ARMY EXTENSION COURSE

COMMON SUBJECTS SUBCOURSE

255

LEGAL ASPECTS OF COUNTERINSURGENCY

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Lesson Assignment Sheet

COMMON SUBJECTS SUBCOURSE 255	Legal Aspects of Counterinsurgency
CREDIT HOURS	1.
TEXT ASSIGNMENT	Attached Memorandum.
LESSON OBJECTIVE	To develop a broad understanding of the legal aspects of the military phase of counterinsurgency, particularly the international rules pertaining to civil wars of an insurgency nature.

ATTACHED MEMORANDUM

CHAPTER I: MILITARY OPERATIONS OVERSEAS

Introduction

As the counterinsurgency operations of primary concern to the United States are most likely in areas outside the country, we must first consider the legal implications which arise from military operations overseas. The presence of U. S. forces overseas, like the presence of U. S. forces anywhere, is subject to certain legal rules which Congress and the President have deemed to be appropriate. Since this presence is in the territory of another state, three separate legal systems are involved: (1) international law, (2) the domestic law of the United States and (3) the domestic law of the foreign state. All govern to some extent the activities of United States troops abroad.

I. International Law and the United States.

A. What International Law Is. International law governs the conduct of States. Without some rules there would be international anarchy. Common sense thus requires rules for State conduct and it is these rules which are called international law. They come into existence either by written agreement between States or by customary practice. In either event the State has agreed to them. Therefore, when it is said that the United States is bound by international law it is meant that past Presidents and Congresses have agreed with other States what a proper course of action in certain circumstances would be.

B. International Law in the Constitution. At the very inception of the United States, international law was recognized by the drafters of the Constitution as governing the international conduct of the nation. In addition to making treaties the supreme law of the land, the Constitution authorizes Congress to define and punish offenses against international

law. An example of this power occurred in World War II in regard to the German saboteurs who landed by submarine. They were tried by a military commission which the Supreme Court found Congress had sanctioned in the Articles of War.

C. International Law and the United States Courts. Cases wherein United States courts have applied international law are too numerous to mention or even to list. The attitude of the Supreme Court is illustrated in a case growing out of the Spanish American War which involved the seizure of two small fishing craft by a U. S. gunboat. In determining that the seizure was unlawful under international law, Justice Gray stated:

> "International law is part of our law, and must be ascertained and administered by the courts of justice. . . as often as questions of right depending upon it are duly presented for their determination."

D. International Law and the Executive Departments. The President alone, chiefly through the Department of State, carries on the foreign relations of the United States. Correspondence of the State Department refers repeatedly to international law. The Executive Branch of the government is concerned almost daily with contracts with foreign governments. Therefore the President's concern with the correct international conduct of States is natural. President Truman was reported to have remarked to one of his aides, "The day there ceases to be international law is the day I would not wish to continue as President."

In time of war proper observance of the international laws of war is of deep concern to all participants. Past presidents have always encouraged this observance and the proper development of this body of law. For example, President Lincoln was instrumental in publishing rules for the conduct of the Union Army, the first ever published by a government for its forces. The violations of the international law of war during World War II resulted in the famous war crimes trials in which the United States played a leading role.

It is therefore apparent that international law is not something foreign to the United States. It has played a large role in the nation's activities as a State and will play a key role in any overseas program.

II. Presence of U. S. Forces in a Foreign Country. When United States forces enter a foreign country with which the U. S. is not at war, they do so only upon invitation of the duly established government. This invitation is a prerequisite and gives rise to a number of legal implications. A brief look at the nature of the more than 100 States that make up the world will explain why.

A. Necessity for the Invitation.

1. The Sovereignty of States. Since 1648 the world has been organized on the State system. Writers generally pick that date because the Treaty of Westphalia which then ended 30 Years War marked the beginning of the State system of Europe. It is this system that has spread over the globe. A State in the State system has two outstanding characteristics. States are first "independent without;" and second, "supreme within." A sovereign State is "independent without" if no foreign State can dictate to it its actions. Therefore, in fighting insurgency within its borders, as in any social and economic matter, a State is free to accept or reject the advice or assistance of other States. If it accepts such assistance in the form of military advisors, foreign Armed Forces, or equipment, its "supremacy within" gives it complete authority over them just as it has complete authority over everything else that is within its boundaries.

2. The Applicability of Local Law in the Absence of an Agreement. This concept of sovereignty gives rise to many problems if there is an invitation to enter and no other agreement. The authority of the inviting State is still supreme within its borders for its laws apply to all who enter.

The aftermath of World War II, coupled with the threat posed from Communist expansion, found American troops scattered over the globe. They had either entered or remained in various countries with the consent of the duly established governments. These many governments then individually began to negotiate agreements with the United States concerning the applicability of local law to U. S. forces. The question immediately arose as to the legal status of the forces already there without such agreements and the effect of accomplishment of an agreement on the United States and its forces already in the country.

Whatever immunity from local law or whatever governmental function the United States forces exercise in the territory of the foreign State is derived solely from the consent of the foreign State. A mere invitation for foreign troops to enter and to be stationed in a country is not necessarily an implied waiver by the inviting State of any jurisdiction over those troops. The State is still supreme within its territory. There are then two distinct concepts. First, the invitation, and second, the agreement establishing the applicability to those forces of the local law.

Overseas operation covers situations from dire emergency to peaceful civic type actions designed to raise the standard of living in an area. Therefore, the agreements governing the status of American forces may vary greatly from one situation to another. A brief examination of some of the agreements of the past will illustrate this point.

Three main problems will arise that need to be covered in all agreements. (1) Can the American soldier be tried in the local criminal court on a criminal charge? (2) Can the American soldier be sued in the local civil courts for damages caused by his failure to pay his debts, or caused by his negligence? (3) How will claims be paid for damages caused by the American forces?

B. Agreements Concerning the Status of U. S. Forces.

1. Emergency Situations. Korea and Lebanon are examples of quick U. S. intervention in an emergency situation in which an agreement in addition to the invitation was necessary. It would be expected that the agreements in these cases would grant certain immunities from the local law, because the more the immunity from local jurisdiction the better able the invited force is to cope with the emergency.

If the invitation is an urgent one and the troops enter before there is time to negotiate an agreement the nature of the situation may preclude the exercise of jurisdiction by the inviting State during the initial period. However, such preoccupation by both the inviting and invited States with the emergency of the moment, does not alter the jurisdictional competence of the inviting State unless the inviting State has either expressly or impliedly waived such jurisdiction.

2. Stationing of a Large Body of Troops for an Indefinite Period. The NATO Status of Forces Agreement offers the best example of a formula that has been devised to balance the interests of both States concerned where a large body of troops is involved over an indefinite period.

Article VII of the NATO Status of Forces Agreement outlines the criminal jurisdiction of both States. Under this agreement the U. S. as a "sending" state has no authority over local nationals. The inviting, or as it is called the "receiving," State retains jurisdiction over every violation of its own laws committed by U. S. troops. However, it permits the United States the first opportunity to exercise jurisdiction over its own forces where only United States interests are involved. For example, suppose a soldier at night drives his private car in an extremely reckless manner and kills a local citizen. The soldier's action not only violates the local law but also affects the local interest. If this same soldier had assaulted another soldier, he would also violate the local law but the local interest is not primarily affected. In such a case the U. S. is authorized under the treaty to try the soldier.

The U. S. serviceman is not abandoned by the service to which he belongs when he has gotten into difficulty with the local law enforcement agencies. If a bond is required for his release from confinement pending trial, it is posted by the United States in certain circumstances. A local attorney is also obtained to represent him in criminal trials,

and an American Armed Forces lawyer attends his trial and reports on the procedural safeguards afforded the accused. If he is sentenced to serve a period of time in the local jail, periodic visits are made in order to see that he has such items of personal care as are considered necessary by U. S. standards. Where necessary and permissible, the U. S. pays for such extra items.

The United States Armed Services and Congress have attempted to balance the legitimate interests of the foreign government in enforcing its laws with the trial safeguards and incarceration conditions which are considered from U. S. tradition and environment to be essential. To date this arrangement has worked very well in practice.

The NATO agreement was made during peace; however, it does not cease to exist because war is commenced. It governs the relations between friends and is not necessarily terminated because both happen to be at war with a third party. It must be modified by mutual consent to take account of the changed circumstances and the greater freedom of action required by the visiting armed force. This same principle applies to a counterinsurgency operation, begun in the climate of peace and emphasizing civic type action, which finds itself as time goes by involved in large scale guerrilla operations. The original agreement remains in force unless modified by the consent of both States.

3. Military Assistance Advisory Groups. The United States, under the Mutual Defense Assistance Act of 1949, has made agreements with many foreign States to supply them with modern arms. A portion of each agreement usually provides for the sending of a group of American military advisors to instruct the local forces in the use and maintenance of this equipment. More than 45 agreements have been concluded which provide for the presence of MAAG personnel. With only three exceptions (Iran, Saudi Arabia and Turkey), they provide that MAAG personnel will operate as a part of the United States Diplomatic Mission. All of these agreements, except the three mentioned, specify either directly or indirectly the diplomatic privileges and immunities which are to be accorded MAAG personnel. The agreements, however, are not all substantially identical and the privileges and immunities enjoyed by MAAG personnel vary considerably from country to country.

Why, it may be asked, do these groups have any special status, separate from that of other military personnel? Is not any visiting military force subject to the jurisdiction of the local law except where such jurisdiction is waived by an agreement? The answer is that this special status for the individuals of the various MAAG's is attributable to the fact that most operate as an integral part of the Embassy of the United States. Therefore, various degrees of diplomatic immunity attach

to the military members of these groups. They all do not enjoy complete immunity merely because they are in the Embassy. Embassy staffs have become so large that the traditional complete immunity granted to the Ambassador himself under international law does not extend to everyone working for him. Therefore, a graduated system ranging from complete immunity to no immunity has evolved.

4. Military Missions. The purpose of a military mission is to cooperate with the local government in the training of its armed forces. The mission members are more closely identified with the local force than are MAAG personnel. In addition, their objectives are much broader, extending even to assistance in the organization and administration of the foreign armed force. The members are usually obliged to use the local language. They generally have all the benefits and privileges which the laws and regulations of the local State confer upon its own officers and noncommissioned officers of corresponding rank.

III. Other Agreements Effecting U. S. Forces. The document containing the terms under which the forces enter may often not be the only agreement between the foreign State and the United States. There may also be agreements on such matters as economic assistance or on the procurement locally of certain types of supplies to build the economy of the country. The more extensive the civic type action planned the more it will be controlled through the mutual agreement of both countries concerned.

A. Common Civic Action Type Agreements.

1. Agricultural commodities agreements have become fairly common in recent years. The agricultural commodity, however, may change with each country. For example, in Iceland the list includes corn, barley, rice and tobacco in addition to wheat. In Indonesia it includes cotton. In all agreements, care is taken not to upset the world trade in any commodity to the injury of private farmers or other friendly countries.

2. The agreement between the United States and Brazil to develop the Brazilian northeast is an excellent example of the attempt, by positive action, to correct conditions that breed insurgency movements.

3. A typical Peace Corps agreement is the one with Liberia. It should be noted at this point that an army overseas operation cannot be compared to the activities of the Peace Corps. However, one aspect of the Peace Corps Program can be copied, that is, selection of personnel. Not everyone in the United States is fitted for the Peace Corps. Also, not everyone in the United States Army is fitted for peace time duty in a foreign country. Some may do more harm than good unless they are properly trained and oriented.

4. The treaty of economic and technical assistance with Ecuador illustrates the activity of the United States under President Kennedy's Alliance for Progress program.

All these treaties indicate that it will be rare where any overseas civic action program conducted by the U. S. armed forces will operate devoid of cooperation with other U. S. agencies. These many simultaneous efforts to assist a foreign State require central authority in order to insure cooperation and unity of purpose.

B. The Country Team. This cooperation is accomplished by the "Country Team" concept. The head of this country team is the United States Ambassador. He will have on his team MAAG personnel and representatives of civilian agencies of the United States, such as USAID and USIS. There could be an embarrassing lack of coordination of the various U. S. agencies in their direct relation with the local government without the country team concept. The part the military, particularly the MAAG, play on this team is important. They, more than any other U. S. agency, work closely with the local military authorities. They, therefore, are in an excellent position to estimate the local military capability and requirements. However, such an estimate is not a simple matter, since the mission of an armed force, particularly in a counterinsurgency operation, is a complex thing, involving social, psychological and economic efforts, as well as military. The Army representative is a key member of the country team.

CHAPTER II: THE LAW AND COUNTERINSURGENCY

Now that we have seen how military operations overseas are effected by law, we may now consider the legal aspects in a particular type of overseas activity--counterinsurgency operations. By its very definition, counterinsurgency embraces a broad spectrum of social, political, military and economic activities; however, a counterinsurgency operation inevitably concerns itself with the local community. It is here that the insurgency operations gain their strength. It is here that the legal aspects of counterinsurgency come into focus. It is here that victory or defeat of the counterinsurgency operation will be decided.

Two aspects of the military phase of counterinsurgency will be examined. First, the international rules surrounding civil wars, particularly those of an insurgency nature; second, the legal status of participants in insurgency type warfare.

A. International Law--Its Effect on Civil Wars and Insurgency. Soviet bloc has determined for the present not to engage the West directly in armed conflict but it has intensified its so-called "war of liberation."[1]

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1. This name is derived from former Premier Khrushchev's address of 6 Jan 1961, part of which is as follows:

"Liberation wars will continue to exist as long as imperialism exists, as long as colonialism exists. These are revolutionary wars. Such wars are not only admissible but inevitable, (cont'd on next page)

These "wars" are called "civil wars" because they are directed against duly established governments and are confined entirely within the borders of the particular State concerned. The communists have recently been emphasizing civil wars as a means to gain new power. We must, therefore, better understand civil wars. Civil wars have traditionally been classified as either a belligerency or insurgency. The law pertaining to the civil war and the assistance permitted outside States in the past has varied with each. This evolved when civil wars were in the main, a local matter, and the rules may not be adequate when these conflicts have become the vehicle for international conquest.

1. Belligerency.

a. Nature of Belligerency: When a revolt takes place within a State the revolutionaries have for their goal either the reformation of the existing government by force or the creation of a new State out of a portion of the old. When this revolutionary movement is recognized and has achieved the following characteristics, it has been considered under the rules of international law to have acquired the status of a belligerency:

(1) A state of general hostilities.

(2) Occupation of a substantial part of the national territory by the revolutionaries.

(3) Possession of a government administering such territory.

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1. (Cont'd) since the colonialists do not grant independence voluntarily. . . . What is the attitude of the Marxists toward such uprisings? A most positive one. These uprisings must not be indentified with wars among states, with local wars, since in these uprisings the people are fighting for implementation of their right of self-determination, for independent social and national development. These are uprisings against rotten reactionary regimes, against the colonizers. The Communists fully support such just wars and march in the front rank with the peoples waging liberation struggles." (N.K. Khrushchev, Address to Higher Party School, Academy of Social Sciences, Institute of Marxian-Leninism of the Central Committees, Communist Party of the Soviet Union, 6 Jan 1961). These "wars" have not confined themselves to colonial areas, but as President Kennedy told the United Nations General Assembly on 25 Sep 1961, are now aimed at the independent nations of Southeast Asia. 45 Dept State Bull. 619 at 623 (16 Oct 1961).

(4) Observance of the rules of warfare on the part of the revolutionary forces acting under a responsible authority.[2]

(5) The practical necessity for other States to define their attitude toward the revolutionary movement.

These requirements are fairly stringent. A revolution, from its very nature, is never a well-ordered thing, particularly in its early stages. Accordingly, it has been far more practical for international law to leave most civil strife where it was, inside the State affected. The exception was the civil strife which met the criteria of a belligerency.

b. The Legal Effect of the Status of Belligerency. The legal effect of the status of belligerency is that the hostilities become international in character upon recognition and are thus governed by all the customary laws of war that pertain to hostilities between States. These laws are considerable and bring into play the numerous rules for handling of prisoners of war, the control of the civilian populations, the care of the sick and wounded, the treatment of captured guerrillas, the exercise of belligerent rights at sea, and the obligations of neutrality. United States history offers a classic example of a status of belligerency in the Confederacy during the American Civil War. It had a government which ruled over substantial territory and fought the North with a regularly established army.

Because of the far-reaching legal consequences of a belligerency, the distinction between insurgency and belligerency should be one easily discernible from the facts. However, such is not the case. There has been a tendency on the part of States, particularly in this century, to withhold recognition of belligerency, even if the facts seem to support such a finding. Today, recognition by governments of this fact has become a prerequisite. However, as one government is not bound by the recognition practice of another, it is possible that a revolutionary group may be a belligerency in the eyes of some States and not in the view of others. For example, during the First World War,

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2. The armed force which the revolutionaries possess must, therefore, meet the standard of a traditional army. This standard requires that the members bear their arms openly, be commanded by a person responsible for his subordinates, have a fixed distinctive sign recognizable at a distance and obey the laws of war. See FM 27-10, The Law of Land Warfare (1956), para. 64 for an explanation of these characteristics. The existence of such an army is not enough. This army must also act under the direction of the "government" of the rebels. 1 Hyde, International Law Chiefly as Interpreted and as Applied by the United States, 201 (2d ed. 1946), quoting Beale, The Recognition of Cuban Belligerency, 9 Harv. L. Rev. 407 (1896).

the allies recognized as a belligerent the army composed of Czechs and Poles which was fighting against the Central Power. The Czech and Polish Republics had not yet been founded. Austria, Hungary, and Germany did not extend such recognition.

The chief difficulty faced today is the failure of any state to extend such recognition. Recognition of any sort is usually withheld until the insurgent is successful in overthrowing the established government. The non-recognition practice, though it leaves much to be desired as far as the protection of combatants is concerned, does nevertheless have the effect of confining the conflict.

2. Insurgency.

a. The Nature of the "Status" of Insurgency. Insurgency movements lack some of the factual requirements of a belligerency. Among the more important missing facts in an insurgency are usually its failure to control territory and the lack of a distinguishing mark for its army. Hostilities are usually waged by clandestine forces which melt away at the approach of the government troops, only to strike by surprise at some other point. Their purpose is not to hold fixed territory or to engage the government troops in direct combat, but to wage a guerrilla type war where they can lose themselves in the civilian population by posing as peaceful citizens.

Insurgents, therefore, are organized bodies of men who, for public political purposes, are in a state of armed hostilities against the established government.

The purpose of the rebels must be political rather than criminal. If the established government is unable to control or to suppress the rebellion quickly, there is a need for some international rules not only for the conflict between the two groups within the State but also for the relations of the legitimate government and the insurgents with other States. These rules are, however, in the main lacking. Nevertheless, at some point it is necessary for foreign States to acknowledge that there exists in another State something more than a riot. The point where this situation seems to come into being is when the insurgent government develops into an actual threat to the continuing rule of the present government, or when the success of the insurgents is such that they are able to interfere with the normal foreign intercourse between the legitimate government and other States of the world. This condition is clearly apparent in Vietnam today and recently in Greece, Malaya, Algeria, Cuba and Laos. It, more than any other warfare, characterizes the twentieth century since World War II.

b. The Legal Effect of the "Status" of Insurgency. The condition of insurgency has historically few international consequences, because, at least up until 1949, there was little that could be ascribed to a "status of insurgency" in international law in contrast to the well recognized consequences of a belligerency.

However, since 1949, by virtue of the Geneva Conventions of that year, there has come into international parlance the phrase "armed conflict not of an international character."

(1) The Treatment of Captives. The 1949 Geneva Conventions have scored a breakthrough in the law in regard to the treatment of captives in armed conflict not of an international character. The United States Senate, on 6 July 1955, by a vote of 77-0, gave its consent to ratification of these treaties by the President. All four conventions have an identical Article 3. This article, because of its importance, is reproduced in full.

> "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
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> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction found on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons.
>
> (a) violence to life and person in particular murder of all kinds, mutilation, cruel treatment and torture:
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> (b) taking of hostages;
>
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
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> (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
>
> (2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

When it is considered that the Geneva PW Convention contains 143 articles and the Geneva Civilian Convention 159 articles all of which with the exception of Article 3, pertain to conflicts of an international character, this one article, Article 3, has turned out to be the most important to date of them all, because it is the only one pertaining to almost all the conflicts in recent years. How then has it fared? Not well. One writer has commented sadly that it has been violated by both sides more than observed. This is unfortunate. Leniency on the part of the established government toward captured guerrillas is dictated not only by the obvious intent of this article, but also by the basic psychological problem posed by a civil war, the problem of converting the dissatisfied insurgent into a friend or ally.

A closer examination of Article 3 may throw some light on the reasons for the violations of this article. The first paragraph states that "each Party to the conflict" is bound to apply its provisions. One party is the established government, the other is the insurgent. The former is fighting an elusive foe, one with whom it cannot come to grips, like a man fighting a swarm of bees. The latter party, the insurgent, often reflects poor education, organization and discipline, and is driven by a hatred of almost everything connected with the established government. Terror is often his objective.

The answer by the government may be terror in return. In fighting this insurgent it cannot see, the established government may also think it can get information it vitally needs by torturing the few insurgents it captures. Both sides may at times tend to shoot those they capture because of the breakdown of the ordinary functions of whatever courts existed in the areas where military clashes occur. The insurgent may also not wish to be burdened with captives, particularly wounded ones. They may also hold persons favorable to the government as hostages, hoping in this way to influence the actions of the government. Put all these factors together, plus the fact that many operations are carried out by small groups in remote areas where the normal restraints of law and civilization are little felt, it is no wonder violations have occurred. Yet, a reading of Article 3 certainly shows that the safeguards it offers are the absolute minimum for civilized conduct.

Subparagraph (1)(d) of the article does not prohibit punishment of the captured insurgent. It is only punishment without a proper trial that is prohibited.

The last paragraph of Article 3 provides that its application "shall not affect the legal status of the Parties to the conflict." This is particularly applicable to the status of the rebels. The established government will usually look upon them as "bandits," "terrorists," "murderers," and "traitors." These they well may be. But the application of the humane provisions of Article 3 to them will not bind the government to give them any status they do not already possess. Least of all its application does not give them the status of belligerents entitled to all the rights of combatants in international wars.

The Algerian civil war of 1954-62 is one of the few conflicts where the applicability of Article 3 was extensively argued by the rebels. In 1960 a White Paper published in New York by the Algerians, they stated that one obstacle which paralyzed the employment of the Geneva Conventions in the conflict by the French was their fear of giving the F.L.N. an international status. Another purported reason was the absence of reciprocity in respect to the humanitarian rules on the part of the F.L.N., a reason which the F.L.N. disputed. The rebels also argued that the French exercised belligerent rights at sea against neutral shipping and even in the air against Tunesian aircraft, thereby, as in our Civil War, recognizing the belligerent status of the rebels.

The experience in Algeria, and elsewhere in this century, indicates that States are moving away from according an international legal status to rebels. It is therefore imperative that that portion of Article 3 which encourages Parties to apply the other provisions of the Convention be implemented. By the very wording of Article 3, as indicated above, such implementation would not affect the legal status of the parties. It would only impose duties of a humanitarian character upon the Parties. The need for such agreements would be particularly compelling where a de facto belligerency existed.

(2) The Conduct of Military Operations. There are extremely few rules of international law that are specifically applicable to the actual conduct of military operations in hostilities not of an international character. There is nothing comparable to Article 3. One of the few conventional rules is Article 19 of the Hague Convention of May 1954 on the Protection of Cultural Property in the Event of Armed Conflict. It provides that those articles of the convention which relate to the respect for cultural property apply to armed conflicts not of an international character. This convention, therefore, follows the precedent set in the 1949 Geneva Conventions. The United States is not a party to this convention.

The international law of war was primarily designed to govern a contest between two armed forces which carry on the hostilities in more or less open fashion. As an example, the rules of football were designed to govern a contest between two uniformed teams, clearly distinguishable from the spectators. How would those rules work if one team were uniformed and on the field and the other hid itself among the spectators, spectators who wandered freely over the playing field?

This analogy will assist in an understanding of the difficulty faced in applying the rules of war to insurgency warfare, particularly in undeveloped areas. The main distinction from conventional wars is; that it is often impossible to distinguish the fighter from the peaceful citizen. The results of this distinction are many. First, the tactics of combat change. Ruses, surprises, and massacres of units of the regular uniformed force can be expected. It is as if the whole population were the "enemy." Second, the regular forces habitually think in terms of "targets" and "objectives." The laws of war are designed to guide the soldier in his selection of legitimate targets. Operating against the insurgent he sees no "target." Also, a hill is not an "objective" when no one is defending it. Lastly, the regular forces also habitually think in terms of the distinction between the soldier and civilian, a distinction resulting in different legal rights and duties.

A communist insurgency movement attempts to erase this distinction. Here the point is not of the lack of a visible distinction, but the lack of a real distinction. Not only does the insurgent fighter hide among the civilian population, he attempts to identify himself with it, and to strike the regular army of the established government with the whole civilian population. It is not solely a matter of fighting through the civilian populations, or swimming in them as Mao's famous quote would indicate.[3] It is making them one with the fighter. The Communist strategy did not make the time honored distinction between combatant and non-combatant. Insurgency type field exercises by the Communists occur almost as often as regular military maneuvers. In these, the local populations take an active part in assisting the regular army. This eradication of the distinction between civilian and soldier is evident again in the conflict now going on in Vietnam.

A second major distinction of insurgency from conventional warfare is the apparent ruthlessness of the insurgent. Certain cautions are to be noted because of this second distinction. First, the regular force should not be shocked by what the insurgent does. For instance in Greece the Communist insurgents kidnapped thousands of children and sent them to neighboring communist countries for schooling. The insurgent is fighting another kind of war. Second, such shock and anger on the part of the regular forces may tempt them to take "reprisals." The concept of "reprisal" has no part in such wars. It could only lower the standards of a civilized army. For example, in the United States counterinsurgency operations in the Philippines in 1901, an American brigadier general was court-martialed and retired from the service for telling his troops, "I want no prisoners. The more you kill and burn, the better you will please me." President Theodore Roosevelt, in approving the findings of this court-martial, made the following comments:

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3. "The people may be likened to water, the troops to the fish who inhabit it." Mao Tse-tung, Guerrilla War 93 (Griffith translation, 1961).

"I am well aware of the danger and great difficulty of the tasks our Army has had in the Philippine Islands, and of the wellnigh intolerable provocation it has received from the cruelty, treachery, and total disregard of the rules and customs of civilized warfare on the part of its foes.... But the very fact that warfare is of such character as to afford infinite provocation for the commission of acts of cruelty by junior officers and the enlisted men, must make the officers in high and responsible positions peculiarly careful in their bearing and conduct so as to keep a moral check over any acts of an improper character by their subordinates."

This incident illustrates the use of U. S. military law as a controlling factor in U. S. forces in counterinsurgency operations, which law can effectively reinforce the sparse international law in this area.

Although common Article 39 of the 1949 Geneva Conventions provides the basic international standards on the subject, this does not mean that there are no other standards. The United States Army is a civilized Army, which implies that it has moral standards. Its members are also subject to the Uniform Code of Military Justice, which imposes a domestic legal standard. The more it does from a moral sense, the more likely will customary law follow in the wake of this practice. So what the United States Army does today will determine to a great extent the law 30 or 40 years from now.

B. Legal Status of Participants in Insurgency and Counterinsurgency Operations. The participants in internal civil wars of the insurgency type are varied. They may consist of the insurgent fighter himself, the passive bystander sympathetic to him, government police units, government armed forces, paramilitary civilian units organized to assist the government, foreign volunteers, and members of foreign armies sent to aid both the insurgents and the harassed government. These participants may not have one legal status, but varying statuses depending on what relationship is being defined.

1. The Insurgent Not in Uniform. He is usually looked upon by the government as an ordinary criminal because the local law of a state is applicable to most acts which take place within the state. If a policeman, political official or a soldier is attacked by an armed individual, that individual is subject to prosecution. The motive for his act is not usually relevant. For example, the assassination attempt in 1951 by a small group of Puerto Ricans against President Truman was inspired by political motives, not from the desire to rob or for the personal gain of the plotters. Those implicated were tried and sentenced by a regular court dispensing criminal laws then in effect in Washington, D. C. Multiply this incident a thousand times and the situation approaches a condition of insurgency. The local law against assault, murder, sedition, theft, etc., is still applicable. The only difference now, from the standpoint of legal principle, is that they do have the basic humanitarian protection of Article 3 of the 1949 Geneva Conventions, whereas an ordinary criminal does not.

From the factual standpoint the chase and capture of the insurgent resembles more closely operations in time of war against an enemy than it does the usual capture of a criminal. Article 3 of the 1949 Geneva Conventions gives the insurgent all the protection usually afforded criminals in the hands of police, plus some of the protection afforded prisoners of war. For instance, when police capture a suspected criminal, it is well understood that they must turn him over for trial. The power of punishment is not in their hands. Similarly, in war time a commander may not put his prisoners of war to death, even where their presence retards his movements. It is likewise unlawful for him to kill his prisoners on the grounds of self-preservation even in the case of airborne or commando operations. In counterinsurgency operations the same rule applies. Article 3 forbids the execution of captured insurgents at any time and in any place whatsoever without previous judgment pronounced by a regularly constituted court.

The very fact that a government may try a guerrilla, even under Article 3, gives it a powerful propaganda weapon when it offers to forego such trials if the insurgent will surrender.

2. The Insurgent in Uniform. The implications of the wearing of the uniform are many. From a legal viewpoint the uniform is important if the rebels have been recognized as belligerents. Such recognition, as was previously mentioned, causes international rules to be applicable to the conflict. International law, as a result, superimposes itself on the local law to make permissible, as lawful belligerent rights, some conduct which otherwise would be criminal.

From a policy standpoint the rebel in uniform is less likely to be a terrorist and more of a fighter, thereby encouraging a policy of leniency toward him on the part of the government. For example, the U. S. forces operating against insurgents in the Philippines in 1901 were reported to have generally accorded PW status to those captives who met the uniform requirements of the 1899 Hague Convention. Still, it cannot be said that, in the absence of a status of belligerency, the rebels could demand as a matter of right to be treated as prisoners of war merely because they wore a uniform. This is evidenced from Algeria where revolutionaries captured in uniform were sentenced to penitentiaries along with other law violators.

3. Private Foreigners Assisting the Insurgents. Foreigners, acting in their private capacities, are often attracted to the insurgent's cause for a number of reasons. They need be treated no differently from the national insurgent when captured. Unless their country is at war with the local government they cannot claim any special status when they exercise belligerent rights on that government's soil in a civil war of the insurgency type. A celebrated example of harsh treatment meted out to foreigners assisting insurgents was that of the Virginius. The Virginius was a ship which left New York in 1873 carrying a group of volunteers to fight with the insurgents in Cuba. On October 31, 1873,

it was captured on the high seas by the Spanish cruiser Tornado and taken to Santiago de Cuba. There fifty-three of the persons on board, American, British and Cuban, were charged with piracy, tried by court-martial and shot.

4. Members of a Foreign Military Force Helping the Insurgents. Members of a foreign military force may sometimes be sent by their government to assist the insurgents as advisors and instructors, or even as direct combatants. The question of their status in relation to the local government raises certain fundamental issues which are not easily resolved.

There are two possible approaches to a solution to this situation. Time alone will tell which is correct. One approach would conclude that they could be treated exactly the same as local national insurgents. Neither the duly established government nor the foreign State to whom the troops belong consider themselves at war with one another. Therefore, the established government is not bound to give PW status to the military of such a foreign State who are advising and assisting the insurgents.

The other approach would reach an opposite conclusion, reasoning that the 1949 Prisoners of War Convention is designed to protect soldiers in armed conflicts of an international character. Such a conflict exists whenever any difference arising between two States leads to the intervention of members of the armed forces. Whether both States wish to regard it as war is one thing; whether the protection of the Prisoners of War Convention applies is quite another because the Prisoners of War Convention was designed to protect individuals, not to serve the political interests of States. Therefore, whether such a foreign soldier should be in the territory of the established government is a question between the established government and the foreign State who sent him, not between the established government and the individual foreign soldier.

The relationship in the situation of government to government is not as open to doubt as the relationship of the dispatched soldier to the foreign government which captures him. Aid to insurgent forces has been considered intervention and as such violates the political independence of the State against which it is practiced. It does much more if such intervention is part of a global plan of subversion. It creates a grave threat to the peace by provoking counter-measures against the intervening State by the established government and by allies of the established government. This President Kennedy made clear when he cautioned Premier Krushchev at Vienna in 1961 that there cannot be too many "wars of liberation" without a direct confrontation of United States and Soviet power.

The United Nations is aware of the grave international consequence of foreign involvement with insurgency movements. On November 17, 1950, the General Assembly passed the following resolution:

"Whatever the weapons used, any aggression whether committed openly or by fomenting strife in the interest of a foreign power, is the gravest of all crimes against peace and security throughout the world."

It is this foreign aid to insurgency movements that has changed the character of domestic conflicts and transformed them into international civil wars, a description which, by the very paradox of its wording, accurately describes the forces that are at work in modern insurgency movements.

This pattern of subversion through civil wars, which is the latest effort at expansion by international communism, has naturally triggered a reaction on the part of the United States. The response to the international civil war is counterinsurgency, and brings with it in many cases the involvement of American forces on the side of the established government.

5. Members of a Foreign Military Force Helping the Established Government. This relationship is usually established by treaty which is necessary because in its absence the local law applies to these foreign forces. The mere invitation of the established government to enter its territory does not relieve such forces of the application of the local law. For example, the United States troops which moved into Thailand hurriedly in the spring of 1962 have as yet (September 1964) no such agreement exempting them from the local criminal law. In contrast to Thailand all the American forces in Vietnam are covered by a MAAG Agreement.

It is always emphasized that the foreign troops are there to advise and assist the local government, rather than to command or to operate independently. It is the established government's responsibility and right to manage its own affairs, and as a sovereign state, it is supreme within its own borders. Foreign military advisors may not like or agree with its strategy. Still they can only advise and persuade. If they were to have an authoritative role in the internal conflict, the agreement under which they entered would have to be substantially revised.

Though the relationship of the foreign forces with the established government may be clearly defined by treaty, the action of the foreign government in sending such forces, even on invitation, is sometimes questioned on the ground that assistance to an established government in a civil war is as much intervention as is assistance to the revolutionaries. As late as 1960 one writer stated:"Since international law recognizes the right of revolution, it cannot permit other states to intervene to prevent it." Such objections cannot be lightly dismissed since every school boy knows that our nation owes its existence to a revolution and that our political philosophy is based on the belief that governments derive their power to govern from the consent of the governed.

However, the objection, though relevant to civil wars in the traditional sense, loses its validity when applied to civil wars inspired or directed by outside agencies. The latter is an international civil war posing, in its subversion of governments, a far greater threat to the freedom of the people of those countries and to the security of the United States.

6. Persons Captured by Insurgents. It is inevitable that some persons engaged in counterinsurgency activities will be captured by the insurgents. The application of Article 3 of the 1949 Conventions to captured insurgents has been discussed. Persons captured by the insurgents are also protected by Article 3, because insurgents also are a "Party to the conflict."

The one difference in the application of Article 3 by insurgents and governments is that there may be no lawful way an insurgent group can try those it captures as the government can. This group has no authority under international law or under the local national law to convene courts. Of course, this cannot stop them from trying people, particularly their own in order to maintain internal discipline. This is particularly true when the insurgency has reached the stage of de facto belligerency. If the insurgent is successful and takes over the government, he possesses all the judicial authority of any government. He could, therefore, try the ex-government officials for the conduct of their counterinsurgency operation. This is just what Castro did after victory in Cuba. He called the trials "war crimes trials." These trials turned out to be political purge trials rather than trials for the violation of activities prohibited by Article 3.

Article 3 may be scant comfort to an individual captured by insurgents. Many times the insurgents will not even have heard of it. The treatment of captives appears to be influenced more by policy than by purely legal considerations. For example, the insurgents, at times, in Algeria afforded protections far beyond Article 3 in order to substantiate their claim to a status of belligerency. There is also indication that the French captured at Dien Bien Phu were afforded prisoner of war status by the rebels who looked upon themselves as the legitimate government and the forces they opposed as the usurper.

Here, it must be pointed out that foreign military personnel who assist the established government in its counterinsurgency operations have a legal status no different from anyone else captured by the insurgent. This is true whether they wear the uniform of the foreign government they are helping, their own uniform, or civilian clothes. In the absence of some other agreement, the protection afforded by Article 3 does not depend on the uniform or lack of uniform worn by the captive.

7. The American Soldier and His Own Government. The legal relationship between the American soldier and his own government is governed by Federal law rather than by treaty. For example, the criminal

provisions of the Uniform Code of Military Justice are applicable to the United States serviceman whether he is within or without the United States. Any court-martial can try a serviceman for any offense prohibited by the code.

The Uniform Code covers not only the non-combat phase of a soldier's life but also periods of combat and while a prisoner of war. Suppose, for example, an American soldier shamefully runs away when the unit he is with engages the insurgents. Could he be guilty of "misbehavior before the enemy under Article 99, UCMJ?" Because of the lack of judicial interpretation, there is no clear answer to this question. The difficulty in counterinsurgency is that there is no "enemy" of the United States in the usual sense before which a person may misbehave. The Manual for Courts-Martial is of some assistance. It construes the term "enemy" in Article 99 not only to include organized forces of the enemy in time of war but also any hostile body United States troops may be opposing, such as a rebellious mob or a band of renegades. However, no judicial decisions have been found to extend the term "enemy" to foreign insurgents.

Turning to the period of captivity by insurgents other problems are encountered. Article 105, UCMJ, prohibits misconduct as a prisoner of war. It is doubtful if Article 105 applies because American soldiers captured by insurgents are not in the strict sense prisoners of war. Also, the counterinsurgency operation is not "in time of war," a time requirement not contained in Article 99.

However, if Article 105 is not applicable, there is no reason why the Code of Conduct should not apply. It lays down standards of conduct, which, though not setting a penal standard, nevertheless, establish a high professional standard.

8. Private Individuals Who Launch Insurgency Movements From Abroad. In this period of international civil wars the insurgents may be successful in their seizure of control of a State. Persons antagonistic to them may flee the country and attempt to oust them by launching expeditions from abroad. Under the law of the country they are operating against they are criminals. The fact that they come from outside the borders makes little difference as far as the applicability of the local law is concerned. The Bay of Pigs invaders were tried under local Cuban criminal laws.

If the expedition is formed on United States soil it may also violate a United States law designed to protect foreign governments from hostile expeditions formed on United States territory. This statute[4] does not forbid Americans from going overseas as individuals

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4. 18 U.S.C. 960

to join insurgency movements as such individual action is not in the nature of an expedition carried on from United States territory. An actual example of a violation occurred in 1916 when a group formed in the United States for the purpose of crossing into Canada to blow up the Welland Canal. These armed bands coming from neighboring States are a problem of major importance in counterinsurgency. Domestic laws such as that enacted by the United States are necessary to control them.

C. Insurgency and Counterinsurgency in International Conflicts. It is important not only to know the legal status of participants on both sides in the type of conflict now going on in Vietnam, but also in any future war. It is necessary to examine the legal status of the men who will take part in such unconventional warfare[5] operations in wars of an international character. It is likely that insurgency and counterinsurgency operations on both sides will become intensified because the enemy can also be expected to step up his subversion of governments and any occupation regimes established in any future wars. The United States can, therefore, expect to be on both the receiving and giving ends of a counterinsurgency operation.

World War II witnessed the operation of large scale resistance movements in countries occupied by Germany, and to a lesser extent those by Japan. These resistance forces were of two kinds. first, indigenous populations who rose up against the military occupier, encouraged, and in some cases assisted by small units of regular troops; second, members of regular army units who were left behind or who penetrated into enemy held areas.

1. Insurgents in an International War. Suppose secret resistance groups are organized both in friendly territory occupied by the enemy and in the national territory of the enemy. What is the status of each group?

a. Insurgents in Occupied Territory. Consider first those formed in occupied territory. Since they do not wear a uniform or carry their arms openly they are subject to punishment under the properly promulgated occupation laws. Occupation laws will be explained briefly at this point. Each commander publishes laws when he enters enemy territory in order to protect his own troops. For example, our own Military Government Ordinance #1 for occupied Germany began as follows:

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5. Subparagraph 2c of Appendix XXII, Annex AA to USCONARC Training Directive, Counterinsurgency/Counterguerrilla Warfare Training, 30 March 1962 defines unconventional warfare as follows: "the interrelated fields of guerrilla warfare evasion and escape, and resistance. Such operations are conducted in enemy-held or controlled territory and are planned and executed to take advantage of or stimulate resistance movements or insurgency against hostile governments or forces."

"The following offenses are punishable by death or such other penalty as a Military Government Court may impose:

(1) Espionage

. . . .

(4) Armed attack on or armed resistance to the allied forces."

General Rauter, the German Commissioner for Security in Holland in World War II thought resistance groups were contrary to international law, and, therefore, he took reprisal measures against the civilian population. The Germans took generally the same view of the hostile acts by the civilians in the U.S.S.R. and in the Balkans. The war crimes court, in the trial of General Rauter for the manner in which he conducted his counterinsurgency in Holland, was emphatic in its declaration that resistance movements do not violate the laws of war. Therefore, "reprisal" is out of the question.

The war crimes trials of World War II and the 1949 Geneva Civilian Convention have made not the legality or illegality of resistance movements the chief concern of an occupation commander, but limited the means he uses to suppress such movements. The 1949 Geneva Civilian Convention has restricted the methods the commander may employ to suppress them. First, collective punishments against civilians are prohibited. Second, reprisals against the civilian population are forbidden. Third, no hostages may be taken. Fourth, coercion in order to obtain information is not allowed. Fifth, no punishment is permitted except for violation of a properly promulgated law, and after a regular trial. Lastly, no death penalty may be imposed except for persons 18 and over for espionage, the killing of a person, or serious acts of sabotage. Even then the execution cannot, except in exceptional circumstances, take place until six months after the trial judgment confirming such penalty.

Two things stand out in the above listing. First, only those who are actually guilty can be punished. Second, no summary executions are permitted. The guilty can be punished but only after a judicial process. The problem faced by the commander is how to find the guilty who hide themselves in the sympathetic sea of the local civilian population.

The resistance forces themselves are only subject to trial for violation of local occupation ordinances or laws if they cannot qualify as prisoners of war. These resistance groups may adopt some sort of recognizable sign, carry their arms openly, and be commanded by a person responsible for his subordinates. In such event they could have the right to be treated as prisoners of war when captured. This

right would shield them from trial by a military commission or a local court for violation of an occupational law. The "fixed distinctive sign" selected may be a badge, various headwear, jackets, arm bands or even leg wear. Whatever it is it should be uniform for them all. The criterion that they carry arms openly is also sometimes difficult to ascertain in certain factual situations. To overcome some of these difficulties the 1949 Geneva Prisoner of War Convention requires that "a competent Tribunal" decide doubtful cases. FM 27-10, The Law of Land Warfare elaborates on this requirement by providing that the component tribunal shall be composed of not less than three officers. It shall be convened when a captured guerrilla, saboteur or partisan asserts he is entitled to prisoner of war status or when for some other reason a doubt exists as to his real status. This competent tribunal does not inflict punishment if it determines that the individual does not merit PW status. Such punishment is the prerogative of properly established occupation courts and military commissions. The competent tribunal is in essence a screening board. However, its determination may be a matter of life or death to an individual brought before it.

There is a factual situation that may occur in hostilities of an international character that could present problems of qualification of persons as prisoners of war. It is the situation where a guerrilla dons the fixed distinctive sign, joins a guerrilla outfit, and bears his arms openly, but only during the attack on the enemy forces or enemy installations. As soon as the attack is over he reverts to his old occupation of shoemaker, or waiter, and is so peacefully employed until the time comes to strike again. Each time he is careful to meet all the requirements of a PW if captured, but only when committing hostile acts. He is apprehended while dressed as a civilian plying his peaceful occupation. Does he, or does he not, have the right to PW status? It would appear that he does not have the right. Certainly he had hidden his arms at the approach of the enemy, an act which FM 27-10 regards as contravening the requirement that the arms be carried openly. He has also turned the category of combatant or noncombatant into one of time rather than into one of status. His distinctive sign is not fixed. Certainly there is no rule that "once a soldier always a soldier." But he should be in some manner properly discharged from the status of a combatant. He cannot take it off and put it on like a coat.

b. Insurgents in the National Territory of the Enemy. A revolt against a duly established government in time of war for the purpose of aiding the enemy could arise if subversive elements, such as the local communist party, waged insurgency warfare against the duly established government in order to weaken it in its fight against an outside foe. It could also occur in Communist satellite nations by local groups sympathetic to the West. There would be here the situation of a war not of an international character taking place against a government which is already involved in a war of an international character. Unless the local insurgents have gained the status of belligerency they cannot escape being

treated as traitors when captured if the government so wished to regard them. This is true even if they have donned the uniform of the enemy and have become affiliated with its troops and are assisted by enemy paratroopers dropped behind the lines. The protection afforded prisoners of war was not meant to become a shield for citizens against the operation of the laws of their own country.

2. Members of a Regular Armed Force Assisting Insurgents in an International War. Suppose small teams of a foreign army whose government is at war with an enemy state are dropped behind the lines to assist resistance groups in occupied territory and in the national territory of the enemy. What is their status when captured?

Since violent resistance by civilians cannot be considered in all circumstances illegal under international law there also would be no breach of international law for a member of the military to cooperate with such resistance forces. If captured with them and in uniform he would be entitled to PW status without being lawfully subject to trial as a war criminal, provided, of course, he had not violated other laws of war and provided his government is at war with the government which captures him. If the military take off their uniform and then commit hostile acts, an entirely different result follows. They would have only the protection available to civilians under the 1949 Civilian Convention caught in like situations.

Conclusion. The foregoing is but a brief resume of the legal aspects of counterinsurgency and is not designed to answer all questions which might arise. However, if you as commanders or staff officers remain aware of matters discussed and seek competent legal advice from your staff judge advocate, many matters can be solved before they become problems and many problems solved before they become international incidents.

EXERCISES

The following material consists of 15 true-false and 5 multiple choice questions. Unless a true-false question is wholly true, it is to be considered false. In the multiple choice questions, one or more statements in each question may be correct. Indicate your choice by placing an "X" in the appropriate space provided on the answer sheet.

1. Adherence to Article 3 of the Geneva PW Convention will assure the Insurgents of international recognition as a "belligerent."

2. Which among the following are necessary for a "Belligerency?"

a. General hostilities.

b. Diplomatic representation with other states.

c. Observance of the rules of warfare.

d. Occupation of and orderly administration of a substantial part of the national territory.

e. Recognition as a belligerency.

3. A foreign insurgent may, according to the MCM 1951, be an "enemy" within the meaning of the word as it is used in Art. 99, UCMJ.

4. Insurgent movements are characterized by:

a. A total lack of organization of the participants.

b. The performance of acts punished as criminal under the local law.

c. General strikes and picketing.

d. Opposition to established government.

e. No international obligations.

5. "Wars of liberation" are civil wars which have not confined themselves to colonial areas, but are also directed at independent nations outside the communist bloc.

6. Military assistance by a foreign state to local insurgent groups fighting against their government would be a breach of international law on the part of the foreign state.

7. Although it is doubtful if Art. 105, UCMJ, applies to American servicemen captured by foreign insurgents, there is no reason why the Code of Conduct, though it grew out of an international conflict, should not be applicable.

8. The CG of a counterinsurgency force proposes to order the following measures. Which are unlawful?

a. Incarceration of captives for treason, based on a Presidential Proclamation that all insurgents are guilty of treason under existing statutes.

b. Announcement that selected officials of every village will be arrested and held responsible for insurgent ambushes of government forces that take place near their villages.

c. Placement of the wounded and sick at announced turn-over points for recovery by their own forces.

9. In international conflicts, civilian resistance groups in occupied areas can be punished by the occupation commander because attacks upon occupation troops by the civilian population are contrary to the law of war.

10. Since civilian resistance groups in occupied territory are not contrary to the law of war, members of the regular armed forces in uniform may assist the resistance groups in their operations without subjecting themselves to trial by the occupant if captured.

11. In an international war a captured guerrilla is entitled to PW status even if on many occasions he takes off his distinctive sign and works in a factory.

12. The presence of United States forces overseas is governed to some extent by which of the following laws:

a. The local law.

b. International law.

c. United States domestic law.

13. The "Country Team" is usually a committee composed of the heads of various departments of the host government, whose task it is to coordinate the U. S. assistance to its State.

14. The agreement covering the status of our forces in Lebanon is the best example of an international agreement which governed the status of a large number of troops in a foreign state for a long period.

15. A Military Mission Agreement usually contemplates closer ties by the American military with the local armed forces than does a MAAG type agreement.

16. The United States was the first state to publish rules for the conduct of its forces while engaged in war.

17. International law is a body of formal laws published by the United Nations applicable to all signatory countries.

18. Article 3 of the 1949 Geneva Conventions is applicable to wars of insurgency as well as to laws which are international in character.

19. The so-called "war crimes trials" conducted by Castro after his victory in Cuba were for violations of Article 3 of the Geneva Conventions.

20. Under the 1949 Geneva Civilian Convention, an occupation commander may:

a. Not take reprisals against civilians.

b. Take no hostages.

c. Not use coercion to obtain information.

d. Not impose a death penalty.

e. Not execute a civilian condemned to death until six months after the final judgment.

CRITIQUE SHEET FOR EXTENSION COURSES

_____ 19__

Name_____ Rank_____ ASN_____

TO BE FILLED OUT ON COMPLETION OF SUBCOURSE

CRITIQUE FOR COMMON SUBJECTS SUBCOURSE 255 - Legal Aspects of Counter-insurgency.

(Strike out inapplicable phrases below - Use typewriter or print)

1. My reactions are as follows:

a. Effectiveness of presentation is in my own opinion_____

_____

_____

b. The course objectives are (attained) (deficient in that)_____

_____

_____

2. Apparent errors, as follows, have been found in (Lesson Assignment Sheets) (Texts)_____

_____

_____

3. I criticize constructively on the following faults (make your comments brief, concise and logical):_____

_____

_____

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USE REVERSE SIDE OR ADDITIONAL SHEETS IF ABOVE SPACES ARE INSUFFICIENT.

JAGS FORM 6-CSS 255
15 February 1965