permit possible evacuation by crew or passengers. If the aircraft is a support or civil aircraft it is particularly important that this rule be observed.

839. Aircraft may not open fire on any personnel who have indicated an intention to surrender. This applies to ships as well as land forces. Additionally, aircraft may not fire upon shipwrecked personnel, including those who may have parachuted into the sea or otherwise come from downed aircraft, so long as the personnel have not been picked up. These rules do not alter the fact that any attempt by the enemy to recover downed crew may be opposed.

Propaganda

840. The use of military aircraft for the purpose of disseminating propaganda from the air is well established in warfare. Dissemination of propaganda by military aircraft includes dropping of leaflets, air-to-ground broadcasts and the like.

841. Propaganda for the purposes of inducing enemy combatants to rebel, desert, or surrender is not prohibited. Inducements may take the form of monetary rewards. Although LOAC sanctions the use of military aircraft and aircrews to deliver propaganda, not all forms of propaganda are lawful. Propaganda which would incite illegal acts of warfare, as for example killing civilians, killing or wounding by treachery or the use of poison or poisonous weapons, is forbidden.

RESTRICTIONS ON THE USE OF AERIAL WEAPONS

842. The rules covering air delivered incendiary weapons and air delivered mines are outlined in chapter 4.

AIR-TO-AIR OPERATIONS

843. Generally for air operations, LOAC is the same as for the maritime and land environments.

844. Enemy military aircraft may be attacked and destroyed in any airspace other than neutral airspace. Enemy military aircraft may be captured anywhere other than in neutral jurisdiction. Ownership of captured aircraft passes to the captor's government by virtue of the capture.

845. A military aircraft is always a legitimate target in armed conflict. There will be exceptions such as a medical aircraft or aircraft which have been granted specific protection by agreement between the parties concerning non hostile uses such as negotiations to conclude hostilities, ceasefire, surrender, exchange of prisoners or the exchange of official communications. In all such circumstances, the agreement should include appropriate markings and other means of identification. In the absence of entitlement to protection, the status of personnel on board a military aircraft is irrelevant; their individual status is subsumed by the military character of the aircraft until such time as they leave it.

846. All reasonable precautions should be taken during the conduct of military operations in the air to avoid loss of civilian lives and damage to civilian objects.

Parachutists and Downed Airmen

847. Aircrew descending by parachute from a disabled aircraft are immune from attack. If such personnel land in enemy territory they must be given an opportunity to surrender before being made the object of an attack, unless it is apparent that they are engaging in some hostile act.

848. If personnel from a disabled aircraft do not surrender on being called upon to do so, they may be attacked in the same way as any other combatant. While they may be captured by noncombatants, they may not be subject to violent assault by them. This does not include such violence as may lawfully be used by a police officer or other noncombatant in effecting their capture.

849. If the crew of a disabled aircraft lands by parachute in territory occupied by their own forces or under the control of their own national authority, they may be attacked in the same way as any other combatant, unless wounded, in which case they are protected. If in a raft or similar craft at sea after parachuting, they are to be treated as if shipwrecked and may not be attacked.

850. Paratroopers and other airborne troops may be attacked, even during their descent. If the carrying aircraft has been disabled it may be difficult to distinguish between members of the crew abandoning such aircraft who are immune from attack, and the airborne troops who are not so protected.

Search and Rescue Operations

851. It is permitted to attack those attempting to rescue aircrew who have crashed. Rescuers such as medical personnel attempting to rescue injured airmen are protected. In such cases, the airman and his rescuers are protected in accordance with the Geneva Conventions.

Civil Aircraft and Occupants

852. Civil aircraft in flight (including state aircraft which are not military aircraft) should not be attacked. They are presumed to be carrying civilians who may not be made the object of direct attack. If there is doubt as to the status of a civil aircraft, it should be called upon to clarify that status. If it fails to do so, or is engaged in non civil activities, such as ferrying troops, it may be attacked. Civil aircraft should avoid entering areas which have been declared combat zones by the belligerents.

853. Civil aircraft which have been absorbed into a belligerent's air force and are being ferried from the manufacturer to a belligerent for this purpose, may be attacked.

854. Civilian crew members of a military aircraft, together with those responsible for ferrying aircraft intended for military use, become prisoners of war if captured by the enemy.

855. If a civilian aircraft has been lawfully attacked, its crew become prisoners of war. If it has been unlawfully attacked, they and any civilian passengers surviving the attack should be freed or held in accordance with the provisions of the Geneva Conventions. Civil aircraft on the ground may only be attacked in accordance with the normal rules relating to military objectives. However, since they may be used for transporting troops or supplies, their status will frequently depend upon the prevailing military situation. In addition, airfields are subject to attack, and collateral damage to civil aircraft on the ground does not render the attack unlawful.

Medical Aircraft

856. Medical aircraft, correctly identified and exclusively used as such, must not be attacked. Like other medical facilities, medical aircraft have special protected status. Medical aircraft must be clearly marked with the Red Cross or Red Crescent and national emblem on their lower, upper and lateral surfaces. Medical aircraft are those aircraft assigned exclusively to medical transportation and under the control of a competent authority of a party to the conflict. Medical aircraft may fly over areas controlled by their own forces and over sea areas not controlled by the enemy.

857. Flights over enemy controlled areas are forbidden without prior agreement. The parties to a conflict may agree to confer immunity from attack upon specific aircraft. Such aircraft remain protected only so long as they take no part in hostilities and rigorously respect the conditions laid down in the agreement.

858. In the absence of any agreement, medical aircraft flying over the battle zone do so at their own risk.

859. Regardless of any agreement, aircraft recognised as medical aircraft cannot be attacked, but may be ordered to land and be inspected. They can be attacked if they do not comply with such directions. Medical aircraft must not be used to gain any military advantage. G.P. I contains seven articles which outline the rules applicable to medical aircraft, and these should be considered by those ADF commanders involved in the use of medical aircraft during armed conflict.

CHAPTER 9

PROTECTED PERSONS AND OBJECTS

INTRODUCTION

901. The law of armed conflict (LOAC) provides rules for both the conduct of hostilities and the protection of victims of hostilities. This chapter focuses on groups and objects which have special protection under LOAC and is mainly concerned with the protection of noncombatants, and civilians and civilian objects. In modern times, the civilian population has become increasingly involved in hostilities as nations have waged 'total war'.

902. Apart from civilians, other particular groups, objects, buildings and facilities are given special protection. These include:

- a. medical personnel, equipment, transport and facilities;
- b. all religious personnel, including chaplains;
- c. sick, wounded and shipwrecked;
- d. civil defence personnel and facilities;
- e. installations containing dangerous forces;
- f. neutrals and neutral property;
- g. prisoner of war (PW), PW camps and internment camps;
- h. cultural, religious and historic buildings and items; and
- i. the environment.

PROTECTED SYMBOLS

903. In order for protected persons, transport, buildings and facilities to be identified, several internationally recognised symbols and markings are provided in international conventions. The main symbols and markings are explained in the following paragraphs and are illustrated at Annex A. Use of the protected symbols is strongly recommended but not compulsory. Not displaying a symbol does not automatically leave a protected facility or person open to attack. If a belligerent has knowledge that a person or facilities are protected under the Geneva Conventions, then the protected status of the facility or person must be respected. The practical problem is that it may be very difficult in combat for an attacker to identify and distinguish the unmarked protected person or facility.

904. Protected symbols will be used by the ADF and the civilian population unless overriding military considerations dictate otherwise. To conceal a military deployment, a commander may choose not to display the Red Cross or Red Crescent symbol on field ambulances or medical facilities which by necessity must be located close to a military objective such as a medical transit post adjacent to a military airfield.

Red Cross and Red Crescent

905. A red cross on a white background is the internationally accepted symbol for protected medical and religious personnel, facilities, transports and activities. Moslem countries utilise a red crescent on a white background. Israel employs the Red Star of David, which it reserved the right to use when it ratified the 1949 Geneva Conventions.

906. Wearing on Military Uniform. In addition to identity cards, medical and religious personnel, regardless of whether they are permanent or temporary, are to wear the distinctive emblem on both their headgear and clothing.

Other Protective Symbols

907. Other protective symbols include an oblique red band on a white background to designate hospital zones and safe havens for noncombatants. PW and PW camps are marked by the letters 'PW' or 'PG' and civilian internment camps with the letters 'IC'. A royal-blue diamond and royal-blue triangle on a white shield is used to designate cultural buildings, museums, historic monuments, and other cultural objects that are exempt from attack. In some countries, a red circle with triple red spheres in the circle, on a white background (the 'Roerich Pact' symbol) is also used for that purpose.

908. Two new protective symbols were established by G.P. I. They are for 'Works and Installations Containing Dangerous Forces', such as dams, dykes, and nuclear power plants, which are to be marked by three bright orange circles of equal size on the same axis; and for 'Civil Defence' facilities and personnel who are to be identified by an equilateral blue triangle on an orange background.

Identity Cards

909. Identity cards are to be issued to both medical and religious personnel regardless of whether they are of permanent or temporary status. Under no circumstances are they to be deprived of this identification. Should circumstances prevent the issue of an identity card, a certificate may be issued temporarily until such time as a proper card can be issued. Identity cards are to:

- a. bear the distinctive emblem and be capable of being carried in a pocket;
- b. be as durable as practicable and be worded in the national or official language (it may carry an additional language);
- c. state the capacity of the holder and carry the name, date of birth, distinguishing features, identity number, photograph and signature or thumbprint of the holder; and
- d. bear the stamp and signature of the issuing authority, date of issue and expiry date of the card.

A model identity card for medical and religious personnel is at Annex B.

White Flag

910. Customary international law recognises the white flag as symbolising a request to cease-fire, negotiate, or surrender. An adversary displaying a white flag should be permitted the opportunity to surrender, or to communicate a request for cease-fire or negotiation. The feigning of an intent to negotiate under a flag of truce or surrender is perfidious conduct.

LOSS OF PROTECTED STATUS

- 911.** Protected personnel lose their protected status when:
- a. as medical, religious or shipwrecked personnel they engage in hostile acts, or attempt to shield military objectives from attack, other than:
 - (1) the use of light individual weapons for their own self-defence or the self-defence of their wounded and sick;

- (2) the use of guards, pickets and sentries for unit protection; and
- (3) small arms and ammunition taken from the wounded and sick are found within a medical unit;
- b. an otherwise protected person, in the territory of one of the belligerents is suspected of, or engaged in, activities hostile to the security of that state; and
- c. an otherwise protected person in an occupied territory is detained as a spy or saboteur.

PROTECTION FOR CIVILIANS AGAINST THE EFFECTS OF HOSTILITIES

Basic Rule

912. A basic rule of LOAC expressed in G.P. I is that:

'In any armed conflict the right of the parties to the conflict to choose methods of or means of warfare is not unlimited.'

913. The basic rule in respect of civilians which flows from this is that a distinction must be made between the civilian population and combatants, and between civilian objects and military objectives, in order that military operations will only be directed against military objectives.

Definition of Civilian

914. G.P. I defines a civilian in a negative fashion, namely, any person not belonging to the armed forces. The definition covers civilians collectively as well, when they are referred to as the 'civilian population'. In cases of doubt about civilian status, the benefit of the doubt is given to the person concerned.

Journalists

915. Special provision is made for civilian journalists engaged in dangerous professional missions in areas of armed conflict. They are to be afforded the protection that normally applies to civilians. Granting of this protection is subject to the journalists not engaging in conduct that is inconsistent with their civilian status. Such journalists are normally issued with special identity cards. Protection does not extend to war correspondents who are members of the military forces of a nation. War correspondents are detained as PW upon capture whereas civilian journalists are deemed protected persons and would not normally be detained.

Definition of Civilian Objects

916. Civilian property or objectives are defined as anything which are not military objectives. Military objectives are:

- a. armed forces except medical service and religious personnel;
- b. the establishment, buildings and areas of land which armed forces use or which have military significance such as hills and bridgeheads, or which contain military objects such as barracks and stores; and
- c. objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction in the circumstances ruling at the time offers a definite military advantage. In case of doubt whether an object which is normally dedicated for civilian purposes is being used to make an effective contribution to military action, it shall be presumed not to be so used.

Protection of Civilians and Civilian Objects

917. Military operations may only be directed against military objectives and not against the civilian population and civilian objects. To give effect to this general protection LOAC contains a number of specific prohibitions.

918. It follows from the general rule that it is forbidden to attack the civilian population, individual civilians and civilian objects as a deliberate method of warfare. Furthermore, acts or threats of violence, the primary object of which is to spread terror among the civilian population are also prohibited. Of course objects which are normally civilian objects can become military objects due to the military situation. In the same way civilians who take part in the conflict become unlawful combatants and legitimate targets.

919. The failure of one party to comply with the specific rules below concerning the protection of civilians does not release the other party from its duty to protect civilians.

920. Reprisals. A reprisal is an otherwise illegal act done in response to a prior illegal act by the enemy. A reprisal aims to counter unlawful acts of warfare and to force the enemy to comply with the LOAC. Reprisals are prohibited against civilians and civilian objects.

921. Indiscriminate Attacks. An extension of the general rule for the protection given to civilians is that indiscriminate attacks, that is, attacks not directed at military targets but likely to strike at both military and civilian targets without distinction, are forbidden.

922. Shielding Military Objectives. The civilian population shall not be used to attempt to render military objectives immune from attack or to shield, favour or impede military operations.

923. Other General Prohibitions. Other general prohibitions which provide for the protection of civilians or their property are as follows:

- a. It is prohibited to attack or bomb undefended towns, villages, dwellings or buildings. This prohibition does not apply where the undefended building or place becomes a military objective and its destruction is necessary. An example is a munitions factory or a railway yard used to support the enemy war effort.
- b. It is forbidden to destroy or requisition enemy property unless it is militarily necessary to do so. In the same manner pillage is also forbidden, even if the town or place concerned is taken by assault.
- c. Starvation of civilians cannot be used as a method of warfare.
- d. Enemy nationals cannot be compelled to take part in operations against their own country even if they were in your service before the outbreak of hostilities.

924. Warning Requirement. Where a military objective is to be attacked and civilians may be in danger, there is a general requirement to warn them of the attack, unless circumstances do not permit. An example would be where surprise is essential to the mission. This rule specifically applies in cases of bombardment where civilians are likely to be endangered.

Relief Operations for Civilians

925. In addition to the special immunity granted to civilian and military medical services there is a number of civilian bodies which are given special protection. These include the International Committee of the Red Cross (ICRC), the Red Cross and Red Crescent Societies, personnel engaged in the protection of cultural property, personnel involved in relief operations and civil defence organisations.

SPECIALLY PROTECTED OBJECTS

Cultural Objects

926. LOAC provides for the specific protection of cultural objects and places of worship, which supplements the general protection given to civilian objects. Buildings dedicated to religion, science or charitable purposes, and historic monuments, are given immunity from attack as far as possible, so long as they are not being used for military purposes. Such places are to be marked with distinctive and visible signs which must be notified to the other party.

Cultural Property

927. Cultural property is also protected. Cultural property includes movable and immovable objects of great importance to the cultural heritage of people, whether their state is involved in the conflict or not, such as historical monuments, archaeological sites, books, manuscripts or scientific papers and the buildings or other places in which such objects are housed. Obligations are placed upon all parties to respect cultural property by not exposing it to destruction or damage in the event of armed conflict and by refraining from any act of hostility directed against such property. These obligations may be waived where military necessity requires such waiver, as in the case where the object is used for military purposes.

928. Historic monuments, places of worship and works of art, which constitute the cultural and spiritual heritage of peoples, are protected from acts of hostility. These objects must not be used in support of any military effort or be the subject of reprisals.

Objects Indispensable to Survival

929. Protection is provided from certain types of attack upon civilian populations by providing special protection for certain types of objects. The first relates to objects indispensable to the survival of the civilian population.

930. Starvation of civilians as a method of warfare is forbidden. G.P. I further prohibits the attacking, destruction, spoiling or removal of objects indispensable to the survival of the civilian population whatever the motive of such destruction. Examples of such objects include foodstuffs, agricultural areas producing foodstuffs, crops, livestock, drinking water installations and irrigation works.

931. Loss of Protection. Objects indispensable to the survival of the civilian population are excluded from protection if:

- a. they are used solely for the sustenance of the armed forces;
- b. they are used in direct support of military action, but the civilian population may not be thus reduced to starvation or forced to move; or
- c. military necessity for the defence of territory against invasion so requires.

932. Details on the protection of military objects is in chapter 7.

Installations Containing Dangerous Forces

933. The works or installations containing dangerous forces are specifically limited to dams, dykes and nuclear electrical generating stations. Even where these objects are military objectives, they shall not be attacked if such attack may cause the release of dangerous forces and consequently severe losses amongst the civilian population. The purpose of this rule against such attacks is to avoid excess damage or loss to the civilian population.

934. Military objectives at or in the vicinity of an installation mentioned in paragraph 933 are also immune from attack if the attack might directly cause the release of dangerous forces from that installation in question and subsequent severe losses upon the civilian population.

935. The release of the dangerous forces must have a consequent severe loss among the civilian population. This is an absolute standard rather than the relative one set by the rule of proportionality. If massive civilian losses are foreseeable, the attack would be prohibited regardless of the anticipated military advantage.

936. Loss of Protection. In the case of a dyke or dam, the protection afforded ceases if three special conditions are evident. These are that:

- a. it is used for other than its normal function;
- b. it is used in regular, significant and direct support of military operations; and
- c. an attack is the only feasible way to terminate such support.

937. In relation to nuclear electrical generating stations and other military objectives located in the vicinity, only the conditions in paragraph 936.b. and c. apply.

938. Defensive Weapons. Defensive weapons systems may be erected to protect works or installations from attack. These systems may only be used for the limited purpose for which they are intended. The erection of such defence facilities is not without danger and could lead to the work or installation losing its protection.

Protected Zones and Localities

939. LOAC allows various zones to be set up for the protection of civilians from the effects of hostilities. They include hospital, safety, neutralised and demilitarised zones and non-defended localities.

940. Hospital and Safety Zones. Hospital and safety zones are established for the protection from the effects of war of the wounded, sick and aged persons, children under 15 years, expectant mothers and mothers of children under seven years. Such zones are:

- a. generally permanent in character;
- b. located outside the combat zone in either own or occupied territory; and
- c. established in peacetime or during war by agreement between the parties. (Such agreement may be reached through the offices of any Protecting Power or the ICRC.)

941. Neutralised Zones. Neutralised zones may be established in regions where fighting is taking place to shelter wounded and sick combatants or noncombatants and civilian persons who take no part in hostilities and who perform no work of a military character. The zones are set up by written agreement, which includes details of location, administration and duration of the neutralisation of the zone.

942. Non-defended Localities. Generally non-defended localities are protected from attack. Further detail is covered in paragraphs 726 to 731.

943. Demilitarised Zones. Generally, demilitarised zones are protected from attack. Further detail is covered in paragraph 737.

GENERAL PROTECTION OF ALL PERSONS AFFECTED BY ARMED CONFLICT

Basic Human Rights

944. G.P. I provides 'fundamental guarantees' or basic human rights to all persons who find themselves under the control of one of the parties to an international armed conflict, and who do not benefit more favourably from other LOAC provisions. This would include a party's own nationals such as German Jews and dissidents who were brutally treated by the Nazis during World War II.

945. The general rule is that persons are to be treated humanely without adverse discrimination on the grounds of race, sex, language, religion, political discrimination or similar criteria. All persons honour, convictions and religious practices must be respected. G.P. I sets out a Bill of Rights for such persons. It makes provision for:

- a. the prohibition of acts such as murder, torture and mutilation;
- b. arrest and detention;
- c. trial and punishment - including basic rights for a trial and the procedures to be followed; and
- d. war crimes - those accused of war crimes must be given the same basic rights of trials.

Protection of Women, Children and Families

946. Protection of Women. Women receive special protection under LOAC against any attack on their honour, in particular against rape, forced prostitution and any other form of indecent assault. This special protection to women extends further to expectant mothers generally and to pregnant women and mothers of dependent children who are arrested, detained or interned for offences related to the armed conflict.

947. Protection of Children. As is the case with women, children are granted special protection under LOAC. Important rules are shown below:

- a. because of their age children should receive all the aid and care they require;
- b. children under 15 years of age should not take a direct part in hostilities;
- c. in case of arrest, children should be kept in separate quarters from those of adults;
- d. the death penalty must not be executed on children who are under the age of 18 at the time the offence was committed; and
- e. children who are not nationals of the state may not be evacuated by that state to a foreign country unless the evacuation is temporary and accords to certain conditions set out in G.P. I.

Free Passage of Relief Supplies

948. The free passage of medical and hospital stores, essential foodstuffs, clothing, bedding, means of shelter and articles necessary for religious worship, which are intended for civilians including those of an enemy, must be allowed.

RULES FOR THE TREATMENT OF PROTECTED PERSONS

949. The majority of G. IV deals with a specific group of civilians called 'protected persons'. The rules applicable to these persons are in addition to the general rules which apply to all civilians.

Protected Persons

950. Protected persons are defined as: `...those [persons] who, at any given moment and in any manner whatsoever, find themselves, ... in the hands of a party to the conflict or occupying power of which they are not nationals'. The words, 'in the hands of', mean that the person concerned is in a territory which is under the control of that party. The most common groups within the definition are:

- a. enemy nationals who are in their own territory,
- b. the whole population of an occupied territory other than persons of the occupying power, and
- c. persons considered as refugees or stateless persons under international law.

951. Persons excluded from the definition of a protected person include:

- a. nationals of that party;
- b. nationals of neutral states who are present in the territory of a party to the conflict;
- c. nationals of states not parties to the conventions;
- d. persons protected by the other three Geneva Conventions, for example, crews of merchant ships if protected under one of the other Geneva Conventions;
- e. an otherwise protected person in the territory of one of the parties who is suspected of, or engaged in, activities hostile to the security of the state; and
- f. an otherwise protected person in an occupied territory who is detained as a spy or saboteur.

952. The rights of a protected person cannot be renounced by them.

General Treatment of Protected Persons in Both Own Territory and Occupied Territory

953. Basic Rule. The general rule for the treatment of protected persons is similar to that outlined in the previous section dealing with fundamental rights. An obligation is imposed on all parties to deal humanely with protected persons. The person, honour, family rights, religious convictions, manners and customs of protected persons shall be respected. Women are granted specific protection. Violence, torture, biological experiments, intimidation or coercion to obtain information, imposition of corporal or collective punishment, pillage and the taking of hostages are all forbidden.

Treatment of Foreigners in a Territory of a Party to the Conflict

954. Foreign inhabitants (aliens) who desire to leave the territory of one of the parties to the conflict are normally entitled to do so. Special rules apply to foreign inhabitants who fall within the category of enemy aliens and thus the definition of a protected person under G. IV. Such persons will not be allowed to leave if their departure is contrary to the national interests of the state. Procedures exist for those who are not allowed to leave to appeal to an appropriate court or administrative board set up by the detaining power. For those that do leave, special procedures dictate the method of repatriation.

THE ENVIRONMENT

Civil Defence

955. The nature of modern warfare has the potential to cause significant losses, damage and suffering to the civilian population. Organised protection of the civilian population is commonly referred to as civil defence. The method and application of civil defence differs from country to country. Protection under G.P. I is based on the specific functions performed by the person or object, not the type of organisation to which the person or object belongs. The similarity of civilian civil defence organisations to military organisations, and indeed national compulsory service in them, shall not deprive them of protection.

956. Australia's position is that ADF members will not be attached to civil defence organisations for the purposes of conducting civil defence tasks. However ADF personnel may undertake military tasks in support of civil defence requests, but not under their command or control and not within the immediate vicinity of civil defence personnel. ADF members will not wear the civil defence emblem, nor will they receive the protection afforded to civil defence personnel.

Tasks

957. G.P. I describes civil defence for LOAC purposes as 'the performance of some or all of the tasks intended to protect the civilian population against the dangers, and to help it recover from the immediate effects of hostilities or disasters, and to provide the conditions necessary for its survival'.

958. There are 15 specific civil defence tasks, namely:

- a. warning;
- b. evacuation;
- c. management of shelters;
- d. management of blackout measures;
- e. rescue;
- f. medical services, including first aid and religious assistance;
- g. firefighting;
- h. detection and marking of danger areas;
- i. decontamination and similar protective measures;
- j. provision of emergency accommodation and supplies;
- k. emergency assistance in the restoration and maintenance of order in distressed areas;
- l. emergency repair of indispensable public utilities;
- m. emergency disposal of the dead;
- n. assistance in the preservation of objects essential for survival; and
- o. complementary activities necessary to carry out any of the tasks included above including but not limited to planning and organisation.

General Protection

959. Scope of Protection. Civilian civil defence organisations and their personnel must be respected and protected under the same conditions and considerations as apply to civilians. The provisions also apply to civilians who, although not members of a civilian defence organisation, respond to a request from the appropriate authority and perform civil defence tasks under their control. Civil defence buildings, material and shelters have no greater protection from attack than any other *prima facie* civilian object. The purpose of granting civil defence organisations a special status is to ensure that the general protection given to them applies when they are performing their tasks, some of which could be mistaken for military tasks.

960. Carriage of Weapons. Civilian civil defence personnel may carry light individual weapons for the purpose of self-defence, or maintaining order, without losing their protection. If operating where fighting is likely to take place, such weapons must be confined only to hand guns to assist in recognition. Australia's interim policy is that civilians will only perform civil defence tasks and they will not be armed while doing so.

Identification

961. The international distinctive symbol for civil defence is an equilateral blue triangle on an orange square background, and for distinctive purposes must be clearly visible. Civil defence personnel must also carry an identity card if they are in areas where fighting is taking place, or in occupied territories. A model identity card is at Annex C.

Australian Civil Defence Agencies

962. Australia does not have totally dedicated civil defence organisations. Emergency Management Australia (EMA) maintains a civil defence responsibility at the national level. Although part of the Department of Defence, EMA does not perform a Defence function. EMA's role includes: 'to promote and support the development of a core civil defence capability'. At the state level the civil defence function is handled by the various State and Territory Emergency Services.

MEDICAL PERSONNEL, TRANSPORT AND FACILITIES**Medical Personnel**

963. Military and civilian medical personnel are protected persons. Similarly, civilian medical facilities, transports and supplies are not to be made the target of attack or unnecessarily destroyed.

964. Military medical personnel, facilities and equipment are also entitled to general protection. However, they may lose this protection if they engage in acts harmful to the enemy. Before the protection of medical personnel and facilities is lost, a warning will normally be provided and reasonable time allowed to permit cessation of improper activities. In extreme cases, overriding military necessity may preclude such a warning. Protection will not be lost if medical members act in self-defence. Defensive weapons such as side-arms may be carried.

965. Captured military medical personnel are not prisoners of war and so they should be repatriated to their home country unless their medical services are required by prisoners of war. Similarly, civilian medical personnel should not be detained and must be permitted to continue to provide medical assistance.

966. Medical personnel are those persons, military or civilian, assigned exclusively to medical tasks or to the administration of medical units or the operation or administration of medical transports. Such assignment may be permanent or temporary. In addition to doctors, dentists, nurses, medical orderlies and hospital administrators attached to the forces or military and civilian establishments, medical personnel include:

- a. personnel of national Red Cross and other voluntary aid societies recognised and authorised by a party to the conflict;
- b. medical personnel attached to civil defence units; and
- c. any persons made available for humanitarian purposes by a neutral state, a recognised and authorised aid society of such a state, or an impartial international humanitarian organisation.

967. Medical personnel, military or civilian, cannot be compelled to give preferential treatment to any sick or wounded person, except on medical grounds, nor may they be compelled to carry out any act incompatible with their humanitarian mission or medical ethics. No person may be punished for carrying out medical activities in accordance with medical ethics, regardless of the nationality or status of the person treated.

968. Medical personnel, whether belonging to the belligerents, relief societies or neutral powers, are required to wear on their left arm a water-resistant armlet bearing the protective emblem, issued and stamped by the military authority to which they are attached. They are also required to carry an official identity card. Members of the military who are detailed to act as orderlies or stretcher bearers must also wear the armband when so employed.

Medical Facilities and Transports

969. As far as possible given the circumstances of a conflict, medical personnel, units and transports must be clearly marked with the Red Cross or Red Crescent, each on a white background. Fixed or mobile units like hospitals or ambulances should fly a flag portraying this emblem and if the unit belongs to a neutral state, the national flag should be flown together with the flag of the belligerent to which they are attached.

970. Military hospital ships, hospital ships used by national Red Cross Societies, recognised relief societies or private persons, whether belonging to or nationals of a party to the conflict or a neutral, and small craft employed by the state or officially recognised lifeboat institutions for coastal rescue work, must be painted white, with a large dark red cross on the sides and on horizontal surfaces so they may be visible from the sea and the air.

971. Medical aircraft must be marked clearly with the protective emblem together with the national emblem on their lower, upper and lateral surfaces, as well as with any other emblems which may be agreed upon by the parties to the conflict.

Medical Facilities

972. Medical facilities on land, hospital ships and medical aircraft must be respected and protected at all times and must not be attacked. Their immunity ceases once they are used for purposes hostile to the adverse party and outside their humanitarian purpose.

973. Medical units are establishments, whether military or civilian, organised for medical purposes, and may be fixed or mobile, permanent or temporary; medical transports are any means of transportation, military or civilian, permanent or temporary, assigned exclusively to medical transportation and under control of a competent authority of a party to the conflict; and the rights guaranteed by LOAC apply equally to both temporary and permanent personnel, units and transports.

974. The material of mobile medical units falling into enemy hands must be reserved for the care of wounded and sick. The buildings, materials and stores of fixed medical establishments are subject to LOAC, but may not be diverted from their purpose as long as they are required for the care of the wounded and sick. Commanders may use them in the event of urgent military necessity, as long as proper arrangements are made for the care of the wounded and sick nursed in them.

975. The sick bay on a warship must, in case of a fight on board, be respected and protected as far as possible, but, provided proper care is taken of the wounded and sick therein, a captor may use the sick bay for other purposes in situations of military necessity.

976. Hospital ships and other craft employed on medical duties are subject to control and search. They may be required to follow a particular course; their radios and other means of communication may be controlled; and, if the gravity of the circumstance so requires, they may be detained for up to seven days. Neutral observers may also be put on board to ensure that the provisions of LOAC are obeyed. Hospital ships found in a port at the time of its occupation by an adverse party must be allowed to leave.

Medical Transport

977. Medical aircraft may fly over land physically controlled by their own or friendly forces, and over sea areas not under enemy control. However, it is advisable that the enemy be informed if such flights are likely to bring the aircraft within range of enemy surface-to-air weapon systems.

978. In accordance with LOAC, flight of such aircraft over enemy or enemy-occupied territory is forbidden without prior agreement. In the absence of such agreement, medical aircraft operating in parts of the zone controlled by friendly forces, and over areas the control of which is doubtful, do so at their own risk, but once they are recognised as medical aircraft they must be respected.

979. Provided prior agreement has been obtained from the enemy, medical aircraft belonging to a combatant remain protected while flying over land or sea areas under the physical control of the enemy. If it deviates for any reason from the terms of such an agreement, the aircraft shall take immediate steps to identify itself. Upon being recognised as a medical aircraft, the adverse party may order it to land, or take such other steps to safeguard its own interests, and must allow time for compliance before attacking the aircraft.

980. Known medical aircraft are entitled to protection when performing medical functions. The detailed rules to be applied may legitimately take into account the nature and flight characteristics of the particular medical aircraft, for example helicopters operating locally, or fixed-wing aircraft in transit at higher altitudes. Medical aircraft must not be used in order to gain any military advantage and while carrying out flights in accordance with the two preceding paragraphs, shall not, without prior agreement, be used to search for the wounded, sick and shipwrecked.

981. If a medical aircraft is ordered by the enemy to land, it must obey such orders and permit inspection. Wounded and sick on board may only be removed if this is essential to enable the inspection to proceed, and only if such removal does not adversely affect their welfare. If the inspection of an aircraft, discloses that the aircraft is in fact a medical aircraft, has not violated any of the restrictions imposed upon the activities of such aircraft and is not in breach of any prior agreement, the aircraft and its occupants must be allowed to leave. If the aircraft does not satisfy these requirements it may be seized, but if it had been assigned as a permanent medical aircraft it may be used by the captor only for this purpose. If the aircraft makes an involuntary landing in enemy or enemy-occupied territory, the sick, wounded and shipwrecked as well as the crew become prisoners of war, but the medical personnel must be treated in the same way as other medical personnel falling into enemy hands.

982. According to LOAC medical aircraft are entitled to fly over neutral territory, land on it if necessary, or use it as a port of call. They are required to give notice of their passage and must land if ordered to do so. When flying on routes, at heights and times agreed between the parties to the conflict and the neutral concerned, they are immune from attack, but the neutral may place restrictions on flights over, or landing, on its territory. Unless otherwise agreed by the neutral and the parties to the conflict, the wounded and sick or shipwrecked who are disembarked shall be detained by the neutral and prevented from taking any further part in hostilities.

Chaplains and Religious Personnel

983. Religious personnel are defined as those military or civilian personnel, who are exclusively engaged in their ministry and who are permanently or temporarily attached to one of the protagonists, their medical units or transports, or to a civil defence. Religious personnel are to wear and display the same distinctive emblem as for medical personnel. Like medical personnel, chaplains may not be attacked but must be protected and respected. As with medical personnel, religious personnel do not become PW, unless their retention is required for the spiritual welfare of PW. They must be repatriated as early as possible.

Wounded, Sick and Shipwrecked

984. Parties to the conflict may make special agreements relating to the sick, wounded and shipwrecked, other than those relating to prisoners of war generally, provided that such agreements do not adversely affect the position of such persons or medical personnel or chaplains as provided by LOAC. It is not permissible for the persons protected by LOAC to renounce any of their rights.

985. Reprisals against the wounded, sick, shipwrecked and medical personnel, buildings and equipment are forbidden.

Collection of Wounded, Sick and Shipwrecked

986. The parties to a conflict must take all possible measures to search for and collect the wounded, sick and shipwrecked, to protect them from pillage and ill-treatment, and ensure their care. Parties must search for the dead and take measures to protect the bodies from being despoiled. Commanders may make agreements for the exchange, removal and transport of the wounded left on the field, besieged or encircled areas and to allow the passage of medical personnel and chaplains proceeding to any such area.

987. While there is no absolute obligation to accept civilian wounded and sick, once civilian patients have been accepted, discrimination against them, on any grounds other than medical, is not permissible.

988. Parties holding wounded, sick and shipwrecked personnel are obliged to record and forward the same details of identity and capture as in the case of any other PW and the rules with regard to burial at sea are adjusted to meet the requirements of the situation.

989. All belligerent warships have the right to demand the handing over of wounded, sick and shipwrecked, whether they are being carried on hospital ships or any other vessels, except neutral warships, provided they are fit enough to be handed over and the warship involved has sufficient facilities for their proper care and treatment. If they have been taken on board a neutral warship or military aircraft, care should be taken that they take no further part in military operations. If they fall into enemy hands they become PW, but the captor may convey them to a port of its nationality, to a neutral port, or even to a port of the captive's own forces. In the latter case, such personnel must take no further part in the hostilities.

Treatment of Wounded, Sick and Shipwrecked

990. Sick, wounded and shipwrecked combatants are to be protected and respected, treated humanely, and cared for by any detaining power without any adverse discrimination. Attempts upon their lives and violence against them are prohibited. They shall not be:

- a. murdered or subjected to biological experiments,
- b. left without proper medical care and attention, or
- c. exposed to conditions which might result in contagion or infection.

991. G.P. I defines wounded, sick and shipwrecked, to include civilians, so that the provisions of the Protocol apply to civilians, although those of the Geneva Conventions do not.

992. Priority in medical treatment can only be determined on the basis of medical need, although women are to be treated with all consideration due to their sex.

993. A party to an armed conflict if compelled to abandon wounded and sick must, so far as military considerations permit, leave medical personnel and equipment to care for those left behind. The presence of such medical personnel does not, however, exempt the enemy from providing additional assistance that may be necessary.

MISSING AND DEAD

Search for Missing and Dead

994. As soon as possible each party to an armed conflict must search for those reported missing by the enemy. Any requests and all information which may assist in tracing or identifying such persons shall be transmitted through the Protecting Power or the Central Tracing Agency of the ICRC or the national Red Cross societies.

Missing Persons

995. General. The request for information relating to either the missing or the dead must be humanitarian in nature and stem from the need for relatives to be notified of their whereabouts and subsequent repatriation, or re-internment. Should there be any controversy resulting from the request for information, the humanitarian needs and interests of the families concerned must prevail. The term generally accepted as common usage for missing combatants is 'missing-in-action'.

996. The Search. As soon as circumstances permit, but at the latest once active hostilities have ceased, all protagonists to the conflict shall commence to search to the fullest extent possible for persons reported missing by one of the belligerents. The report of a missing person is to be notified by each belligerent's National Bureau direct, or through a Protecting Power to the Central Tracing Agency of the ICRC.

997. Particulars of Missing Persons. In order to facilitate the search for missing combatants, protected persons, civilians and persons who would not receive more favourable considerations under either the Geneva Conventions or Additional Protocols, each of the protagonists shall:

- a. record the following information for each person detained, imprisoned or otherwise held in captivity for a period of two weeks, or who has died:
 - (1) surname, all first names and nationality;
 - (2) place and date of birth;
 - (3) location of last residence and any distinguishing features;
 - (4) the first name of the father and the maiden name of the mother;
 - (5) the circumstances of captivity or detainment, including the date and place of detainment;
 - (6) the address to which correspondence may be sent to the captive or detainee; and
 - (7) the name and address of the person to be informed; and
- b. provide regular reports on the state of health of seriously ill or wounded persons held in captivity or detention who cannot be immediately repatriated because of their medical state.

The Dead

998. The remains of the dead, regardless of whether they are combatants, noncombatants, protected persons or civilians are to be respected, in particular their honour, family rights, religious convictions and practices and manners and customs. At all times they shall be humanely treated and protected against pillage and despoilment. The minimum respect for the remains of the dead is a decent burial or cremation in accordance with their religious practices.

999. The burial or cremation of the dead shall be carried out individually in accordance with the religious rights and practices of the deceased. In the case of burial the deceased shall be honourably interred, their graves respected and grouped by nationality. They are to be correctly marked to allow future exhumation. Bodies shall be buried with one half of a double identity disc placed in the mouth of the deceased. The other half is to be kept for records by Graves Registration. In the event of only one identity disc, that is to remain with the body.

9-100. Bodies shall only be cremated for imperative reasons of hygiene and health, or for the requirements of the deceased. The ashes of the deceased shall be forwarded to Graves Registration and the ashes exchanged as soon as practicable following the conclusion of hostilities.

9-101. As soon as is practical following the death of a combatant, a belligerent shall record the following information to aid identification. Such information is to be passed to the National Bureau direct, or through a Protecting Power to the Central Tracing Agency of the ICRC as follows:

- a. nationality;
- b. regimental or serial number and rank;
- c. surname and all first names;
- d. date of birth, religion and any other particulars shown on the body's identity card or identity discs; and
- e. the date, cause and place of death and if the body is given a field burial, the exact location of the remains to enable future exhumation of the body, or remains if necessary.

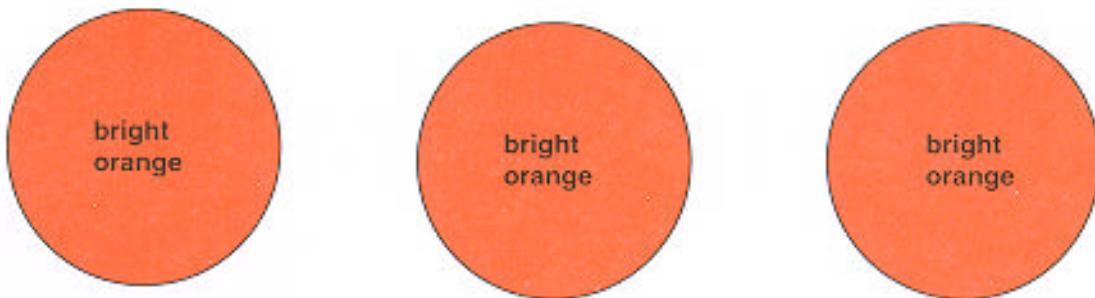
9-102. Prisoners of War. The notification of the death of a PW is to be forwarded as soon as possible to the Central Tracing Agency along with the same information required immediately above. A death certificate is to accompany this notification along with a medical report establishing the cause of death.

9-103. Internees. The requirements for disposal of an internee is no different to the processes described above for combatants and PW. Notification of death is to be forwarded to the National Bureau direct, or through a Protecting Power to the Central Tracing Agency of the ICRC.

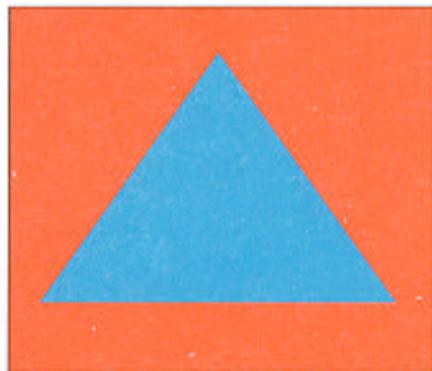
9-104. Search Teams. All of the protagonists to a conflict shall attempt to agree to form special teams to undertake the search, identity and recovery of their dead from a belligerent's battlefield. This will include any arrangement for such teams to be accompanied by members of the belligerent force upon whose land they are searching. In the course of their duties search teams are deemed to be protected persons.

- Annexes:**
- A. Protective Symbols
 - B. Identity Card for Medical/Religious Personnel
 - C. Identity Card for Civil Defence Personnel

PROTECTIVE SYMBOLS



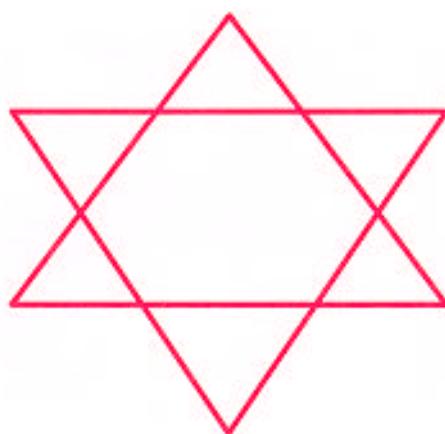
International Special Sign for Works and Installations Containing Dangerous Forces. Special sign for dams, dykes and nuclear power stations protected under Additional Protocol I to the 1949 Geneva Conventions (1977) (three bright orange circles of equal size on the same axis).



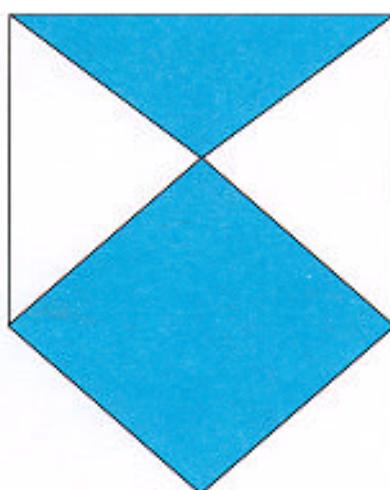
International Sign for Civil Defence. International distinctive sign for civil defence provided for in Additional Protocol I to the 1949 Geneva Conventions (1977) (equilateral blue triangle on an orange background).



Emblems for Medical Activities (Red Crescent or Red Cross on a white background).



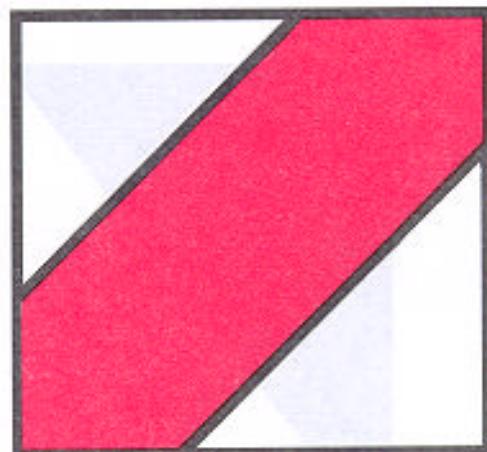
Israeli Emblem for Medical Services. When ratifying the 1949 Geneva Conventions Israel reserved the right to use a red Star of David as its distinctive emblem for medical services.



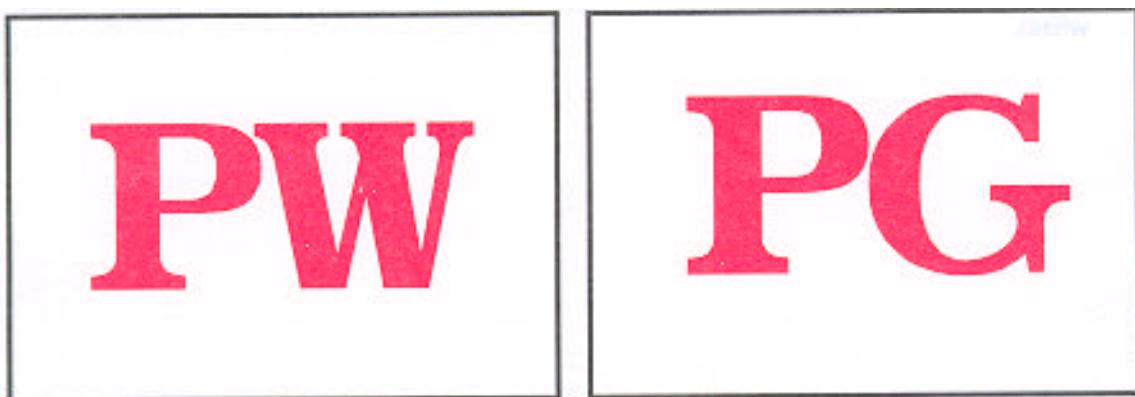
Emblem for Cultural Property under the 1954 Hague Convention (royal blue square and triangle on white square).



Flag of the 'Roerich Pact' (1935). To be used on historic monuments, museums, scientific, artistic, educational and cultural institutions, among Western Hemisphere States (red circle with triple red spheres in the circle, on white background).



Marking for Hospital and Safety Zones for Civilians and Sick and Wounded (oblique red band on a white background).



Markings for Prisoner of War Camps (red letters on a white background).



Markings for Civilian Internment Camps (red letters on a white background).

FOR OFFICIAL USE ONLY

ADFP 37

9A-3



The 1907 Hague Sign. The Convention on Naval Bombardment established this sign for sacred edifices; buildings used for artistic, scientific or charitable purposes; historic monuments and hospitals (rectangular panel divided diagonally into two triangular portions, the upper portion black, the lower white).

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

ADFP 37

**ANNEX B TO
CHAPTER 9****IDENTITY CARD FOR MEDICAL/RELIGIOUS PERSONNEL****FRONT**

	(space reserved for the name of the country and authority issuing this)	
IDENTITY CARD		
for PERMANENT civilian medical personnel TEMPORARY religious		
Name:.....		
Date of birth (or age)		
Identity No. (if any)		
The holder of this card is protected by the Geneva Conventions of 12 August 1949 and by the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) in his capacity as		
..... Date of issue No. of card		
Signature of issuing authority		
Date of expiry		

REVERSE SIDE

Height	Eyes	Hair
Other distinguishing marks or information:		
PHOTO OF HOLDER		
Stamp	Signature of holder or thumbprint or both	

FOR OFFICIAL USE ONLY

IDENTITY CARD FOR CIVIL DEFENCE PERSONNEL**FRONT**

	(space reserved for the name of the country and authority issuing this)	
IDENTITY CARD for civil defence personnel		
Name:		
Date of birth (or age)		
Identity No. (if any)		
The holder of this card is protected by the Geneva Conventions of 12 August 1949 and by the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) in his capacity as		
.....		
Date of issue No. of card		
Signature of issuing authority		
Date of expiry		

REVERSE SIDE**REVERSE SIDE**

Height	Eyes	Hair
Other distinguishing marks or information:		
Weapons		
PHOTO OF HOLDER		
Stamp	Signature of holder or thumbprint or both	

CHAPTER 10

PRISONERS OF WAR AND DETAINED PERSONS

INTRODUCTION

1001. The fundamental principle underlying the treatment of prisoners of war (PW) is that they are war victims, not criminals and are entitled to humane treatment throughout their captivity. Once combatants are captured they must not be attacked, but should be handed over without undue delay to PW processing authorities.

1002. The fundamental rules for the treatment of PW are:

- a. they must be treated humanely and honourably;
- b. any discrimination on the grounds of race, nationality, religious belief or political opinions is unlawful; and
- c. reprisals against them are prohibited.

Prisoner of War Status

1003. Not all persons falling into the hands of a belligerent become PW or are entitled to PW status. Civilian nationals of an enemy, for example, when taken into custody do not fall into this category and if captured are entitled to treatment in accordance with the provisions of G. IV, unless they have been taking part in hostilities when they may be liable to trial as unlawful combatants.

1004. In most cases, captured combatants are entitled to claim PW status. If any doubt arises about a captured person's status, PW status is to be granted until such time as a proper tribunal established under the G. III can determine their status.

1005. Apart from uniformed combatants, the five categories of persons who may be entitled to claim PW status are:

- a. members of the armed forces of a party to the conflict (other than medical personnel and chaplains);
- b. members of militias, volunteer corps or organised resistance groups, belonging to a party to the conflict and operating in or outside their own territory provided that:
 - (1) they are commanded by a person responsible for them as subordinates;
 - (2) they have a fixed, distinctive sign recognisable at a distance;
 - (3) they carry their arms openly; and
 - (4) they conduct their operations in accordance with laws of armed conflict (LOAC);
- c. those who accompany the armed forces without actually being members thereof (for example, civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces which they accompany): an identity card is required to be provided to those persons to ensure PW status is given (a model identity card is at Annex A);

- d. members of crews, including masters, pilots and apprentices, of the merchant marine and the crew of civil aircraft of the parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law; and
- e. levee en masse, ie inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and comply with LOAC.

1006. Status of Captured Medical and Religious Personnel. Medical personnel and chaplains who fall into enemy hands do not become PW but, until they are returned, are to be treated in accordance with the provisions of the G.C. III. They must be treated as PW and be provided with all necessary medical facilities to care for their own PW. PW who are medically qualified but not attached to the medical branch of their own forces may be required by the Detaining Power to exercise their medical functions on behalf of PW. Although prisoners, they are to be treated as other medical personnel and are exempt from any other work.

PROTECTION OF PRISONERS OF WAR

1007. PW must be treated humanely at all times. It must be remembered that PW when captured are the responsibility of an enemy power and not the individuals or military units that have captured them. The Detaining Power has overall responsibility for treatment of PW.

Special

1008. No PW may be subjected to physical mutilation or to medical or scientific experiments of any kind. They must be protected at all times, particularly against acts of violence or intimidation and against insults and public curiosity.

1009. All PW shall be treated without distinction based on race, nationality, religious belief or political opinions or any other distinction subject to privileged treatment which may be given to them by reason of their rank and sex, state of health, age or professional qualifications.

1010. Female prisoners must be treated with due regard to their sex and must in no case be treated less favourably than male prisoners. Their sex must also be taken into account in the allocation of labour and in the provision of sleeping and sanitary facilities. They must also be specially protected against rape and other sexual assaults.

Violations

1011. Killing PW is prohibited. PW cannot be put to death for any reason including because the captors are unable to provide the necessary facilities or personnel to restrict their movements or because they will have to be fed, thus reducing the supplies available to the captors, or because they may gain their liberty as a result of an early success by the forces to which they belong.

1012. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a PW in custody is prohibited.

PRISONER OF WAR CAMPS

1013. Prisoners must be evacuated to camps away from any danger areas as soon as possible. The only exception allowed is in respect of those who, because of wounds or sickness, would run a greater risk by being moved. PW may not be exposed to unnecessary dangers during evacuation.

1014. PW camps must not be located near military objectives with the intention of securing exemption from attack for those objectives and must be provided with the same protective measures against aerial attack as the civilian population. Prisoners must be allowed to seek shelter as soon as possible after an alarm sounds. The location of PW camps shall be communicated to the enemy through the Protecting Power and whenever possible such camps should be clearly marked with the letters 'PW' or 'PG' visible from the air. These marks are protected and must not be used for any other purpose.

1015. Evacuations must be conducted in conditions similar to those for the forces of the Detaining Power during changes of station. During the evacuation, prisoners must be provided with adequate food, clothing and medical attention, and lists must be maintained of those affected.

1016. PW may only be interned on land and centres of internment must be established in healthy areas, with prisoners having facilities guaranteeing hygiene and health. They must not be detained in penitentiaries.

1017. While officers should be housed separately, PW should be in camps according to nationality, language and customs, but should not be separated from other PW belonging to the forces with which they were serving at the time of capture, other than with their own consent.

RULES OF CAPTIVITY

1018. Upon capture, any urgent or necessary medical treatment should be provided. If medical personnel or facilities are scarce they should be applied according to strict medical triage. The most gravely wounded or sick are to be given priority, irrespective of whether they are PW or soldiers of the captured force. Immediate shelter, clothing and accommodation are to be provided and evacuation to a PW camp should be undertaken as soon as possible.

Identity Cards

1019. Every PW and person required to be treated as a PW must be issued with a capture card showing surname, first names, rank, Service, regimental or personal number and date of birth. The identity card must be shown by the PW on demand, but cannot be taken away from the PW at any time. A model capture card is at Annex B.

1020. Those captured who are entitled to PW status have that status from the moment of capture until their repatriation. They cannot, even of their own free will, surrender their rights of protection. Therefore, PW includes deserters and defectors.

Interrogation

1021. When questioned, PW are bound only to give their surname, first names, rank, date of birth and Service number. Any information beyond those areas must be given voluntarily.

1022. No physical or mental torture, or any other form of coercion, may be inflicted on PW to obtain information of any kind.

Articles and Equipment

1023. After capture combatants may be disarmed and they and their possessions may be searched for the purpose of collecting military intelligence. PW must be allowed to retain:

- a. all their personal property, except vehicles, arms, and other military equipment or documents;
- b. protective equipment, such as helmets or respirators;
- c. clothing or articles used for feeding, even though the property of the government of the PW;

- d. badges of nationality or rank and decorations; and
- e. articles of sentimental value.

1024. Money and articles of value may be taken from a PW only on the order of an officer. If this is necessary, then there must be a proper system of security and accountability established for that action, eg a receipt must be given. Any money or articles of value that are taken must be returned to the PW at the end of captivity.

Quarters, Food and Clothing

1025. Housing. PW must be housed under conditions as favourable as those applicable to members of the Detaining Power housed in the same area.

1026. Food. Food must be sufficient to keep prisoners in good health and the customs and normal diet of PW must be taken into account, ie PW dietary practices and customs must be accommodated if possible.

1027. Clothing. Clothing, underwear and footwear must be sufficient and take into account the climate of the region where the PW is detained.

Medical and Hygiene

1028. The Detaining Power is bound to take all sanitary measures to ensure cleanliness of and health within the camps and to prevent epidemics. Every PW camp must have an infirmary.

1029. Medical personnel of the PW are to be made available to attend to PW. Special facilities are to be made available for the care of the disabled, in particular the blind, and for the rehabilitation of those PW, pending repatriation. PW whose condition necessitates special treatment must be admitted to any civilian or military unit where such treatment can be given. PW cannot be prevented from seeking medical attention.

Religious, Intellectual and Physical Activities

1030. PW are completely free to exercise their religious duties and must be provided with adequate premises where religious services can be held. Chaplains retained by the enemy power are not PW and must be permitted to minister to PW.

1031. The Detaining Power must encourage intellectual, educational and recreational pursuits, sports and games and provide adequate premises and equipment for that purpose.

Labour

1032. Type of Work. Officers and persons of equivalent status cannot be compelled to work but must be found work if they request suitable work. Noncommissioned officers may only be required to do supervisory work but, as with officers, they may request to do suitable work, and if that request is made, that work must be found if possible.

1033. Permitted Work. G. III (Article 50) lists the work that PW can be compelled to do. No PW can be employed on labour which is of an unhealthy or dangerous nature, which contributes to the war effort or which would be looked upon as humiliating for a member of the Detaining Power's own forces.

1034. Conditions. The conditions of any work performed are not to be inferior to those enjoyed by the nationals of the Detaining Power employed in similar work. The duration of daily labour of PW cannot be excessive and cannot exceed that permitted for civilian workers in the area who are nationals of the Detaining Power and who are employed on the same work.

1035. Wages. PW shall be paid a fair working rate of pay by the detaining authorities.

Prisoner Representatives

1036. In general, in all places where there are PW, there will be prisoners' representatives entrusted with representing PW before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organisation which may assist them. In officer camps, the senior officer shall be recognised as the representative. In all other camps, election of representatives is to occur every six months.

DISCIPLINARY AND JUDICIAL SANCTIONS

1037. PW are subject to the same laws, regulations and orders applicable to members of forces of the Detaining Power, and judicial or disciplinary action can be taken for any offence committed against those laws. Minor offences will result in disciplinary action. More serious offences may result in judicial (penal) action. Disciplinary action rather than judicial measures are to be adopted wherever possible.

1038. Acts by PW punishable by the laws of the Detaining Power, which are not punishable if committed by a member of the forces of the Detaining Power, can only result in disciplinary punishment.

1039. PW undergoing disciplinary or judicial action cannot be subject to any more severe punishment than that applicable to members of forces of the detaining power.

Disciplinary Punishment

1040. The types of disciplinary punishments available are set out in G. III. The duration of any punishment cannot exceed 30 days.

Judicial Sanctions

1041. PW must be tried by military courts unless the laws of the Detaining Power permit trial by civil courts for members of forces of the Detaining Power for similar offences.

1042. A number of procedural rules apply in respect of trial. They are as follows:

- a. investigations must be conducted as rapidly as possible;
- b. PW cannot be confined awaiting trial unless members of the Detaining Power can be confined in similar circumstances;
- c. notice of proceedings must be given to:
 - (1) the accused notifying the particulars of the charges in good time before trial; and
 - (2) the Protecting Power at least three weeks prior to trial; and
- d. PW are entitled to be represented by a qualified lawyer of their choice and assisted by another PW; where the PW does not elect to choose a lawyer, the Protecting Power must appoint a defence lawyer within one week of being notified of the proceedings.

1043. Consequences of Escape. PW who have made good their escape and who are recaptured shall not be liable to any punishment in respect of their escape. The escape of a PW shall be deemed to have succeeded when the escapee:

- a. has joined friendly or allied armed forces,
- b. has entered neutral territory or otherwise left the territory under control of the Detaining Power, or
- c. has joined a ship in the territorial waters of the Detaining Power which is not under the control of the Detaining Power.

1044. A PW who has been captured in an attempt to escape shall only be liable to a disciplinary sanction if a guard is wounded or killed. This applies equally to repeated offences.

Repatriation

1045. With the exception of the categories mentioned below, PW are to be repatriated immediately to their own country at the conclusion of hostilities.

1046. Seriously wounded and sick PW must be repatriated as soon as they are fit to travel except that PW cannot be involuntarily repatriated during hostilities. The incurably wounded or sick, those who will not recover within one year, or those who are gravely and permanently disabled are to be repatriated direct to their own country. PW who may recover within a year and those whose mental or physical health may be seriously threatened by captivity, may be accommodated in a neutral country.

1047. Agreements may also be concluded between the parties to the conflict for the repatriation and internment in a neutral country of able-bodied PW who have undergone a long period of captivity.

Effect of Repatriation

1048. PW who are repatriated for medical reasons or for reasons of prolonged captivity are not permitted to rejoin the conflict. No such restrictions apply where PW are repatriated for any other reason.

Annexes: A. Identity Card for a Person Who Accompanies the Armed Forces
 B. Capture Card for Prisoner of War

FOR OFFICIAL USE ONLY

ADFP 37

**ANNEX A TO
CHAPTER 10**

IDENTITY CARD FOR A PERSON WHO ACCOMPANIES THE ARMED FORCES

FRONT

Photograph of the bearer	(Name of the country and military authority issuing this card) IDENTITY CARD FOR A PERSON WHO ACCOMPANIES THE ARMED FORCES		
Name First Names Date and place of birth Accompanies the Armed Forces as			
Date of issue		Signature of bearer	

REVERSE SIDE

Height	Weight	Eyes	Hair
Any other mark of identification		Blood type	Official seal imprint
		Religion	
NOTICE This identity card is issued to persons who accompany the Armed Forces of but are not part of them. The card must be carried at all times by the person to whom it is issued. If the bearer is taken prisoner, he shall at once hand the card to the Detaining Authorities, to assist in his identification.			
Fingerprints (optional) (Left forefinger) (Right forefinger)			

Remarks — this card should be made out for preference in two or three languages, one of which is in international use, Actual size of the card: 13 by 10 centimetres. It should be folded along the dotted line.

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

ADFP 37

ANNEX B TO
CHAPTER 10

CAPTURE CARD FOR PRISONER OF WAR

FRONT

PRISONER OF WAR MAIL		I Postage free
CAPTURE CARD FOR PRISONER OF WAR		
IMPORTANT This card must be completed by each prisoner immediately after being taken prisoner and each time his address is changed (by reason of transfer to a hospital or to another camp). This card is distinct from the special card which each prisoner is allowed to send to his relatives.		CENTRAL PRISONERS OF WAR AGENCY INTERNATIONAL COMMITTEE OF THE RED CROSS GENEVA SWITZERLAND

REVERSE SIDE

Write legibly and in block letters		1. Power on which the prisoner depends.....
2. Name	3. First names (in full)	4. First name of father
5. Date of birth	6. Place of birth	
7. Rank		
8. Service number		
9. Address of next of kin		
*10. Taken prisoner on: (or) Coming from (Camp- No., hospital, etc)		
*11. (a) Good health - (b) Not wounded - (c) Recovered - (d) Convalescent - (e) Sick - (f) Slightly wounded - (g) Seriously wounded.		
12. My present address is : Prisoner No..... Name of camp		
13. Date 14. Signature		
* Strike out what is not applicable - Do not add any remarks - See explanations overleaf.		

CHAPTER 11

RIGHTS AND DUTIES OF NEUTRALS

INTRODUCTION

1101. The law of neutrality defines the relationship under international law between nations engaged in armed conflict (belligerents) and nations seeking to avoid direct involvement in the conflict (neutrals). The law of neutrality originally developed to localise armed conflict, to limit the conduct of war on both land and sea and to lessen the impact of conflict on international commerce.

1102. At the time the law of neutrality was developed, transition to armed conflict was relatively clear cut and usually accompanied by a declaration of war. Since that time, several legal developments have occurred to change the environment in which the law of neutrality operates. First, nations no longer customarily declare 'war' before engaging in hostilities and there is therefore no formal delineation between war and peace. Secondly, the use of force by member nations, other than in individual or collective self-defence, is now outlawed under the United Nations (UN) Charter. Thirdly, collective security arrangements, either through the UN Charter or by way of regional security compacts mean that very few nations will be able to remain 'neutral' in the true sense in the event of armed conflict. Notwithstanding these uncertainties, the principles developed under the law of neutrality continue to play an important role in containing the spread of hostilities, in regulating the conduct of belligerents with respect to nations not participating in the conflict and in reducing the harmful effects of such hostilities on international commerce.

Neutral Status

1103. Under customary international law, all nations, in the absence of an international commitment to the contrary, have the right to refrain from participation in an armed conflict by adopting neutral status. There is no requirement in international law for a 'declaration of neutrality'. However, all nations which do not expressly declare the contrary, by word or action, are neutral and the rights and duties of neutrality apply to them. Neutral status remains in effect unless and until the neutral nation abandons its neutral stance and enters into the conflict, or is itself the subject of an attack by a belligerent.

Primary Rights and Duties of Neutral States

1104. The laws of armed conflict (LOAC) reciprocally imposes duties and confers rights upon neutral states and upon belligerents. The primary right of a neutral is that of inviolability, that is, the right to have its territorial sovereignty and its activities, such as international trade and commerce, respected and unaffected by armed conflict occurring between other nations. There is a corresponding right on the part of the neutral to preserve its neutrality by excluding armed forces of the belligerents from its territory. As a corollary, a neutral has a duty to abstain from taking part in the conflict and to remain impartial by according rights of passage or providing goods and services to belligerents on a non-discriminatory basis.

1105. A belligerent has a right to insist that a neutral not violate its duties of abstention and impartiality and has limited rights, mainly in respect to neutral shipping and commerce, to pursue its war aims by acts that would not be permitted in peacetime (further detail is covered in chapter 7). Likewise, a belligerent has a duty to respect the territorial sovereignty of a neutral state and the immunity of its activities, such as international commerce.

Neutrality and the United Nations Charter

1106. The UN Charter requires nations to settle their disputes peacefully and to refrain from the threat or use of force in international relations. In the event of a threat to or breach of international peace or security, the UN Security Council is empowered to take enforcement action, on behalf of all member nations, involving or not involving the use of force, to maintain or restore international peace. When called upon by the UN Security Council to do so, all member nations are required to provide assistance to the UN in any action it takes. A nation which provides elements of its armed forces to a UN force or lends other assistance in support of UN peace operations cannot assume neutral status. Should the UN Security Council determine not to institute an enforcement action or is unable to do so, due to the use of the veto by one of its members, member nations remain free to assume neutral status.

Neutrality and its Relationship to Regional and Collective Security Arrangements

1107. The obligation in the UN Charter for member nations to refrain from the threat or use of force is qualified by the right of individual or collective self-defence, which member nations may exercise until such time as the Security Council has taken the measures necessary to restore international peace. This inherent right of self-defence may be exercised by individual nations or through regional or collective security arrangements. The possibility of maintaining neutral status under such arrangements depends upon the extent to which the parties to the arrangements are obligated to provide assistance in a regional action, or in the case of collective self-defence, to come to the aid of a victim of an armed attack.

NEUTRAL TERRITORY

1108. As a general rule of international law, all acts of hostility in neutral territory, including neutral land, neutral waters and neutral airspace are prohibited. A neutral state has a duty to prevent the use of its territory as a sanctuary or a base of operations by the belligerent forces of any side. If the neutral state is unable or unwilling to enforce effectively its right of inviolability, an aggrieved belligerent may resort to acts of hostility in neutral territory against enemy forces, including warships and military aircraft, making unlawful use of that territory. Belligerents are also authorised to act in self-defence when attacked or threatened with attack while in neutral territory or when attacked or threatened from neutral territory.

Neutral Land Territory

1109. Belligerent Forces. Belligerents are prohibited from moving troops or war materials and supplies across neutral land territory. Belligerent troops that enter neutral land territory or who are on neutral land territory at the outset of an armed conflict must be disarmed and interned until the end of the armed conflict. Internees under these rules must be afforded treatment at least to the same standard as laid down in G. III.

1110. Sick, Wounded and Shipwrecked. A neutral state may accept sick and wounded of a belligerent into its territory but must ensure that they are guarded and do not again take part in military operations. Neutral states are also required to cooperate with belligerents in the accommodation or internment of sick and wounded in neutral territory. Neutral states are required to apply, by analogy, the same standards to sick and wounded and shipwrecked received or interned in their territory as is required of belligerents.

1111. Medical Aircraft and Transports. A neutral state may authorise passage through its territory of wounded and sick belonging to the armed forces of either side on condition that the vehicles transporting them carry neither combatants nor materials of war. If passage of sick and wounded is permitted, the neutral nation assumes responsibility for providing for their safety and control. If any sick or wounded are left in neutral territory, they must not be allowed to take any further part in the conflict. Medical aircraft are not permitted to fly over neutral land territory without prior permission except in cases of emergency. The neutral state may impose conditions on such flights on a non-discriminatory basis. Where an aircraft is ordered to land it must be inspected to verify its status, with the minimum disruption to the sick and wounded and to the aircraft's flight.

1112. Prisoners of War. Prisoners of war (PW) that have escaped their captors and made their way to neutral territory may be either repatriated or left at liberty in the neutral state, but must not be allowed to take part in belligerent activities while there. The neutral state may assign them a place of residence. Neutral states are obligated to seek agreement with Detaining Powers with a view to interning PW on neutral territory. A neutral state which has received PW on its territory must set up an Information Bureau with the same rights and entitlements to receive information as those established in belligerent territory.

1113. Medical Personnel and Chaplains. Medical personnel and chaplains of the armed forces of a belligerent who are received into neutral territory may only be retained if necessary for the medical and spiritual care of interned members of the armed forces. They must otherwise be repatriated. They must be accorded the same standard of treatment as applies to other internees.

1114. War Criminals. Where an individual seeking asylum in a neutral state is alleged to have committed grave breaches of LOAC, and a prima facie case can be established, the neutral state is obligated either to place the individual on trial or hand them over to another party to the Geneva Conventions for trial.

1115. Recruitment and Neutral Territory. A neutral state must not permit a belligerent to establish recruiting depots within its territory, nor may it permit the organisation of groups intending to proceed to belligerent territory in order to enlist there. The neutral state is not under an obligation, however, to prevent isolated individuals or disorganised groups from crossing its frontiers in order to enlist in the forces of one of the belligerents; nor is it under an obligation to prevent its own nationals from enlisting in the forces of belligerents but any such restriction it does impose must be non-discriminatory between belligerents. Active members of the armed forces of a neutral state must not be permitted to enlist, or to continue serving on exchange or otherwise in the armed forces of a belligerent nation.

NEUTRAL WATERS

1116. Neutral waters are the internal waters, territorial sea and archipelagic waters of a neutral. The peacetime rights and duties of a neutral in relation to neutral waters and other waters under its jurisdiction, such as the contiguous zone and the exclusive economic zone, and the peacetime rights and duties of belligerent vessels entering and transiting such waters continue to apply during armed conflict subject to certain modifications necessary to observe the laws of neutrality. Further detail is covered in chapter 6.

1117. As a general rule, belligerent warships and auxiliary vessels must abstain from acts of hostility in neutral waters except those necessitated by self-defence or undertaken as a self-help enforcement action against enemy forces that are in violation of the neutral status of those neutral waters and where the neutral cannot, or will not, enforce its neutrality. Belligerents are prohibited from using neutral waters as a base of operations or as a sanctuary from their enemies.

Neutral Internal Waters

1118. Neutral states may, on a non-discriminatory basis, close their internal waters, including their ports and roadsteads, to belligerents but they are not obliged to do so. Belligerent vessels retain a right of entry in distress whether caused by force majeure or damage resulting from enemy action. In the absence of special provisions to the contrary in the national law and regulations of the neutral, belligerent warships or auxiliary vessels are forbidden to remain in a neutral port or roadstead in excess of 24 hours. Belligerent warships may be permitted by a neutral to extend their stay in neutral ports and roadsteads on account of stress of weather or damage involving seaworthiness. It is the duty of the neutral to intern a belligerent warship, together with its officers and crew that will not or cannot depart a neutral port or roadstead where it is not entitled to remain.

1119. Unless the neutral has adopted laws or regulations to the contrary, no more than three warships of any one belligerent nation may be present in the same neutral port or roadstead at the same time. When warships of opposing belligerent nations are present in a neutral port or roadstead at the same time, not less than 24 hours must elapse between the departure of the respective enemy vessels. The order of departure is determined by the order of arrival unless an extension of stay has been granted to a particular vessel.

1120. Belligerent warships may carry out such repairs in neutral ports and roadsteads as are absolutely necessary to render them seaworthy. They may not add to or repair weapons systems or enhance any other aspect of their war-fighting capability.

1121. A prize (a captured neutral or enemy merchant ship; see chapter 6) may only be brought into a neutral port or roadstead because of unseaworthiness, stress of weather, or want of fuel or provisions and must leave as soon as such circumstances permit.

Neutral Territorial Waters

1122. A neutral may, on a non-discriminatory basis, close its territorial waters, except in international straits and archipelagic sea lanes, to belligerent vessels. When properly notified of its closure, belligerents are obliged to refrain from entering a neutral territorial sea except to transit through international straits or archipelagic sea lanes or as necessitated by distress. A neutral may, however, allow the 'mere passage' of belligerent vessels, including warships and prizes, through its territorial waters. Such passage must be innocent in nature and, in the absence of specific national law or regulations of the neutral state to the contrary, must not exceed 24 hours in duration unless a longer time is unavoidable on account of damage or the stress of weather. This rule does not apply in neutral international straits and neutral waters in which the right of archipelagic sea lanes passage is exercised. Although the general practice has been to close neutral territorial waters to belligerent submarines, a neutral may elect to allow mere passage of submarines, either on the surface or submerged. Neutral nations customarily authorise passage of vessels carrying the wounded, sick and shipwrecked, whether or not those waters are otherwise closed to belligerent vessels.

Neutral International Straits

1123. Belligerent and neutral surface ships, submarines and aircraft have a right of transit passage through, under and over all straits used for international navigation. Neutral nations cannot suspend, hamper or otherwise impede this right of transit passage through international straits. Belligerent forces transiting through international straits overlapped by neutral waters must proceed without delay, must refrain from the threat or use of force against the neutral nation and must otherwise refrain from acts of hostility and activities not incident to their transit. Belligerent forces in transit may take defensive measures consistent with their security, including the launching and recovery of aircraft, screen formation steaming, and acoustic and electronic surveillance. Belligerent forces may not use neutral international straits as a place of sanctuary nor a base of operations, and belligerent warships may not exercise the right of visit and search or capture vessels in those waters.

Neutral Archipelagic Waters

1124. Belligerent forces must refrain from acts of hostility in neutral archipelagic waters and from using them as a sanctuary or base of operations. All belligerent ships or aircraft, including submarines, retain the right of unimpeded archipelagic sea lanes passage through, over and under neutral archipelagic sea lanes. Belligerent forces exercising the right of archipelagic sea lanes passage in neutral archipelagic waters may engage in those activities that are incidental to their normal mode of continuous and expeditious passage, and are consistent with their security. Belligerent warships on archipelagic sea lanes passage are not permitted to conduct visit search and capture of vessels while in archipelagic waters.

1125. A neutral may close its archipelagic waters (other than archipelagic sea lanes whether designated or those routes normally used for international navigation) to the mere passage of belligerent ships but it is not obliged to do so. The neutral archipelagic nation has an affirmative duty to police its archipelagic waters to ensure that the inviolability of its neutral waters is respected. If a neutral is unable or unwilling to effectively detect or expel belligerent forces unlawfully present in its archipelagic waters, the opposing belligerent may undertake such self help enforcement actions as may be necessary to terminate the violation of its neutrality. Such actions may include surface, sub-surface and air penetration of archipelagic waters and airspace, and the use of proportional force as necessary.

Neutral Airspace

1126. Neutral territory extends to the airspace over a neutral's land territory, internal waters, territorial sea and archipelagic waters (if applicable). As a general rule, belligerent military aircraft are prohibited from entering neutral airspace with the following exceptions:

- a. The airspace above neutral international straits and archipelagic sea lanes remains open at all times to belligerent military aircraft engaged in transit or archipelagic sea lanes passage. Such passage must be continuous and expeditious and must be undertaken in the normal mode of flight of the aircraft involved. Belligerent aircraft must refrain from acts of hostility while in transit but may engage in activities that are consistent with their security and the security of accompanying surface and subsurface forces.
- b. Unarmed military aircraft may enter neutral airspace under such conditions and circumstances as the neutral nation may wish to impose impartially on the belligerents. If such unarmed aircraft penetrate neutral airspace without permission, or otherwise fail to abide by the entry conditions imposed upon them by the neutral nations, they may be interned together with their crews.
- c. Medical aircraft may overfly neutral territory, may land there in case of necessity, and may use neutral airfield facilities as ports of call, subject to such restrictions and regulations as the neutral state may see fit to apply equally to all belligerents.
- d. Belligerent aircraft in evident distress are permitted to enter neutral airspace and to land in neutral territory under such safeguards as the neutral state may wish to impose. The neutral state may require such aircraft to land, may intern both aircraft and crew, or may impose non-discriminatory conditions upon their stay or release.

1127. Neutral states have a duty to prevent violation of neutral airspace by belligerent aircraft, to compel offending aircraft to land and to intern both aircraft and crew. If a neutral state is unable or unwilling to prevent the unlawful entry or use of its airspace by belligerent aircraft, belligerent forces of the other side may undertake such self-help enforcement measures as the circumstances may require.

NEUTRAL COMMERCE

1128. A principal purpose of the law of neutrality is the regulation of belligerent activities with respect to neutral commerce. Neutral commerce comprises all commerce between one neutral nation and another not involving materials of war or armaments destined for a belligerent nation and all commerce between a neutral nation and a belligerent that does not involve the carriage of contraband or otherwise sustain the belligerent's war-fighting capability. Neutral merchant vessels and non public civil aircraft engaged in legitimate neutral commerce are subject to visit and search, but may not be captured or destroyed by belligerent forces. The conditions under which neutral vessels and aircraft may be visited and searched and subsequently captured together with other measures of naval and air warfare which affect neutral commerce are dealt with extensively in chapter 7.

1129. The law of neutrality does not prohibit neutral nations from engaging in commerce with belligerent nations. However, a neutral state cannot supply materials of war or armaments to a belligerent without violating its neutral duties of abstention and impartiality and risking loss of its neutral status. Although a neutral state may forbid its citizens from carrying on non-neutral commerce with belligerent nations, it is not obliged to do so. In effect the law establishes a balance of interests that protects neutral commerce from unreasonable interference on the one hand and the right of belligerents to interdict the flow of war materials to the enemy on the other.

NEUTRAL PERSONS AND PROPERTY

Neutral Nationals and Property in Belligerent Territory

1130. Neutrals who remain in the territory of a belligerent are only entitled to treatment as a protected person under the G. IV if their country of nationality does not maintain normal diplomatic relations with the belligerent nation. The rules in relation to property outlined in the following paragraph apply in respect of belligerent territory.

1131. A neutral ship in the territorial or internal waters of a belligerent may be requisitioned by a neutral in the case of public need or necessity justifying the seizure. The owner must be fully compensated for any damage caused by use or destruction of the ship. Only a ship and not its cargo may be seized in this manner.

Neutral Nationals or Property in a Theatre of War

1132. A belligerent is not responsible for accidental injury or damage to neutral national property occurring in a theatre of war; however, if a belligerent has requisitioned neutral property, the belligerent is liable to pay compensation.

Neutral Nationals in Occupied Territory

1133. Neutral nationals in occupied territories may leave the territory unless their departure is contrary to the interests of the occupying power.

Loss of Neutral Status

1134. A neutral national loses neutral status if it commits hostile acts against a belligerent, or acts in favour of a belligerent, particularly by joining the armed forces of the belligerent.

BREACH OF NEUTRALITY

1135. Failure by a neutral to observe or prevent violation of its neutrality can take a number of forms, including:

- a. direct participation in the conflict,
- b. providing assistance to a belligerent by way of supply of munitions or organised bodies of men, or
- c. failure to prevent a belligerent using neutral territory or neutral waters for its war aims contrary to the law of neutrality.

1136. Where there are severe breaches of the rules of neutrality, for instance by the commission of an armed attack or by assistance in such an attack, it may justify a conclusion that the nation is no longer neutral. This may then give rise to a legitimate exercise of the right to self-defence by the belligerent which was the subject of such an attack.

1137. In instances short of this situation, particularly where the neutral has been unable to prevent its territory or waters being violated by a belligerent, the nation would not lose its neutral status. The principal remedy in this case would be for the belligerent nation to seek reparations as it would for any other international wrong. To respond to such violations by a declaration of war or by armed attack directed against the neutral is contrary to international law.

CHAPTER 12

OCCUPATION

INTRODUCTION

1201. Occupation is the military occupation of enemy territory. The law of military occupation refers to those provisions of international law which regulate conduct in occupied territory. Detailed rules of occupation are contained in G. IV. Further guidance with respect to this subject is available from ADF legal officers.

COMMENCEMENT AND TERMINATION OF BELLIGERENT OCCUPATION

Commencement

1202. A territory is considered occupied when it is actually placed under the authority of the enemy armed forces. The occupation extends only to the territory where such authority has been established and can be exercised. The territory is considered occupied even if the occupation meets with no armed resistance.

Termination

1203. Occupation may be terminated in at least three ways, shown below;

- a. The occupying power may withdraw.
- b. The occupying power may be ejected either by the population of the territory or by the armed forces of the sovereign nation, or by the armed forces of their allies or by a combination of the above.
- c. The sovereign government of the occupied territory may be defeated and part or all of the occupied territory may be annexed by the occupying power or by some other power. A legally valid annexation cannot occur while allies of the defeated sovereign nation are still in the field against the occupying power.

1204. The general termination of hostilities does not automatically terminate occupation. Occupation does not terminate until a nation exercises sovereign authority over the area as part of its own territory.

GENERAL EFFECTS OF OCCUPATION

Limits on Legislative Power of Occupying Power

1205. The powers of an occupying power are of a provisional nature and it should only take measures which are necessary for the purposes of the war, the maintenance of order and safety and the proper administration of occupied territory. Generally speaking, the occupying power is not entitled to alter the existing form of government, to disregard the constitution and domestic laws of the occupied territory or to set aside the rights of the inhabitants.

Annexation Prohibited

1206. It is unlawful for an occupying power to annex occupied territory while hostilities continue. The right to annex territory once hostilities have ended is beyond the scope of this publication. The inhabitants of occupied territory are not subjects of the occupying power and the territory does not belong to the occupying power. Neither annexation nor agreements between the occupying power and authorities of the occupied territory have any effect on the rights of protected persons under the laws of armed conflict.

Maintenance of Public Order

1207. Inhabitants of occupied territory cannot be compelled to swear allegiance to the hostile power. Notwithstanding this prohibition, the occupying power has a right to demand and enforce such measures of obedience from the population of the territory as are necessary for the security of its forces, the maintenance of order, and the proper administration of the country. The occupying power has an obligation to maintain public order.

ADMINISTRATION OF OCCUPIED TERRITORY

1208. All functions of the legitimate government in the occupied territory cease when occupation commences. The occupying power may, however, allow civil servants and other officials of the local government to continue to perform their routine duties. Where municipal officials are involved in particular, this course of action is usually in the best interests of the occupying power.

Law Applicable in Occupied Territory

1209. The occupying power does not bring with it the ordinary laws and jurisdiction of its own country. Generally speaking, laws of the occupied country continue to be valid and the courts continue to sit. The courts usually continue to try all criminal charges against the inhabitants which are not of a military nature and do not affect the safety of the army of occupation. The courts should be suspended only if:

- a. judges abstain from fulfilling their functions,
- b. the courts are corrupt or unfairly constituted, or
- c. local judicial administration has collapsed.

1210. If the exigencies of war, the maintenance of order, or the welfare of the population so require, it is within the power of the occupying power to alter or suspend or repeal any existing laws, or to promulgate new laws in areas such as:

- a. legislation constituting a threat to its security, such as laws relating to recruitment and the bearing of arms;
- b. legislation dealing with the political process, such as laws regarding the rights of suffrage and of assembly; and
- c. legislation, the enforcement of which would be inconsistent with the duties of the occupying power, such as laws establishing racial discrimination.

1211. In occupied territory possessing an adequate legal system conforming with generally recognised principles of law, significant changes should be avoided. The occupying power may, however, issue regulations fixing prices and securing the equitable distribution of foodstuffs and other commodities.

1212. The occupying power may not declare that the rights of enemy subjects are abolished, suspended, inadmissible or unenforceable in a court of law in the occupied territory.

Occupying Force Exempt from Local Laws

1213. Members of an occupying force are not subject to the jurisdiction of the local courts but their offences will be dealt with under the military law of their own armed forces. The occupying power will generally ensure that some system of law is available to handle legal problems arising between inhabitants of the occupied territory and members of the occupation forces.

Welfare Measures

1214. Foodstuffs and medical supplies in the occupied territory may only be requisitioned for use by the occupation forces and administration personnel so long as the requirements of the civilian population have been taken into account. If the local food and medical resources are inadequate for the purposes of the local population, the occupying power is, to the fullest means and extent available to it, under a duty to bring in such supplies as are necessary. Civilian hospitals may only be temporarily requisitioned, and only in the event of urgent necessity for the care of military wounded and sick, provided adequate arrangements are made for the care of the local population. The occupying power must also ensure the provision of clothing, bedding, means of shelter and other supplies essential to the survival of the civilian population together with those objects which are required for religious worship.

1215. The occupying power must take necessary steps to ensure that children under 15 years of age and who are separated from their families are not left to their own resources, and that proper steps are taken to maintain their education and religious welfare. They must also enable all persons in the occupied territory to exchange news of a personal nature with members of their families, whether the latter be in the occupied territory or elsewhere, and shall facilitate inquiries made by families which have been dispersed as a result of the conflict and shall encourage relief organisations seeking to assist in this task.

Relief Measures

1216. The occupying power is under an obligation to allow free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended for civilians in occupied territory, as well as of essential foodstuffs, clothing and medical supplies intended for children under 15 years of age, expectant mothers and maternity cases, although it may require that distribution of such supplies be under the supervision of the Protecting Power.

Population Movements into Occupied Territory Prohibited

1217. The occupying power is forbidden to move parts of its own population into the occupied territory with the intention of changing the nature of the population or annexing or colonising the area.

EFFECTS OF OCCUPATION ON THE POPULATION**Rights of Inhabitants of Occupied Territory**

1218. The inhabitants are entitled to respect for their person, their honour, their family rights, their religious beliefs and practices, and their manners and customs. They must be humanely treated at all times and be especially safeguarded against all acts of violence or threats of violence and against insults and public curiosity. Women must be protected against any attack on their honour, in particular against rape, enforced prostitution or any other form of indecent assault. All protected persons must be treated with the same consideration, without any adverse distinction based, in particular, on race, religion or political opinion.

1219. Any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands is prohibited. That prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

Control of Persons in Occupied Territory

1220. Military authorities in occupied territories have the right to perform police functions and to protect their own security.

1221. Measures for the control of the population which are prohibited include:

- a. violence;
- b. physical or moral coercion, particularly to obtain information;
- c. brutality;
- d. reprisals or collective penalties; and
- e. deportations.

Compulsory Labour

1222. The occupying power may only compel persons over the age of 18 to work, and then only on the needs of the army of occupation, the public utility services, or for the feeding, clothing, sheltering, transportation or health of the population of the occupied territory. The population cannot be compelled to participate in any work which would involve participation in military operations, nor may they be compelled to employ forcible means to ensure the security of the installations where they are performing compulsory labour. No contract made with any worker by the occupying power can impair the right of the worker, even though they are performing compulsory labour, of access to the Protecting Power.

1223. The occupying power must not requisition labour to an extent that leads to the mobilisation of workers in any organisation of a military or semi-military nature. Nor may the occupying power use any measures to stimulate unemployment or restrict the opportunities for work open to the population of the occupied territory so as to induce them to work for the occupying power.

ENEMY PROPERTY IN OCCUPIED AREA**Pillage Prohibited**

1224. Pillage is prohibited. Pillage is the seizure or destruction of enemy private or public property or money by representatives of a belligerent, usually armed forces, for private purposes. A soldier may, under certain circumstances seize enemy property but once such property has been seized it belongs to the state. A military person is not allowed to become a thief or a bandit merely because of involvement in a war. The rule against pillage is directed against all private acts of lawlessness committed against enemy property.

Confiscation

1225. Confiscation is the taking of enemy public movable property without the obligation to compensate the state to which it belongs. All enemy public movable property which may be useable for the operations of war may be confiscated. Private property may not be confiscated. Enemy public immovable property may be administered and used but it may not be confiscated.

Seizure

1226. The seizure of private movable property is governed by H. IV. R Article 53. By this rule all appliances adapted for the transmission of news or for the transport of persons or goods by land, sea or air, except where naval law governs, stores of arms and in general every kind of war material, even if they belong to private individuals, may be seized, but they must be restored and the indemnity fixed when peace is made.

1227. These objects may be seized by, but they do not become the property of, the occupying power. The seizure operates merely as a transfer of the possession of the object to the occupying power while ownership remains with the private owner. In so far as the objects seized are capable of physical restoration, they must be restored at the conclusion of peace, and in so far as they have been consumed or have been destroyed or have perished, a cash indemnity must be paid when peace is made.

Requisition

1228. Requisition may be made of all commodities necessary for maintenance of the occupying army such as: food and fuel supplies, liquor and tobacco, cloth for uniforms, leather for boots, and the like. The taking of such articles is forbidden unless they are actually required for the needs of the occupying forces. Goods or medical supplies available in the occupied territory are subject to requisition because they are needed for the forces of occupation and for administrative personnel. They may be requisitioned only after the requirements of the civilian population have been taken into account. In every case, the articles taken must be duly requisitioned, and be in proportion to the resources of the country.

1229. Articles requisitioned should be paid for in ready money, but if this is not possible a receipt must be given for them and payment of the amount due must be made as soon as possible. Articles properly requisitioned become the property of the occupying power and pass out of the ownership of their former owner.

1230. The prices to be paid for requisitioned supplies may be fixed by the commander of the occupying force. The prices of commodities on sale may also be regulated.

1231. The right to billet troops on the inhabitants follows from the rights to requisition.

CHAPTER 13

COMPLIANCE

1301. Australia has ratified many of the major international treaties, such as The Hague Conventions, Geneva Conventions and the Additional Protocols. In addition, Australia is also bound by customary international law which has not been incorporated into treaties. For these reasons, Australia is responsible for ensuring that its military forces comply with the laws of armed conflict (LOAC).

1302. All ADF members are responsible for ensuring that their conduct complies with LOAC. They are to be trained in its basic principles and avoid breaches of these laws.

Yamashita Principles

1303. After World War II, Japanese General Yamashita was put on trial and subsequently executed for the widespread destruction, murder and rape which occurred in Manila just prior to its liberation. Out of this case, principles were established for the standard of responsibility of commanders for LOAC violations. In particular, the concept of indirect responsibility was established. The principles of this doctrine are that the commander will be held responsible if the commander:

- a. knows subordinates are going to commit war crimes and does not prevent them,
- b. knows subordinates have committed war crimes and does not punish them,
- c. should know subordinates are going to commit war crimes and does not prevent them, or
- d. should know subordinates have committed war crimes and does not punish them.

Commander's Responsibilities

1304. Military commanders of all Services and at all levels bear responsibility for ensuring that forces under their control comply with LOAC. Specifically, a commander will be held accountable if an order is given to a subordinate to commit a breach of LOAC or knows that a breach is occurring and fails to intervene. A commander is also liable for prosecution if the commander fails to act to prevent a breach of LOAC of which the commander should have known.

Legal Advisers

1305. As appropriate, legal advisers should be available to assist commanders in ensuring compliance. In contrast, an aircraft pilot, a company commander or a commander of a RAN vessel may not have this direct access; consequently, it is essential that they have a sound knowledge and understanding of LOAC issues.

Individual Responsibility

1306. ADF members are open to prosecution for breaches of LOAC. Individual responsibility for compliance cannot be avoided and ignorance is not a justifiable excuse. ADF members will be held to account for any unlawful action that leads to a serious breach of LOAC. If such acts are committed, compliance with unlawful orders of a superior officer is not a justifiable excuse. If an order is ambiguous, clarification should be sought. If clarification is unavailable, any action taken must comply with LOAC.

Reporting Law of Armed Conflict Breaches

1307. Responsibility for LOAC compliance is not limited to ensuring that actions conform with LOAC requirements. Each ADF member is also responsible for ensuring that breaches are properly reported and documented. Reporting of LOAC breaches, whether committed by the enemy or ADF members, should be made to superiors. Commanders must ensure that processes for reporting LOAC breaches are detailed in standard operating procedures.

Unilateral Compliance

1308. The ADF obligation to comply with LOAC is not conditional upon an enemy's compliance; unilateral compliance by the ADF is required. The limited specified exceptions, which are matters of national policy are beyond the scope of this publication but include the concept of reprisals and specific aspects of G.P. I.

Reprisals

1309. Some nations may not comply with LOAC in the conduct of armed conflict. Where this occurs, and all methods of persuasion and diplomatic pressure have failed, reprisals may be justified but only against military objectives.

1310. Reprisals are otherwise illegal actions that are taken by one nation for the sole purpose of persuading another nation to comply with LOAC. Nevertheless, because there is a risk that the conflict may escalate as a result, reprisals are rarely employed. Reprisal action by ADF members requires prior approval at government level. In any case, reprisals must be timely, responsive to the enemy's conduct, proportional and only resorted to after lesser forms of redress have been tried.

1311. Protected Persons. Protected persons, such as medical personnel, civilians, wounded and sick, as well as protected buildings and facilities, should not be the subject of reprisals.

War Crimes

1312. War crimes are illegal actions relating to the inception or conduct of armed conflict. They may be viewed as any violation of LOAC (either customary or treaty law which is committed by any person).

1313. In addition to war crimes, the international community recognises that national leaders may commit offences of a general nature before the inception of hostilities. These are often referred to as crimes against peace (the conduct of hostilities in violation of international treaties, agreements and assurances) or crimes against humanity (major felonious crimes against a civilian population whether they occur before or during an armed conflict). Finally, the Genocide Convention of 1948 makes it a crime to commit or incite any of several acts with the specific intent to destroy in whole, or in a substantial part, a national, ethnic or religious group.

Breaches

1314. War crimes which are directed against protected persons or facilities under the Geneva Conventions or the Additional Protocols fall within two main categories. The more serious violations are termed grave breaches and the less serious are simple breaches.

1315. The following examples constitute grave breaches or serious war crimes likely to warrant institution of criminal proceedings:

- a. wilfully killing, torturing or inhumanely treating protected persons;
- b. wilfully causing great suffering or serious injury to body or health of protected persons;
- c. taking protected persons as hostages or extensive destruction and appropriation of property which is not justified by military necessity and which is carried out unlawfully and wantonly;

- d. unlawfully deporting, transferring or confining a protected person;
- e. compelling prisoners of war (PW) or other protected persons to serve in the forces of a hostile;
- f. wilfully depriving PW or other protected persons of the right to a fair and regular trial as proscribed by the Geneva Conventions;
- g. making the civilian population or individual citizens the object of attack;
- h. launching indiscriminate attacks that affect the civilian population or civilian objects in the knowledge that such attack will cause extensive and disproportionate loss of life, injury to civilians or damage to civilian objects;
- i. making PW or the sick and wounded the object of attack;
- j. launching unlawful attacks against installations containing dangerous forces;
- k. making non-defended localities and demilitarised zones the object of attack;
- l. misusing or abusing the Red Cross symbol or any other protected emblem for the purpose of gaining protection to which the user would otherwise not be entitled;
- m. performing physical mutilations, conducting medical or scientific experimentation and removing tissue and organs for transplantation without consent;
- n. mistreating PW, including killing, torturing, subjecting them to inhuman treatment, forcing them to work in dangerous, unhealthy or otherwise prohibited labour and infringing their religious rights;
- o. denying an enemy the right to surrender;
- p. using certain unlawful weapons and ammunition such as poison and expanding rounds;
- q. firing upon flags of truce, the Red Cross symbol or any other protected emblem; or
- r. feigning surrender in order to obtain military advantage.

TRAINING

1316. ADF policy for LOAC training is contained in Defence Instruction (General) OPS 33-1 - *Australian Defence Force Law of Armed Conflict Training* .

FOR OFFICIAL USE ONLY

ADFP 37

**DISTRIBUTION LIST ADFP 37
(as at 12 JAN 96)**

HQADF

OPERATIONS DIVISION

ACOPS (M-B-42)
ADFCC (M-B-10)
DGJCE (DDCO, M-SB-40)
DGJMOVT (CP4-1-28)
DGJOP (M-B-11)
DDC2IN (M-SB-45)
DJLOP (M-B-34)
DJOPS (M-B-20)
DJOPS (SO1 CCOPS, M-B-24)
DJP (M-SB-24)
DSCS (DKN 2/AO5)
JEPS (CCLK H-2-01)
JLP (M-B-32)

DEVELOPMENT DIVISION

DGFD(Joint) (B-3-25)
DGFD(Aerospace) (B-1-21)
DGFD(Land) (B-3-11)
DGFD(Sea) (B-4-05A)
DGMSC (F-3-13)

PERSONNEL DIVISION

DPV (F-G-38)

VCDF COORD AND SUPPORT STAFF

CDF Spt Cell (F-3-01)

SURGEON GENERAL ADF

DCHSR (CP4-6-40)
AOPHS (CP4-6-14)

HQAST

DEPARTMENT OF DEFENCE

ADF LEGAL SERVICES BRANCH

ASLEG/DGDFLS (NCC-C1-04)
DINTLAW (NCC-C1-25)

DIRECTORATE OF PUBLISHING

DPUBS Distribution (K-B-07) (spare)

DIO

ADFIC (M-B-35)
DIO Library (L-4-13)

EMERGENCY MANAGEMENT AUSTRALIA

DGEMA (NBH-6-19)
CDO (NBH-6-15)

PUBLIC INFORMATION BRANCH

DGPI (B-4-29)

INTERNATIONAL POLICY DIVISION

ASSPP (F-1-16) 1
CEOCS (F-2-22) 1

1 2 **FORCE DEVELOPMENT AND ANALYSIS DIVISION**

2 1 ASFD (F-2-44) 1

1 1 **LOGISTIC DIVISION**

1 1 DGLP (DLSMP, CP4-2-79) 1

1 2 **JOINT ESTABLISHMENTS**

2 1 ADFA (Military Library) 1
1 4 ADFWC 70
1 1 JSHC 1
1 1 JSSC 60
1 1 NORCOM 5
1 1 HQ 1st Joint Mov Gp 1

1 1 **DEFENCE CENTRES**

1 1 Defence Centre - Adelaide 2
1 1 Defence Centre - Brisbane 2
1 1 Defence Centre - Canberra 2
1 1 Defence Centre - Hobart 2
1 1 Defence Centre - Melbourne 2
1 1 Defence Centre - Perth 2
1 1 Defence Centre - Sydney 2

1 1 **DEFENCE LIBRARIES**

1 1 Defence Central Library (E-G-4) 1
1 1 Defence Central Library (CP2-5-6) 1

1 1 **ADF PERSONNEL OVERSEAS**

6 1 **Australian Exchange Instructor** 1
Canadian Forces Command and Staff College
215 Yonge Blvd TORONTO ONTARIO
CANADA M5M 3H9

1 1 **Australian Exchange Instructor** 1
1 Canadian Forces Marine Warfare Centre
FMO Halifax
NS B3K 2XO
CANADA

1 2 **STAFF OFFICER (COORDINATION)** 1

1 Australian High Commission
2 Australia House
The Strand LONDON WC2B 4LA
UK

1

FOR OFFICIAL USE ONLY

ADFP 37

DL-2

ADS-W	1 UNITED KINGDOM	
AS Naval Attache Washington	1 Classified Books Officer (QCJWC member)	1
RAAFWASH	1 Permanent Joint Headquarters	
Australian Embassy 1601 Massachusetts Avenue NW WASHINGTON DC USA 20036	HMS WARRIOR NORTHWOOD MIDDLESEX HA6 3HP	
 Australian Liaison Officer	 1 DCTS MOD (QJCWC Member)	1
HQ US TRADOC FORT MUNROE VA USA 23651-5000	Ministry of Defence WHITEHALL LONDON SW1A 2HB	
 Military Adviser	 1 COMMANDANT	1
Australian Mission to the United Nations 885 Second Avenue NEW YORK NY 10017 USA	AIR WARFARE CENTRE RAF CRANWELL Nr Sleaford Lincs NG34 811B	
 RAAFPNG	 1 UNITED STATES OF AMERICA	1
Australian High Commission PO BOX 9129 HOHOLA PNG	Director (QJCWC Member) Joint Doctrine and Allied Interoperability Divisio	
 RAAFSUBUT	 1 J7 Division	1
Australian High Commission 6 Jalan Yap Kwan Seng PO Box 10921 KUALA LUMPUR 50730 MALAYSIA	Joint Chiefs of staff PENTAGON WASHINGTON DC USA 20301-5000	
 OTHER GOVERNMENT DEPARTMENTS	 Commandant (QJCWC Member)	1
 Australian National University	Air Ground Operations School Hurlburt Field	
The Research School of Pacific Studies Strategic and Defence Studies Centre CANBERRA ACT 0200	 1 FLORIDA USA 32544-5000	
 Attorney General's Department	 Director PSO ABCA	1
Library PSCC GPO Box 158 CANBERRA ACT 2601	Primary Standardization Office Park Centre II, Suite 275 4401 Ford Avenue	
 OTHER COUNTRIES	 1 ALEXANDRIA VA USA 22302-1401	
 CANADA	 COMMANDER	1
Director-General Force Development National Defence Headquarters (QJCWC) Colonel By Drive OTTAWA K1A OK2	Naval Doctrine Command 8952 First Street Suite 200 NORFOLK VA USA 23511-3790	
 Canadian NDHQ	 1 HQ USCINCPAC (for J5, J54, J55)	3
(Through CDA STANREP ABCA-Army Headquarters, Russell Offices G-1-30A)	Camp H.M. Smith Honolulu HAWAII USA 96861-5025	
 NEW ZEALAND	 1 NAVY	
HQNZDF Ops (Attn: DDJ Plans) 6th Floor Defence House WELLINGTON	 NAVY HEADQUARTERS	4
	ACPERS-N	2
	DCNS	1
	DGNLP	1
	DGNPW	1
	DNLS	6
	DNW	1
 Defence Attaché	 1	
New Zealand High Commission Commonwealth Avenue CANBERRA		

FOR OFFICIAL USE ONLY

ADFP 37

DL-3

NAVAL COMMANDS	SYDNEY	1
COMFLOT (MHQ)	1 TARAKAN	1
COMFLOT (CTG) on embarkation	1 TOBRUK	1
MHQ	5 TORRENS	1
SJOP (MHQ)	1 TOWNSVILLE	1
	WARRNAMBOOL	1
	WATERHEN	3
	1 WATSON	1
SHIPS AND BASES	1 WATSON (RANSWARS)	20
ADELAIDE	1 WESTRALIA	1
BALIKPAPAN	1 WHYALLA	1
BENALLA	1 WOLLONGONG	1
BENDIGO	1 Navy Sup Centre (spare)	32
BETANO		
BRISBANE		
BRUNEI		
BUNBURY		
CAIRNS		
CANBERRA		
CDT1 WATERHEN	ARMY	
CDT2 PENGUIN		
CDT4 STIRLING	ARMY HEADQUARTERS	
CERBERUS	1 Office CGS	1
CESSNOCK	1 DAAPA	1
COLLINS	1 DALS	1
COONAWARRA	1 DARA	1
CRESWELL (Jervis Bay)	1 DCOORD-A	1
CRESWELL Library (RAN-CL-ACT)	1 DEME-A	1
DARWIN	1 DGAOS (for ABCA Library)	2
DUBBO	1 DLP-A (SO2 Log Trg)	1
FLINDERS	3 DMI-A	1
FREMANTLE	1 DMOV&T	1
GAWLER	1 DORD-A	1
GEELONG	1 DSIGS	1
GERALDTON	1 Gen Staff Div	1
GLADSTONE	1 HQ Army Aviation Centre	1
HARMAN	1 Mat Div Coord	1
HAROLD E HOLT	1 Army Svy Regt	1
HOBART		
IPSWICH	ARMY OFFICE UNITS	
KANIMBLA	1 HQSF (G-1-18)	2
KUTTABUL	1 HQ 1 Cdo Regt	1
LABUAN	1 1 Cdo Coy	1
LAUNCESTON	1 2 Cdo Coy	1
MANOORA	1 HQ 1 GL Gp	1
MELBOURNE	1 66 GL Sect	1
MERMAID	1 67 GL Sect	1
MORESBY	1 68 GL Sect	1
NEWCASTLE	1 70 GL Sect	1
ONSLOW	1 MEA	1
ORION	1 SASR	5
OVENS	1 HQ Eastern Region	2
PALUMA		
PENGUIN	LAND COMMAND UNITS	
PENGUIN Library (RANSO)	1 LHQ	12
PERTH	1 HQ 1 Div	5
PLATYPUS	1 1 Div (for RANLO)	2
PLATYPUS Library	10 HQ 1 Div Arty	1
PROTECTOR	1 HQ 2 Div	5
RUSHCUTTER	1 HQ 2 Div Arty	1
SHEPPARTON	2 HQ 1 Bde	3
SHOALWATER	1 HQ 1 BASB	1
STIRLING	1 HQ 3 Bde	3
SUCCESS	1 HQ 3 BASB	2
SWAN	1 HQ 4 BASB	1
	1 HQ 4 Bde	5
	1 HQ 5 Bde	1

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

ADFP 37

DL-4

HQ 6 Bde	3	25 Spt Sqn, 3 CER	1
HQ 6 BASB	1	26 Div ESS	1
HQ 7 Bde	1	35 Fd Sqn	1
HQ 7 BASB	1	38 Fd Sqn, 7 Engr Spt Regt	1
HQ 8 BASB	1	39 E&M Sqn, 7 Engr Spt Regt	1
HQ 8 Bde	1	91 Res Sqn, 7 Engr Spt Regt	1
HQ 9 BASB	1	101 Const Sqn, 21 Const Regt	1
HQ 9 Bde	1	102 Const Sqn, 21 Const Regt	1
HQ 11 Bde	1	105 Const Sqn, 22 Const Regt	1
HQ 11 BASB	1	106 Const Sqn, 22 Const Regt	1
HQ 13 BASB	1	1 Topo Svy Sqn	1
HQ 13 Bde	3	4 Fd Svy Sqn	1
HQLSF	1	1 Sig Regt	1
HQ 1 LSG	1	7 Sig Regt (EW)	1
1 BASB (Fwd)	1	8 Sig Regt	1
Land Command Battle School	1	103 Sig Sqn	1
1 Armd Regt	1	104 Sig Sqn	1
1/15 RNSWL	1	108 Sig Sqn	1
2 Cav Regt	1	109 Sig Sqn	1
2/14 LH (QMI)	1	139 Sig Sqn	1
3/9 LH (SAMR)	1	140 Sig Sqn	1
4/19 PWLH	1	141 Sig Sqn	1
12/16 HRL	1	144 Sig Sqn	1
A Sqn, 10 LH	1	152 Sig Sqn	1
B Sqn, 3/4 Cav Regt	1	615 Sig Tp	1
1 Fd Regt	1	Land Force Sig Unit	1
2/10 Mdm Regt	1	1 RAR	3
4 Fd Regt	5	1/19 RNSWR	2
7 Fd Bty, 3 Fd Regt	1	2 RAR	3
7 Fd Regt	1	2/17 RNSWR	2
8/12 Mdm Regt	1	3 RAR	3
11 Fd Regt	1	4 RAR	3
13 Fd Bty, 5 Fd Regt	1	4/3 RNSWR	2
16 AD Regt	1	5/6 RVR	2
16 Fd Bty, 6/13 Fd Regt	1	5/7 RAR	3
23 Fd Regt	1	6 RAR	3
48 Fd Bty, 6/13 Fd Regt	1	8/7 RVR	2
CDI 1 Div	1	8/9 RAR	3
131 Div Loc Bty	1	9 RQR	2
HQ LSF Engr	1	10/27 RSAR	2
1 CER	1	11/28 RWAR	2
1 Fd Sqn, 1 CER	1	12/40 RTR	2
1 Fd Tp, 1 Fd Sqn, 1 CER	1	16 RWAR	2
2 CER	1	25 RQR	2
3 CER	3	31 RQR	2
3 Fd Sqn	1	41 RNSWR	2
4 FER	1	42 RQR	2
5 Fd Sqn, 4 FER	1	49 RQR	2
7 Engr Spt Regt, LSF Engr	1	51 FNQR	2
7 Fd Sqn, 2 CER	1	NORFORCE	3
10 Fd Sqn, 4 FER	1	Pilbara Regt	2
11 Fd Sqn	1	1 Avn Regt	2
12 CE Wks	1	5 Avn Regt	2
13 Fd Sqn	1	161 Recce Sqn	1
14 Fd Sqn, 4 FER	1	162 Recce Sqn	1
17 Const Sqn, LC Engr	1	171 Comd and Liaison Sqn	1
18 Fd Sqn, 3 CER	1	173 Gen Spt Sqn	1
19 CE Wks, LC Engr	1	1 Div Int Coy	1
20 Spt Sqn, 2 CER	1	2 Div Int Coy	1
21 Const Regt, LC Engr	1	7 Int Coy	1
21 Const Sqn, LC Engr	1	HQ 9 Tpt Regt	1
22 Const Regt, LSF Engr	1	HQ 10 Tml Regt	1
23 Spt Sqn, 1 CER	1	1 Div Postal Unit	1

FOR OFFICIAL USE ONLY

ADFP 37

DL-5

3 Tpt Sqn	1	9 MP Pl	1
7 Tpt Sqn	1	55 MP Pl	1
8 Tpt Sqn	1	1 Psych Unit	1
10 Tpt Sqn	1		
11 MC Gp	1	TRAINING COMMAND	
15 Tpt Sqn	1	HQ Trg Comd	6
16 Tpt Sqn	1	C&SC	60
26 Tpt Sqn	1	LWC	46
30 Tml Sqn	1	PTS	1
35 Water Tpt Sqn	1	RMC	2
44 Tpt Sqn	1	1 RTB (Kapooka)	7
176 Air Dispatch Sqn	1	Army College of TAFE	1
SAD HMAS TOBRUK	1	Army Maritime School	1
1 Fd Amb	1	Army School of Transport	10
1 Fd Hosp	1	RAAOC Centre	2
2 Fd Hosp	1	RAEME Trg Centre	2
3 Fd Amb	1	School of Armour	3
3 Fwd Gen Hosp	1	School of Army Health	2
5 Fd Amb	1	School of Army Aviation	4
6 Fd Amb	1	School of Artillery	34
7 Fd Amb	1	School of Infantry	34
10 Fd Amb	1	School of Military Engineering	5
2 Fd Dent Unit	1	School of Military Intelligence	2
3 Fd Dent Unit	1	School of Military Police	1
4 Fd Dent Unit	1	School of Military Survey	1
5 Fd Dent Unit	1	School of Signals	10
6 Fd Dent Unit	1	1 Trg Gp	1
Fd Dent Unit 11 BASB	1	2 Trg Gp	1
Fd Dent Unit 3 BASB	1	3 Trg Gp	1
Fd Dent Unit 6 BASB	1	4 Trg Gp	1
Fd Dent Unit 1 BASB	1	5 Trg Gp	1
1 Amen Unit	1	6 Trg Gp	1
1 Petrl Coy	1	7 Trg Gp	1
2 Fd Log Bn	2	11 Trg Gp	1
4 Fd Sup Coy	1	Monash University Regt	90
5 Fd Sup Coy	1		
8 Fd Sup Coy	1	LOGISTIC COMMAND	
9 Combat Sup Pl	1	HQ Log Comd	5
9 Fd Sup Coy	1	Bandiana Log Gp	1
11 Fd Sup Coy (Comp)	1	Brisbane Log Gp	1
13 Fd Sup Coy	1	DNSDC	3
39 ADE Maint Pl	1	Adelaide Log Bn	1
1 Avn Regt Wksp	1	Army Spt Unit Darwin	1
1 Sig Regt Wksp	1	Broadmeadows Log Bn	1
1 CER Wksp	1	Oakey Log Bn	1
2 CER Wksp	1	Perth Log Bn	1
3 CER Wksp	1	Puckapunyal Log Bn	1
3 Recov Coy	1	Hobart Log Coy	1
5 Avn Regt Wksp	1	Marrangaroo Sup Coy	1
10 Tml Regt Wksp	1	Myambat Log Coy	1
16 AD Wksp	1	Randwick Log Coy	1
17 Const Sqn Wksp	1	Wallangarra Log Coy	1
21 Const Sqn Wksp	1	Sydney Log Coy	1
103 Fd Wksp	1	ACT Wksp Pl	1
105 Fd Wksp	1	1 MU	1
107 Fd Wksp	1	2 MU	1
111 Fd Wksp	1	3 MU	1
113 Fd Wksp	1	4 MU	1
173 Gen Spt Sqn Wksp	1	5 MU	1
LSF Wksp	1	6 MU	1
1 MP Coy	1	7 MU	1
2 MP Coy	1	8 MU	1
4 MP Coy	1	BASC Albury/Wodonga	1

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

ADFP 37

DL-6

BASC Darling Downs	1	East Sale	
BASC Enoggera	1	305ABW	1
BASC Hunter Valley	1	305TSF	1
BASC Lavarack	1	305HSF	2
BASC Liverpool	1	32SQN	1
BASC Puckapunyal	1	515SQN	1
BASC Randwick	1	CFS	1
BASC Rockhampton	1	SAN	5
BASC Watsonia	1	SATC	1
P&EE Graytown	1		
P&EE Port Wakefield	1	Edinburgh	
1 Military Hospital	1	HQMPG	2
DFCE	1	92WG	1
3 MP Coy	1	304ABW	1
Bandiana Log Gp (spare)	50	304TSF	1
		304HSF	2
AIR FORCE		1JCU	1
AIR FORCE HEADQUARTERS		10SQN	1
DOCAS	2	11SQN	1
AFPOL4	1	24SQN	1
DAFLS	1	292SQN	1
DAFP (A-7-16)	1	504SQN	1
DGPP	1	AAFTS	1
DOMAT-AF	1	ARDU	1
PM-AF	1	EWSQN ARDU	1
RAAFSUCAN Library	4	Fairbairn	
		307ABW	1
BASES		307TSF	1
		307HSF	2
Amberley		28SQN	1
HQSRG	2	34SQN	1
301ABW	1	AHQIAC	1
301TSF	1	APSC	2
301HSF	2	RAAFSC	1
82WG	1		
501WG	1	Glenbrook	
1SQN	1	AHQ	10
2AFDS	1	RAAFTSUG	3
6SQN	1		
23SQN	1	Pearce	
38SQN	1	306ABW (306TSF)	2
114MCRU	1	25SQN	1
AFDW	1		
RAAFSFS	1	Richmond	
		HQALG	2
Butterworth		303ABW	1
92WG Det A	1	303TSF	1
RSU	1	86WG	1
		503WG	1
Darwin		3HOSP	2
321ABW	1	22SQN	1
321TSF	1	33SQN	1
321HSF	2	36SQN	1
2CRU	1	37SQN	1
13SQN	1	AMTDU	1
301SQN	1	ATTU	1
35SQN Det A	1	MATU	1
		ALCC	1

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

ADFP 37

DL-7

Tindal	3CRU	1
322ABW	1 3SQN	2
322TSF	1 26SQN	1
322HSF	2 76SQN	1
75SQN	1 77SQN	1
	TFLMS	1
Townsville		
HQOSG	2 Williams	
HQAfdw	1 SUWIL	1
323TSF	1 SUWIL (Library)	1
323HSF	2 6HOSP	1
84WG	1 21SQN	1
27SQN	1 AVMED	1
35SQN	1 RAAFCOL	10
303SQN	1 ADF School of Languages	1
304SQN	1	
305SQN	1 INDEPENDENT UNITS	
	HQLC	1
	HQTC	1
Wagga	2 1CAMD	1
HSFWAG	1 1OSU	1
SUWAG Library	1 1RSU	1
	RAAFPU (Spare)	1
Williamtown	2	
HQTFG	1 Inquiries:	
302ABW	1 SOPUBS	
302TSF	2 ADFWC	
302HSF	1 RAAF Base	
41WG	1 WILLIAMTOWN NSW 2314	
81WG	1 Ph: (049) 64 6034 DNATS 841 6034	
2OCU	Fax: (049) 64 6002	

FOR OFFICIAL USE ONLY