COMMON SUBJECTS LESSON PLAN
AND
INSTRUCTOR'S GUIDE

LEGAL ASPECTS OF INTERNAL DEFENSE/INTERNAL DEVELOPMENT OPERATIONS

PREPARED IN ACCORDANCE WITH ANNEX AL TO TRAINING DIRECTIVE
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SUBJECT: COMMON SUBJECTS, ARMY SERVICE SCHOOLS
USAR SCHOOLS COURSE (1 HOUR)

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Lesson Plan

SUBJECT: Legal Aspects of Internal Defense/Internal Development Operations

COURSE: USAR School Branch Officer Advanced Course

LESSON TITLE: Legal Aspects of Internal Defense/Internal Development Operations

LESSON OBJECTIVE: To develop a broad understanding of the legal aspects of the military phase of Internal Defense/Internal Development Operations, particularly the international rules pertaining to civil wars of an insurgency nature.

PRESENTATION: Lecture-Conference

HOUR: One

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I. INTRODUCTION

A. Purpose.

This instruction is designed to acquaint you with the legal aspects of Internal Defense/Internal Development Operations, considering the relevance of the law, the specific provisions of Article 3 of the Geneva Conventions of 1949, and the status of various participants in insurgencies.

B. Scope.

We will discuss the legal rules surrounding civil wars, especially those of an insurgency nature, and the distinctions between a belligerency and an insurgency. Insurgencies have a way of involving the international community. Today, for instance, many insurgencies are the tools of the communists with their sponsorship of "wars of liberation." International law provides some specific rules and some general guidance for dealing with insurgencies. To begin with, we will take a brief look at what international law is and the nature of our country's commitment to its observance. Then we will consider the specific provisions of international law as they deal with an insurgency.

II. INTERNATIONAL LAW

International law is a body of rules and principles which govern the conduct of states. These rules are made part of the supreme law of the U.S. by our Constitution. They are enforced not only by our Congress but by our Courts and Presidents as well.

QUESTION: States are likely to obey international law in peacetime, but is it realistic to expect states to obey international law in wartime?

ANSWER: Yes.

a. The reasons for the observance of international law between allies are stronger in wartime. It is as between enemies the question of "unreality" arises.

b. States have agreed to do or not to do certain things in war beforehand. No one forced them to make treaties for the conduct of hostilities. What belligerent considers it sound policy to admit to illegality?

c. These treaties take into account the needs of military necessity, and were coordinated with the military leaders of the state before ratification.

d. In war, because it is a contest between men rather than animals, there is room for reason and a sense of the right and wrong which give rise to the need for laws. It is, in essence, an aspect of morale and discipline within the ranks.

e. The rules are not all complicated, the majority of them are easily understood by, and readily available to, all participants.
International law allows aid to nations in many ways. In the appendices to your Student's Guide, you see a sample Military Mission, and a Military Assistance Agreement. You also have sample Peace Corps, Economical and Technical Assistance or Social Development Agreements. These operations can aid a country in its Internal Defense/Internal Development Operations, by achieving improved living conditions for all people.

A. Insurgents.

Insurgents are a body of men who are organized for political purposes and who are in armed hostility against the loyalist government. Insurgents must be nationals or citizens or for some other reason owe allegiance, for the political objective is the overthrow of the government. They cannot merely be pirates or bandits bent on enriching themselves and committing acts of wanton depredation.

B. Belligerency.

International law acknowledges a concept of "belligerency" to exist when a successful insurgency has escalated into what Americans have come to think of as a civil war.

QUESTION: What are the conditions which must be present before an internal conflict can be described as a belligerency and the rebel insurgents gain a status as "belligerents?"

ANSWER: A revolutionary movement must achieve the following characteristics:

1. There are general hostilities, that is, the revolt is more than just a local skirmish.

2. The revolutionaries act like an army. They observe the rules of warfare and they take orders from a responsible authority.

3. The rebels have a government that can govern effectively.

4. The rebels are in control of a substantial (meaningful) part of the territory of the state and can maintain their authority.

5. Third states face the practical problem of "defining their attitude toward the conflict." This arises when the rebels cause substantial interference with the normal international relations of the loyalist government. Third states feel the necessity of involving neutrality laws or becoming co-belligerents with one side or the other in the conflict. Political considerations often dictate that outside states do neither of these things. As a result, rebels are rarely accorded recognition as belligerents during the course of the conflict. However, after the conflict, legal determinations which depend for their validity upon there having been a belligerency rely on these five criteria.
QUESTION: What are the legal consequences of an internal conflict attaining the status of belligerency?

ANSWER: The legal effect of the status of belligerency is that, for the purpose of the hostilities, the rebels are treated as though they represented a state. The result is that the full range of the customary international law of war is applicable. This requires both sides to observe the rules for conducting hostilities, the treatment of captives, helpless civilians, sick and wounded, and property.

C. International Relations.

In the event of insurgency within a country it is debatable how much and what kind of assistance an outside government may give the loyalist government against a purely grass-roots insurgency. On the other hand, international law insists that it is illegal for an outside government to give aid to the rebels and if such aid is given, the loyalist government may seek aid from its allies to put down the insurgency.

III. INTERNATIONAL LAWS WHICH REGULATE CONDUCT OF HOSTILITIES IN INTERNAL DEFENSE/INTERNAL DEVELOPMENT OPERATIONS.

There is nothing in international law, other than Article 3 of the Geneva Conventions of 1949 which regulates, in self-executing fashion, the conduct of hostilities by or against insurgents. Insurgency, historically, was not the type of warfare that states had in mind as they developed customary international law to regulate the conduct of hostilities. This stands to reason because insurgencies were much less of international concern until the post World War I era. This does not mean, however, that international war law does not provide useful guidelines. In fact, our Field Manual 100-20, Field Service Regulations, Counterinsurgency (1964), specifically provides in paragraph 60: "... Military operations to counter insurgency are conducted in accordance with the international law of war ..." and gives reference to "... applicable provisions of the Geneva Conventions of 1949, Annex to Hague Convention No. IV of 1907 and FM 27-10," (our Law of Land Warfare). We have recognized the value of international law as guidance for our conduct in combating an insurgency, and have expressed our intention to follow this guidance. However, some specific rules are difficult to apply because of the differences in the type of warfare involved.

The international law of war was conceived to govern a contest between two armed groups which fight in more or less open fashion, just as the rules of football were designed to govern a contest between two uniformed teams, clearly distinguishable from the spectators. The analogy of the football game points up one of the main distinctions between an insurgency-type civil war and conventional warfare. You cannot tell the fighters from the peaceful citizens.
ARTICLE 3 PROVISIONS.

Let's turn now to Article 3. Article 3 of the Geneva Conventions of 1949 is one of the few rules of international law which is expressly concerned with insurgency. This Article is common to all four of the Geneva Conventions of 1949, and the drafters thought that this Article was of extreme importance.

A. Content.

Article 3 is reproduced in your study guide. Please turn to it.

QUESTION: What are the principal protections furnished insurgents under this article?

ANSWER:

1. Quarter - The insurgent who offers to surrender, or who is rendered helpless must not be killed out of hand. You see international law is now requiring what we required in the Philippine Insurrection at the turn of the century. We court-martialed a general who told his men to refuse quarter to the insurgents.

2. No torture.

3. No hostages.


5. No execution without fair trial.

6. Right of intercession by International Red Cross or other humanitarian organizations.

B. Implementations.

How have these provisions fared? Not well. Let's consider the operative features of the article. First, when and where does it apply?

- To a certain type of civil war, that is armed conflicts of the insurgency type, occurring in the territory of one of the High Contracting Parties. Secondly, who is bound? Each party to the conflict (that is, the rebels as well as the loyalist government). Third, who is protected? Noncombatants and members of armed forces who have laid down their arms. Fourth, what acts are prohibited? Torture, humiliation, hostage taking and summary executions. Fifth, how may the international community oversee the application of these provisions?

- An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the conflict.
One party is the government; the other party the insurgents. The latter are often poorly disciplined. Terror is many times their objective and their principal weapon. The government may be tempted to answer terror with terror. Also, in fighting this insurgent it cannot see, the loyalist government may think it can get vital information by torturing the few insurgents it captures. The insurgent on the other hand may not wish to be hindered by captives, particularly wounded ones. Put all these factors together, plus the fact that many operations are carried on by small groups on both sides in relatively remote areas, it is little wonder violations have occurred. In addition, although they have become a party to the Conventions, the loyalist government is perhaps sometimes reluctant to allow the International Committee of the Red Cross the opportunity to see what is going on. On the other hand, with the provisions of Article 3 clear, the Red Cross is in a position to publicly question this reluctance and present the issue to the test of world opinion. Article 3 is the minimum for civilized conduct.

QUESTION: Have insurgents ever made public reference to the Geneva Conventions, particularly Article 3?

ANSWER: Yes. The Algerian Civil War of 1954-62 is one of the few conflicts where the applicability of Article 3 was argued by the rebels. They held themselves out as belligerents, deposited at Geneva their adherence to all four Geneva Conventions of 1949, and demanded the protection of all 143 Articles of the HW Convention when captured. But they also pointed out that, in their opinion, not even the protection of Article 3 was being extended them by the French. The French reportedly were not inclined to apply the Geneva Conventions for fear of giving the rebels an international status. The French also said the terror tactics of the rebels disqualified them for protection under Article 3. Reciprocity is not a condition for application of Article 3 protection, however. Also, Article 3 specifically provides that even an agreement to apply all or part of the rest of the Convention will have no effect on the legal status of the parties. But this provision does not always relieve the fears of the loyalist government that any negotiations with the rebels may encourage recognition of the rebels by other governments.

When Castro was in rebellion against the Batista government, he sought the assistance of the International Committee of the Red Cross and cooperated with that organization in the repatriation of wounded and sick loyalist prisoners.

These moves by the rebels have political impetus. The more rational and humane the rebels appear to world opinion, the more sympathy they gain for their cause. If the rebels understand this, the loyalist government should also.
IV. STATUS OF PARTICIPANTS IN INSURGENCY-TYPE CIVIL WARS

A. Relationships.

In insurgency-type civil wars, the stage is filled with an odd assortment of actors. They consist of by-standers, who are not such at all, police units, private armies, and armed villagers, foreign volunteers on both sides, and in some cases, regular military components from other countries. These individuals have not one legal status, but many, depending on which relationship is being discussed. For example, the legal relationship between the U. S. soldier and the foreign government he is advising differs from the relationship between the U. S. soldier and his own government, and between the U. S. soldier and the insurgent.

B. Situations.

Turn in your study guide to the list of seven fact situations (pp. 21-23). These will be the basis for our discussion. These situations deal with the type of warfare going on in South Viet Nam in the late 1950's and early 1960's; the type that may be going on in Guatemala, Laos and Thailand today.

1. THE INSURGENT NOT IN UNIFORM.

Suppose an insurgent in a civil war is captured by the government forces. He is dressed as a pedicab operator and when seized had just placed explosives in a government army barracks. He did it because he thought the government was oppressive. He, therefore, joined the insurgents for "patriotic" reasons. Of course, both sides claim to be "patriots", but the insurgent is a "rebel" against the established government which is supported by "loyalists".

QUESTION: What is the legal status of the rebel from the viewpoint of the loyalists?

ANSWER:

a. He is usually treated like an ordinary criminal by the government he is opposing. No law of any state permits attacks upon its soldiers, policemen, or civic officials merely because the attacker thinks he is doing "the people" a favor. He is, in short, charged as a traitor, a murderer, an arsonist, etc.

b. Our own Secretary of State supported this view in 1959 in regard to insurgents in Mexico.

"While the United States has recognized the existence of a condition of hostilities in certain areas in Mexico, the belligerency of the rebels has not been recognized . . . nor has this Government recognized in this conflict even a semi-belligerency . . . . They are from the standpoint of legal principle, both international and national, in no better position than ordinary outlaws and bandits."
c. There are, however, some differences between insurgents and renegades; a difference in law, in the facts, and in policy considerations. First, an insurgent now has the basic humanitarian protection of Article 3 whereas the ordinary criminal does not have Article 3 protection. Secondly, this is logical because, in fact, the insurgents do have a political purpose. If successful, they will replace the government. The international community is interested because the rebels seek identity and a role in the international community. As insurgents, they are already playing a role in the sense that they may be disrupting normal international relations of the loyalists. The captured insurgent is given by Article 3 some, but not all, of the protection afforded a PW. The chief difference between an insurgent and a PW is that the insurgent may be prosecuted and punished for taking up arms against the loyalists. Third, if the renegade seeks asylum in another country, he is usually extradited. If an insurgent seeks asylum, however, he may have extradition thwarted by the fact that he is a political offender. This brings us to the fourth difference, one of policy. Should all the insurgents be tried?

Let us look at Algeria and Malaya. An article in the Military Review in December 1962 entitled "Psywar: The Lessons from Algeria" stated:

"Rebels must be given a chance to surrender. In principle, those who surrender should be given a chance to prove their sincerity--preferably by participating immediately in operations against their former comrades."

The only exception should be for those who have killed helpless individuals in their power. In Malaya a propaganda campaign that offered guerrillas who surrendered rehabilitation and protection was so successful that by 1957 only 2,000 remained hidden in the jungles. 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.

South Viet Nam has instituted a "Chieu Hoi" program to encourage defection from the Viet Cong and return to pursuits in support of the government. "Chieu Hoi" means roughly, "Rally". It is also popularly taken to mean, "open arms". This program has converted many people from enemies to supporters of the government, people who might otherwise have been simply prosecuted for their insurgency action. No one would likely be motivated to voluntarily surrender to face a firing squad. But this program offers the insurgent hope of a better life if he lays down his arms and "returns to the fold".
2. WEARING OF UNIFORM.

Suppose the insurgent in situation No. 1 had been wearing a fixed distinctive sign recognizable at a distance, bore his arms openly, and was part of an organized unit.

QUESTION: Would he have the right to be treated more leniently by the government?

ANSWER:

a. It would have a legal significance in two circumstances. If the revolutionaries have gained the status of belligerents, then his legitimate acts of war are not crimes under the local law. For example, it would not be said that the Pennsylvania law of murder was applicable to the Confederate forces at Gettysburg.

b. The uniform would have legal significance in an insur­gency if by agreement portions of the PW convention other than Article 3 were put into effect, particularly Article 4 which contains the uniform requirements for PW status.

c. From a policy, rather than a legal standpoint, an insurgent in uniform may be more of a fighter and less of a terrorist, thereby encouraging a policy of leniency toward him on the part of the government.

d. Still he cannot demand PW status just because he puts on a uniform. Here, the situation is still one of insurgency and not belligerency. In the absence of a special agreement, the protection of Article 3 alone applies.

3. FOREIGN ACTIVITY IN INSURGENCY.

It is possible that foreigners may be attracted to the insurgent's cause for a number of reasons. First, we will consider foreigners acting in their private capacity, without authorization from their government.

QUESTION: Are they treated any differently from the national insurgent when captured?

ANSWER:

a. A qualified "No". Such foreigners share the lot of the insurgents they help. Such foreigners cannot, unless their country is at war with the established government, commit acts of war in the territory of that government.
b. This does not mean that the foreigners are totally beyond the help of their own country. Even before Article 3, international standards demanded that these foreigners be accorded due process of law. A celebrated case of harsh and summary treatment given to foreigners by a government occurred in the insurgency style civil war in Cuba in 1873. At that time a ship, the VIRGINIUS, carried American and British volunteers to the aid of the insurgents in Cuba. The ship was intercepted on the high seas by the Spanish and brought into Cuba under guard. Fifty-three persons on board were summarily tried by a nominal court-martial and executed. Great Britain demanded, and obtained, reparation for this treatment of her subjects on the basis that it was the duty of the Spanish authorities to prosecute the offenders "in proper form of law and to have instituted regular proceedings on a definite charge before the execution of the prisoners". The United States similarly protested and obtained a sum of money from Spain to be distributed to the families of the men "murdered".

c. Moreover, there is nothing to prevent a state of which such foreign volunteers are nationals from stepping in and requesting special protection for them. Policy considerations will dictate whether such requests will be made and/or honored. For example, in the civil war in Mexico in 1929 the United States requested the Mexican government to treat U. S. citizens serving with the insurgents as prisoners of war and not hold them liable under Mexican law, even though the insurgents had not attained the status of belligerents. The U. S. has not always requested such sweeping protection. In the Greek civil war in 1935 it only asked that the Greek government give captured Americans a fair trial.

4. ASSISTANCE OF FOREIGN MILITARY.

Suppose members of a foreign military force are sent by their government to assist the insurgents as advisors and instructors.

QUESTION: Must they be treated any differently from a private foreigner who volunteers to do the same thing?

ANSWER:

a. There are two possible answers to this question. Future state practice alone will tell which is correct.

b. One answer would assume that the same reasoning applies as in the situation just discussed. That is, they are liable to be prosecuted for aiding and abetting a rebellion, murder, arson or other crimes related to the insurgency operations. Unless their government is at war with the loyalist government, the foreign soldiers have no right to assist insurgents hostile to that government. The fact that they also wear the foreign uniform gives them no special status in such a civil war.
c. The other answer would conclude that the sending of any soldiers to act as advisors and instructors for insurgents into the territory of another state creates an armed conflict to which the full 1949 FW Convention was intended to apply. The Geneva Conventions of 1949 were deliberately designed to apply to any armed conflict between the Parties to the Conventions. Too many times in the past humanitarian conventions depended upon the legal technicality of "war" for application. The expression "armed conflict" was deliberately used in the Geneva Conventions of 1949 as a substitute for "war". As a FW, the foreign soldier would then be immune from prosecution for violating local laws. Since personnel who are entitled to FW status are the "privileged combatants" in armed conflict, the killing they do in combat is not "murder", and other destruction they cause is generally not criminal if incident to combat. The obvious grievance of the loyalist government is a matter to be taken up by it with the foreign state, not with the individual foreign soldier.

We had an example of this second answer in 1916 on our Mexican border. There some Mexican soldiers crossed the U. S. border, engaged in a fire fight with U. S. troops, and killed several American soldiers. They were captured in Texas and tried by a state court for murder. The Texas supreme court reversed a conviction in the lower court because, in its opinion, something like a state of war was existing between the U. S. A. and Mexico.

Today in Viet Nam the captured North Vietnamese regulars are regarded as having FW status under the Geneva Conventions of 1949. That conflict now is obviously an armed conflict between parties of the Geneva Conventions. We contend, and so does the International Committee of the Red Cross, that all four Geneva Conventions of 1949 apply. The Viet Cong are considered not to be supported by North Viet Nam but rather to be the agents of North Viet Nam. Thus, the Viet Cong are also accorded FW status as part of the North Viet Nam Army (MACV Dirs. 20-5 and 381-46).

d. When foreign governments assist the loyalist government in internal defense operations, the question may be raised: Is this not a conflict of international character? If the insurgent is not directly supported in an uncontroversible manner by a foreign government, and if the civil war has not been recognized as a belligerency, the conflict is not, as a matter of law, international in character no matter how many foreign states are helping the loyalist government. The direct participants in the conflict are representatives of states on one side against insurgents, who represent neither a state nor a quasi-state, on the other side. Therefore, there is no "inter"-national conflict.
5. **LOYALIST GOVERNMENT AND ITS FOREIGN SUPPORTERS.**

The United States does, on occasion, send its troops to advise an established government in putting down an insurgency movement.

**QUESTION:** What is the status of these forces in relation to the established government?

**ANSWER:**

a. Look at the treaty if there is one. There is usually an agreement telling how the local criminal law applies to offenses committed by individuals in this force, how the local law applies in civil law suits, and who pays for the damage they may cause. If there is not such a treaty, then the local law applies to these troops as it does to everyone else in the country.

b. Turn in your study guide to the appendix. Note the treaties on the presence of U. S. forces in Korea, Lebanon, and Viet Nam. All provide a basis for complete immunity from the local criminal law. In Viet Nam this is done by giving such troops the same protection as persons in the diplomatic mission. Thailand is not listed here because there is, at this writing, no treaty with Thailand which applies to the U. S. troops that entered the country in May 1962. A newspaper item in December 1966 said the Thais want one. A treaty would clarify the status of the Americans there. The Korean treaty has been replaced by a Status of Forces Agreement patterned after the NATO SOFA, which is effective as of 7 February 1967.

c. U. S. forces advise and assist the local troops. They do not command them. This may seem frustrating to our forces. But the internal defense operations are naturally and logically the loyalist government's responsibility. To carry out that responsibility, it must make the final decisions. If our forces were to take command, the agreement under which they entered would have to be substantially revised.

6. **INSURGENTS VS. FOREIGN SUPPORTERS OF LOYALISTS.**

It is inevitable that some persons engaged in internal defense operations will be captured by insurgents.

**QUESTION:** What is their status when captured?

**ANSWER:**

a. From the very nature of an insurgency movement it would be unrealistic to say that the lot of those captured is an easy one. Article 3, by its terms, requires the insurgent to refrain from torture or other types of inhumane treatment. This article binds the insurgents just as much as it binds the government. But whether or not the insurgent complies with this minimum standard depends upon the outlook of the insurgent and his assessment of what action will be useful to his cause.
b. This raises another question. The government looks upon the insurgent as a criminal and may try him. May the insurgents try the members of the internal defense forces it captures? Is not "turn about" fair play? Such a question assumes an equality between the parties. The insurgents have no standing under local law to convene courts. They also have no standing under international law to do so. The fair trial provisions of Article 3 contemplate only that trials may be conducted by the government, not by the insurgents.

c. This does not prevent the insurgent from in fact having trials. Castro tried his own men when they stepped out of line. When he was successful, he tried the ex-governmental officials for the way they conducted their internal defense operations. This he could justifiably do, if the facts so warranted, after he became the government, but not before. You see here a motive for the insurgent to defer trials until he wins. The trial is then legal and "correct."

d. Policy, rather than law, often has a great deal to do with the way the insurgent treats prisoners. The Algerian rebels maintained that they treated prisoners according to the law of war in order to help substantiate their claim to the status of belligerency. Guevara, in his book on the Castro revolution, said that captured government forces were treated well in order to win them over to the side of the insurgents.

e. Here, it must be pointed out that foreign military personnel who assist the loyalist government have no legal status different from anyone else captured by the insurgent. This is true whether they are wearing their uniform or not. Article 3 is not concerned with uniforms. However, if, as Article 3 urges, all the rest of the 142 Articles of the PW Convention are introduced into the conflict, then the wearing of the uniform becomes important because it may be the ticket to PW status when captured.

7. THE AMERICAN SOLDIER AND THE UNITED STATES GOVERNMENT.

QUESTION: What is the legal relationship between the American soldier and the United States Government?

ANSWER:

To begin with, the Uniform Code of Military Justice naturally applies to him wherever he is, whether in orbit or in the jungles of Southeast Asia. The Uniform Code covers three periods in the life of a soldier: first, noncombat; second, combat; and third, during captivity by the enemy.
a. Noncombat Activity.

Suppose an American soldier-advisor assaults a local citizen in the country where he is assigned as an advisor. This is a criminal act which violates the UCMJ. Assuming that our Status of Forces Agreement provided that we would take jurisdiction in this case, the UCMJ and the Manual for Courts-Martial set out the procedures for hearings and trials and the authorized punishments for this offense. The fact that the criminal act also violated the local law, and the fact that a local citizen was the victim, would make the question of which government was to exercise jurisdiction the subject of negotiation. The agreement under which the soldier-advisor entered the country is the result of the basic negotiation on this question.

b. Misconduct During Combat and as a Prisoner.

Turn to the extracts of the Uniform Code which appear in the appendix to your student study guide.

(1) Suppose an American soldier runs away or deliberately allows himself to be captured when the unit he is with engages the insurgent.

QUESTION: Could he be guilty of "misbehavior before the enemy" under Article 99?

ANSWER:

He might be. Some of you might think "Where is my enemy? The U. S. is not at war with anyone. The insurgent is the enemy of the loyalist government, not of the United States." The answer lies in the meaning of "enemy." Paragraph 178 of the Manual for Courts-Martial says that an enemy can be a mob or a band of renegades.

We had a court-martial charge of misbehavior before the enemy arising out of an incident in our stability operations in the Dominican Republic in June 1965. The accused, Private E-2 Charlie Monday, was assigned to a platoon which occupied a defensive position facing, and in close proximity to, the Rebel Force in downtown Santo Domingo. The unit's mission was to prevent Rebel infiltration, sabotage and harassment. The orders were to return fire and "stand to," and fire from Rebel Force positions was frequent. At about 0400 one morning the accused informed a Sergeant in his squad that he was upset and could not "take it any more." He then walked in front of the fortified position, deliberately cast aside his web gear and ammunition, and intentionally proceeded in a rapid manner directly towards the Rebel position. He disregarded calls from his squad to return, and continued forward where he allowed himself to be captured. He was sentenced by general court-martial to dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for life, and reduction to private (E-1). The convening authority cut the confinement to
three and one-half years. The Board of Review considered the question of whether Article 99 was applicable to this situation. After reviewing the history of the definition of "enemy" in the context of Article 99, the Board found that Article 99 was indeed applicable in this case and the "enemy" may be any hostile body our forces may be opposing, whether domestic or foreign.

a. Article 105 speaks of misconduct as a PW in time of war. It is doubtful if Article 105 applies to internal defense operations in the cold war because captives of insurgents are not, in the strict sense, PWs, and the captivity is not in time of war. The "in time of war" restriction of Article 105 is not apparent in Article 99.

The Viet Nam conflict has taken on an obvious international character and is analogous in many ways to the Korean Conflict. Incidents in the Korean Conflict gave rise to a number of prosecutions under Article 105 of the UCMJ. That precedent would indicate Article 105 is now applicable in Viet Nam.

b. Where Article 105 is not applicable—don't forget the Code of Conduct. This Code is with our fighting men regardless of the technicalities surrounding the fight. The Code is in the appendix of your study guide. AR 350-30 puts the Code of Conduct in the form of a lawful order which carries penal sanctions. While maximum judicial punishment for violation of the Code of Conduct would be less than for violation of Article 105, the stigma for abandoning our professional standard would be a considerable risk for a soldier.

V. SUMMARY

A. Rules Governing Conduct of Hostilities.

We have seen that international law was not originally intended to regulate the conduct of hostilities in an insurgency. We have also seen that some of the international rules may be difficult to apply because of the type of warfare involved in an insurgency. But, most importantly, we have seen that some of the international rules can provide useful guidelines in an insurgency.

B. Status of Participants.

We have seen that participants in an insurgency are intended to be protected by Article 3 of the Geneva Conventions of 1949. This means that captives must be treated humanely and must not be punished without a fair trial. We noted that the insurgents have no authority to conduct trials unless they succeed in overcoming the loyalists. A very important provision of Article 3 is the authority it gives to a nonpolitical organization, such as the International Committee of the Red Cross, to look after the interest of humanity in an insurgency. We noted several legal relationships for foreigners involved in an insurgency. The foreign volunteer aiding the rebel is in much the same legal position as the rebel. But the foreign government may ask special treatment for him if he is captured by the loyalists. The foreigner sent by his govern-
ment to aid the rebel may only be entitled to Article 3 protection, but there have been cases where he has been considered entitled to PW status because his government's action in sending him made the conflict international. The foreign soldier aiding the loyalist government has three legal relationships which are operative concerning him. His relationship with the loyalist government depends on the agreement between the loyalist government and the soldier's government. His relationship with the insurgent who captures him is no different legally than that of a loyalist captured by the rebel. For policy reasons the rebel may treat him better or worse, but Article 3 is intended to protect him. His relationship with his own government is in accordance with the national law of that government. In our case the UCMJ and pertinent regulations, such as the Code of Conduct, are important.
Discussion Questions and Lesson Synopsis

Question 1: What distinguishes "renegades," "insurgents" and "belligerents," in characterization, and in resultant legality of the treatment which may be directed toward them by the loyalist government of a state?

Discussion: Renegades are simply criminals violating the laws of their state for personal and material purposes. They may be banded together for greater effect and mutual protection. These people are subject to the law enforcement practices of their State government. International law does not attempt to restrict the measures available to the government in repressing or punishing these people within its borders. In fact, if a renegade seeks refuge in another country, he may be subjected to extradition to face prosecution for his crimes.

In contrast, insurgents are a body of men, organized in armed rebellion against the loyalist government for political purposes. Their rebellion is contrary to the laws of their State and many of the acts which they may perpetrate in furtherance of their rebellion are criminal acts for which they may be subject to punishment. Until recently, international law did little to restrict the methods of the loyalist government in dealing with these people. If they sought asylum in a foreign country, they were less likely to be extradited because they were political offenders rather than simple renegades. But if captured by the loyalist government, they were at the mercy of that government, and, faced the likelihood of a "prompt trial and prompt execution," or simply execution. However, today Article 3 of the Geneva Conventions of 1949 places certain restraints upon the methods legally available to the loyalist government in dealing with insurgents. This is a manifestation of a growing international interest in the "rights of man" as opposed to the theory of "sovereign internal interest."

Belligerents are rebels who are organized for political purposes, too. But their rebellion has reached proportions beyond that of the insurgent. Belligerents are engaged in general hostilities, not just sporadic skirmishes. They have an organized army which takes orders from a responsible authority and observes the customary laws of war. They do not rely on terrorist tactics to the extent that insurgents do. The belligerents have a government which exercises effective administration over a meaningful part of the territory of the State. The belligerents have so effectively interfered with the normal international relations of the loyalist government that third States have been obliged to acknowledge (recognize) their status as belligerents. The status of belligerency requires the application of all the customary laws of war. Both sides in the conflict must
then treat captive members of each other's armed forces as prisoners of war, and regulate their conduct of hostilities to avoid unnecessary devastation and to protect the humanitarian interests of helpless victims of the conflict.

Question 2: May foreign governments legally support insurgents? Support the loyalist government?

Discussion: Rebellion is not contrary to international law. However, it is an unquestioned rule of international law that foreign governments must not incite or support insurgents. There is some doubt about precisely what aid foreign governments may legally give to a loyalist government to combat a purely grass-roots indigenous insurgency. However, when the insurgents are illegally supported and supplied by foreign governments, governments in sympathy with the loyalist government may legally come to the aid of the loyalists. This is the basis for United States action in cooperation with governments with which we share common goals to combat communist supported insurgencies.

Question 3: Bearing in mind that international law, by its terms, has not been developed for the purpose of regulating the conduct of hostilities by or against insurgents, what is the United States policy regarding the regulation of U. S. forces in our conduct of internal defense operations?

Discussion: Our Field Service Regulations, Counterinsurgency, FM 100-20 (1964) specifically provide that military operations in internal defense will be conducted in accordance with the international law of war. We recognize the valuable guidance of the law of war in these operations even though the law is not strictly binding and even though some specific rules are difficult to apply because of contrasts between insurgency-type warfare and conventional warfare. Since at least as long ago as the Philippine insurrection at the turn of the century, the United States has chosen to be guided by the principles of the international law of war in combating insurrectionary forces. These principles call for discrimination application of power which has the important purpose of preserving humanitarian interests and gaining the support of the people.

Question 4: What are the principle protections furnished insurgents by Article 3 of the Geneva Conventions of 1949?

Discussion: First of all, the insurgent who offers to surrender, or who is rendered helpless, must not be murdered. Quarter must be granted. Secondly, torture is prohibited. Third, hostages must not be taken. Fourth, degrading treatment is prohibited. Fifth, there must be no executions without fair trial. Sixth, and perhaps most important because it provides a means whereby the international community may determine whether the other protections are furnished, the Article provides that a nonpolitical, humanitarian organization may, as a matter of right, offer its services to assist in carrying out the humanitarian provisions.
Question 5: What systems of law control the conduct of U. S. soldiers engaged in internal defense operations in a foreign country?

Discussion: No matter where he goes the U. S. soldier is subject to the Uniform Code of Military Justice. We can rely upon this code to enforce our policy with regard to the activity of the soldier in noncombat, combat and captivity. Our Code of Conduct also provides standards for the soldier. AR 350-30 puts much of the Code of Conduct in the form of a lawful order. In addition, our soldiers are obliged to respect local law, an invariable condition of consent to entry.
LEGAL ASPECTS OF INTERNAL DEFENSE/INTERNAL DEVELOPMENT OPERATIONS

INSTRUCTOR'S STUDY GUIDE

Outline

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Appendix

INTRODUCTION

These materials, the Student Study Guide and the Lesson Plan for the conference hour are designed to complement each other. The Lesson Plan and the Student Study Guide each put emphasis on slightly different aspects of the subject. The purpose of this Instructor's Study Guide is to provide more depth and background for a better understanding of the subject.

Internal defense/internal development operations, regardless of the presence of United States personnel, are subject to certain principles of international law as well as the domestic law of the state in which the operations occur.

1. "Internal defense operation - Any operation conducted by host country or its allies--security establishment, military paramilitary, police or security organization--directly against armed insurgents, their underground organization, support system, external sanctuary or outside supporting power."
"Internal development operation - Any direct operation undertaken by host government or its allies to strengthen the local government politically, economically, socially or militarily, or make more viable its national life."
In addition, the role of the United States in the internal defense/ internal development operations of other countries calls for the presence of U. S. personnel (military and otherwise) in those countries, in varying organizations to meet the particular situation. Three legal systems have application to these personnel and their presence in these allied countries: (1) international law, (2) the domestic law of foreign state, and (3) the domestic law of the United States.

No one knows what circumstances lie ahead, in what countries U.S. personnel will be stationed, or the exact pattern of the operations that will develop in any particular area. Therefore, we must not restrict our thinking to situations of the present or immediate past. This material will be broader than the recent experience of the United States, in that it will discuss general principles. At the same time it will show the application of those principles to recent and current events. As Thomas Jefferson sagely put it: "When principles are well understood, their application is less embarrassing."2

The Student Study Guide devotes considerable attention to the nature and development of international law. This Study Guide takes up some specific rules of international law and their applicability to the activities of the United States.

I. The Applicability of International Law to the Activities of the United States

A. What International Law Is

International law consists of the rules which govern States in their conduct with each other and with certain organizations such as the United Nations and the International Committee of the Red Cross and, to a limited extent, with individuals. These rules come into existence either by written agreement or by customary practice. In either event, the State has agreed to them.3

B. Recognition of International Law by the United States

At the very inception of the United States, international law

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2. Quoted in I Moore, Digest of International Law 120 (1906).

3. "When the United States . . . assumed the character of an independent nation, they became subject to that system of rules which reason, morality, and custom had established among civilized nations of Europe . . . . The faithful observance of this law is essential to national character." Kent, Commentaries 1-2 (12th ed. 1873).
was recognized by the drafters of the Constitution as governing the international conduct of the nation. In addition to noting treaties to be part of the supreme law of the land, the Constitution authorizes Congress to define and punish offenses against international law. Congress has conferred on General courts-martial jurisdiction over offenses under "the law of war." The President, chiefly through the Department of State, carries on the daily foreign relations of the United States. Correspondence of the State Department refers repeatedly to international law. The President's concern with the correct international conduct of States is a substantial portion of his responsibility. Long ago President Monroe summed up this concern when he stated: "Our policy... to cultivate relations by a frank, firm and manly policy, meeting, in all instances, the just claims of every power, submitting to injuries from none."  

"Claims" in the sense of legal obligations are by no means the only basis for international relations. States, for various reasons, have common interests and shared goals, reflected in the international agreements which they make. Some of these agreements, which have particular relevance to internal defense/internal development operations, are considered next.

II. Civic Action Agreements

From the definition of internal defense and internal development, it is apparent that military operations are by no means the sole instrument of policy involved. Nations of the free world have become increasingly aware of the need to raise the standard of living of their people. The United States considers it in our best interests to cooperate with the

4. Article VI, para. 2, of the Constitution.
5. Article I, sec. 8, 1. 10.
7. Example at Appendix, this study guide.
8. Para. 49 of President Monroe's message to Congress, December 21, 1823.
governments of these nations in their efforts to raise the standards of living of their people. These governments welcome the assistance which they need to overcome economic and technical difficulties facing their programs. To facilitate international cooperation in these situations we have entered into a number of treaties, commonly called civic action agreements.

Examples

The appendix to the Student Study Guide contains extracts from recent treaties concluded by the United States representing various efforts by the United States to assist foreign States achieve our common goal of a better life for their people.

1. Peace Corps agreements are inspired by an awareness of the need for a grass roots approach to internal development. A government cannot truly serve its people unless the people are trained and prepared to make a personal effort. The masses must be educated in order to achieve more than a marginal subsistence existence. The States which have welcomed Peace Corps volunteers see the need for immediate tangible progress in the lower echelons of their society. The volunteers, on a people to people basis, help to improve the knowledge and techniques of the people in such matters as agriculture, sanitation, hygiene and light industry.

2. Although the Peace Corps is designed to bring improvements on a broad base to the many people whose living conditions would otherwise be wholly inadequate, this program alone would serve merely to whet the appetite of the people for a better life. Economic and technical assistance aimed at energizing the total productivity of the State is also necessary. The Alliance for Progress is designed to improve rural living, land use, housing, community facilities, educational systems, training facilities, and public health. This may sound parallel to the Peace Corps effort, but whereas the Peace Corps strives to help the people learn to help themselves, the Alliance for Progress strives to help the government help the people on a higher level and mobilize the domestic resources so that the economy of the State can sustain the development of a higher standard of living.

3. It is not always an abstract awareness of the need for improved living conditions which motivates a government to ask for assistance. The Brazilian treaty is clearly the basis for an effort to restore and maintain a stability in the country, a stability sorely threatened
by unrest due to intolerable conditions. Again, the assistance is aimed at improving the living conditions of the people.

III. Military Organization and Civic Action

In many States, the military organization may be the most efficient agency of the government. These States may employ the military organization to carry out various programs to improve living conditions. Soldiers may construct community laundries or bathing facilities, or supervise and instruct the local civilians on these projects. Aside from the material benefits which result, this type of program builds the confidence of the people in their government. They see the army, and thus the government, as a benefactor rather than an oppressor.

But sometimes the program of internal development is late or moves too slowly. The people become rebellious in their demands for improved conditions. Then the army must divert some of its attention to internal defense operations. Foreign governments may, under certain circumstances, assist in these operations as well. What these circumstances are is an important threshold question in any internal defense operation in which the United States participates.

IV. Military Assistance and Internal Defense

A. General

The practice has developed amongst nations of exchanging military missions as well as other technical personnel. This practice is an acknowledged routine of international relations. These exchanges are not something dreamed up to take the place of colonialism. The practice has been carried on between practically all the old established powers for years. 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. These personnel make up the Military Assistance Advisory Groups (MAAG). An example of MAAG Agreement is found at Appendix 4 of the Student Study Guide. In addition, the United States has entered into Military Mission Agreements with many countries. An example is found at Appendix 5 of the Student Study Guide. The purpose of these

missions is to cooperate with the military departments of the foreign government to enhance the efficiency of those departments in matters of training, organization and administration.

In the cases of both MAAG and Military Missions the purpose is to improve the capability of the armed forces of the foreign government. The employment of those armed forces is another matter. It is to be expected that the government would use those forces to put down any threat to its authority, whether internal or external. Our interest, for purposes of this course, are the threats which appear to be internal.

B. "Insurgents" Defined

Insurgents are organized bodies of men who, for public political purposes, are in a state of armed revolt against their government. The purpose of the rebels must be political rather than simply criminal. Equally important to the existence of an insurgency is the inability of the loyalist government to control or to suppress the rebellion quickly. This inability of the government creates the need for the establishment of some international rules not only for the conflict between the rebels and the loyalists but also for the relations between the loyalists (and the rebels) and other States. If the loyalists cannot quickly suppress the rebellion there will come a time when outside States will have to acknowledge that something more than a riot is occurring. The point where this situation seems to come into being is when the insurgency develops into a considerable threat to the continuing rule of the loyalist government, or when the success of the insurgents is such that they are able to interfere with the normal intercourse between the loyalist government and

10. For example, Secretary Hay recognized the possible need for dealing with insurgents in 1899, when writing to the U.S. Minister to Bolivia, "You will understand that you can have no diplomatic relations with the insurgents implying their recognition by the United States as the legitimate government of Bolivia, but that short of such recognition, you are entitled to deal with them as the responsible parties in local possession to the extent of demanding for yourself and for all Americans within reach of insurgent authority . . . fullest protection for life and property." U.S. Foreign Relations 105 (1899).
other States of the world. This condition was clearly apparent in Viet Nam in the late 1950's and early 1960's. It was evident in Greece after World War II and more recently in Malaya, Algeria, and Cuba. Laos, Thailand, and Guatemala may well be some of today's examples.

C. **Legal Effect of the "Status" of Insurgency Upon International Relations**

If the insurgency develops as a strictly internal affair, it is debatable whether international law permits foreign military assistance to the loyalist government to continue.

D. **Insurgency Inspired and Supported by Outside Governments**

Whatever may be said about limits on the amount or type of support outside governments may give to the loyalist government against a grass roots insurgency, international law has always made it quite clear that outside governments must not give support to the insurgent.

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11. Wilson and Tucker, International Law 64 (8th ed. 1922). Both of these elements were present in Cuba's revolution against Spanish rule toward the end of the last century. In 1895 President Cleveland issued a proclamation which recognized the existence of an armed insurrection in Cuba and cautioned all persons in the United States to avoid getting involved. Later the Supreme Court had occasion to evaluate this proclamation. It concluded that "... here the political department has not recognized the existence of a de facto belligerent power engaged in hostility with Spain, but had recognized the existence of insurrectionary warfare...." The Three Friends, 166 U.S. 1, 64 (1899). See example of Mexican Postal Service in Appendix A, this Study Guide.

12. Not only must outside governments not support insurgents, they must take all reasonable measures to prevent the use of their territory for the preparation or launching of military expeditions by insurgents against another nation. A recent example of United States action in this regard is reported in the Charlottesville Daily Progress, Feb. 27, 1967, at 1, col. 5: "Miami, Fla. (AP) - A former Cuban senator, an exiled Haitian priest and five other men were indicted today on charges of conspiring to (Cont'd)
This proposition has been restated in modern times. "A United Nations Assembly Resolution of December, 1949, called upon states to refrain from indirect as well as direct threats against the independence of a state, and one of November, 1950, condemned intervention to change legally established governments." It stands to reason that when insurgents are supported by an outsider in an effort to subvert the loyalist government, the loyalist is entitled to seek aid from other foreign States in sympathy with its aims. International law recognizes that right.

12. (Cont'd) Invade Haiti from the Florida Keys last month.

"Six of the seven were among 75 battle-clad exiles and American adventurers rounded up Jan 2 when customs agents barged into their camp on a secluded island near Marathon. A small arsenal was confiscated.

"The indictments were returned by a federal grand jury in Miami. Acting Atty. Gen. Ramsey Clark announced in Washington that the charges had been made.

"Clark said the seven are charged with conspiring to violate a federal law which forbids preparing or launching from this country a military expedition against a nation with which the United States is at peace. The maximum penalty upon conviction is five years in prison and $10,000 fines.

"The indictment said the seven conspired to set up a camp in southern Florida and to transport arms and ammunition to Miami from New York and Atlanta, Ga.

"The indictment said also they had planned to transport men and arms by boat for a military expedition against Haiti."


14. Henry Cabot Lodge, while Ambassador to the United Nations in 1958, had occasion to state: "If the United Nations cannot deal with indirect aggression, the United Nations will break up." Reported in 39 Dept State Bull, 195 (1958). The United Nations has not as yet found an effective way to deal with indirect aggression. However, we can hardly say the United Nations is breaking up. States are finding it necessary to deal with indirect aggression by means other than United Nations machinery.
It is at the request then of established loyalist governments, beset by a subversive insurgency which is inspired and supported by outside governments, that the United States participates in internal defense/ internal development operations.

Insurgency is a type of civil war. In today's world it has become an instrument in the international power struggle of conflicting ideologies and is sometimes called "international civil war." As such, the need for application of international law to this type of conflict is pressing. So far we have explored only the circumstances under which a foreign government may legally assist a loyalist government in combatting a rebel insurgent. Before we consider what law may apply to the manner in which this combat (internal defense operation) is carried on, we will look at another type of civil war for contrast.

V. Belligerency

The American Civil War of 1861-65 is a classic example of belligerency. The insurrection... must be an armed struggle, carried on between two political bodies, each of which exercises de facto authority over persons within a determinative territory, and commands an army which is prepared to observe the ordinary laws of war. It requires then, on the part of the insurgents, an organization purporting to have the characteristics of a State, though not yet recognized as such. The armed insurgents must act under the direction of this organized civil authority. An organized army is not enough.15

These requirements might be called the minimum objective criteria for a belligerency. Note that the imminent or ultimate success of the rebel is not a criterion. However, international law does not force the loyalist government, or foreign governments, to admit/recognize that

the rebels meet the above criteria. Therefore, as a practical matter, a fifth criterion emerges if the rebels are to attain the status of belligerency, at least during the critical period with which we are here concerned—while the conflict rages. This criterion is that third States feel the necessity of taking practical steps with regard to the conflict. This may mean that they invoke neutrality laws or that they become a co-belligerent with one side or the other in the conflict. Political considerations seem to have dissuaded third States from extending recognition of belligerency during the twentieth century. It would be rare indeed if the loyalist government were to explicitly do so during the rebellion. The executive branch of our Federal Government did not do so during 1861-65. However, several considerations, amongst them the Federal blockade of Southern ports, prompted Great Britain to recognize the Confederacy as a belligerency. The parent State may recognize the belligerency of a revolting community by acts which imply the existence of war or by formal declaration. Either course may justify recognition by foreign States. After the rebellion many federal cases were decided on the basis of the Confederacy having been a belligerency.

16. Recognition of belligerency is a political function and solely the responsibility of the executive branch. (The Three Friends, 166 U.S. 1, 63 (1896).) However, "It is to be observed that the rights and obligations of a belligerent were conceded to... [the Confederacy] in its military character, very soon after the war began, from motives of humanity and expediency by the United States." Thorton v. Smith, 75 U.S. (8 Wall.) 10, 11 (1868). This concession, in this case mainly the result of the attitude of the professional officers of the Union Army about how a war should be fought, need not mean a grant of legal status to the rebel.

17. Lord Russell, British Foreign Secretary to Mr. Adams, American Minister at London, May 4, 1865, 1 Dip. Cor. 356 (1865).


19. "It has been held by this court in repeated instances that, though the late war was not between independent nations, yet, as it was between the people of different sections of the country, and the insurgents were so thoroughly organized and formidable as to necessitate their recognition as belligerents, the usual incidents of a war between independent nations ensued." U.S. v. Pac. R.R. 120 U.S. 227, 233 (1886).
The legal effect of the status of belligerency is that, for the purposes of the hostilities, the rebels are treated as though they represented a State. The result is that the full range of the customary international law of war is applicable. This requires both sides, the rebels and the loyalists, to observe the rules for conducting hostilities, the treatment of captives as prisoners of war, the control of civilian populations, the care of sick and wounded and proper regard for private property.

The insurgent, though just as much a political rebel as the belligerent, fails to meet one or more of the criteria. When the insurgency does not attain the "status of belligerency" the parties to the conflict are not required to apply the customary law of war. We may, however, stress the value of following the guidance of international law in these circumstances. Rebellion, whether an insurgency or a belligerency, gives rise to two questions: How to conduct the combat and how to treat enemies who fall into our control.

VI. Conduct of Hostilities

These are contrasts between insurgency warfare and the "battlefront" warfare we have historically thought of as conventional. Since international war law grew out of experience with "battlefront" warfare many of the rules are difficult to apply in these new circumstances. But the purposes of war law remain the same, even with changing circumstances. Those purposes are:

a. Protecting both combatants and noncombatants from unnecessary suffering;

b. Safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and

c. Facilitating the restoration of peace.

Whether or not specific rules are difficult to apply, the principles should be applied to attain these purposes.

States are giving more attention to bringing international law to bear on insurgency warfare. For example, the Hague Convention of May 1954 on the Protection of Cultural Property in the Event of Armed Conflict provides in Article 19:
1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions of the present convention which relate to respect for cultural property.

2. The parties to the conflict shall endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

3. The United Nations Educational, Scientific, and Cultural Organization may offer its services to the parties of the conflict.

4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

The United States has signed but not yet ratified this treaty. Therefore, it is not yet binding on us. But we are bound during international conflict by the Hague Regulations of 1907 to spare "...as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals and places where sick and wounded are collected, provided they are not being used at the time for military purposes...." See para. 45, FM 27-10, The Law of Land Warfare. We are also bound during international conflict by the "Roerich Pact", a Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (April 15, 1935, 39 Stat 3267; T.S. 8997). The parties to this treaty are, however, just a few of the American Republics. It stands to reason, that in aiding a loyalist government with internal defense operations, we would take care to avoid unnecessary damage to these buildings and institutions. There are two reasons: (1) Unnecessary damage would alienate the people from the loyalist government. (2) These institutions have intrinsic value to the State as a whole in spite of the insurgency. When the loyalist government is successful in putting down the insurgency, it will be faced with the expense of restoring damaged and destroyed institutions of this sort, assuming they are capable of restoration.
The guerrilla warfare methods of the insurgent make it extremely difficult for the loyalist forces to carry on a discriminating, efficient internal defense operation. The insurgents do not want the loyalists to be able to discriminate. The rebels enlist the assistance of the people through persuasive propaganda or terror. It is not solely a matter of fighting through the civilian population, or swimming in it as Mao's famous quote would indicate. It is making the population one with the fighter. This is termed "mass warfare" by a Chinese Nationalist general.

The idea of mass warfare is again evident in the title of the book by the Communist General Giap, People's War, People's Army; The Viet Cong Insurrectional Manual for Underdeveloped Countries (1962). This publication contains photos allegedly taken at Dien Bien Phu showing endless lines of civilians bringing supplies to the fighting men.

It does not serve the purpose of the loyalist government to react to "mass warfare" with indiscriminate application of force. Many of these people are helping the rebels simply because of the control the rebels exercise through terror. They are as much the victims of the insurgency as the village chief whom the rebels assassinate. In order for the loyalist government to truly "win" in the internal defense/internal development operation, it must extend its protection to the masses so that they do not fall prey to the rebels.

VII. Treatment of the Helpless Enemy

A. General

Prior to the Geneva Conventions of 1949 there was no provision in international law regulating the treatment of persons rendered helpless or offering to surrender during insurgency warfare. However, the United States has not waited for the adoption of a multi-party convention to apply our firmly held principles of humanity and justice when dealing with insurgents.

The Philippines Insurrection (1899-1902) was not the sort of conflict which has traditionally been subject to the international law of war. The regulation of our forces in that conflict was strictly a matter of the internal interest of the United States. We chose to be

22. "The people may be likened to water, the troops to the fish who inhibit it." Mao Tse-tung, Guerrilla War 92 (Griffith trans. 1961).

All international Conventions, including this one, are primarily the affair of Governments. Governments discuss them and sign them, and it is upon Governments that the duty of applying them devolves. But it is impossible to speak of the Geneva Conventions, and in particular of their application to civil war, without reference to the part played by the Red Cross.

The principle of respect of human personality, the basis on which all the Geneva Conventions rest, was not a product of the Conventions. It is older than they are and independent of them. Until 1949 it only found expression in the Conventions in its application to military personnel. But it was not applied to them because of their military status: it is concerned with people, not as soldiers, but simply as human beings, without regard to their uniform, their allegiance, their race or their beliefs, without re-
gard even to any obligations which the authority on which they depend may have assumed in their name or in their behalf. Wounded or sick, they are entitled as such to the care and aid which the respect for human personality enjoins.

There is nothing astonishing, therefore, in the fact that the Red Cross has long been trying to aid the victims of internal conflicts, the horrors of which are sometimes even more terrible than those of international wars because of the fratricidal hatred they engender. But the difficulties which the Red Cross encountered in its efforts in the connection—as always when endeavoring to go a step beyond the text of the Conventions—were enhanced in this case by special obstacles arising out of the home policies of the States in which the conflicts raged. In a civil war the lawful Government, or that which so styles itself, tends to regard its adversaries as common criminals. This attitude has sometimes led governmental authorities to look upon relief given by the Red Cross to war victims on the other side as indirect aid to guilty parties. Applications by a foreign Red Cross Society or by the International Committee of the Red Cross for permission to engage in relief work have more than once been treated as unfriendly attempts to interfere in the domestic affairs of the country concerned...

2. The discussions at the Diplomatic Conference of 1949

From the very outset, in the course of the first discussions of a general character, divergences of view became apparent. A considerable number of delegations were opposed, if not to any and every provision in regard to civil war, at any rate to the unqualified application of the Convention to such conflicts. The principle criticisms of the Stockholm draft* may be summed up as follows. It

The wording of the Stockholm draft was as follows:

In all cases of armed conflict which are not of an international character, especially cases of civil war, colonial conflicts, or wars of religion, which may occur in the territory of one or more of the High Contracting Parties, the implementing of the principles (Cont'd)
was said that it would cover in advance all forms of insurrection, rebellion, anarchy, and the break-up of States, and even plain brigandage. Attempts to protect individuals might well prove to be at the expense of the equally legitimate protection of the State. To compel the Government of a State in the throes of internal conflict to apply to such a conflict the whole of the provisions of a Convention expressly concluded to cover the case of war would mean giving its enemies, who might be no more than a handful of rebels or common brigands, the status of belligerents, and possibly even a certain degree of legal recognition. There was also a risk of ordinary criminals being encouraged to give themselves a semblance of organization as a pretext for claiming the benefit of the Convention, representing their crimes as "acts of war" in order to escape punishment for them.

A rebel party, however small, would be entitled under the Conventions to ask for the assistance and intervention of a Protecting Power. Moreover, it was asked, would not the de jure Government be compelled to release captured rebels as soon as the troubles were over, since the application of the Convention would place them on the same footing as prisoners of war? Any such proposals giving insurgents a legal status, and consequently increased authority, would hamper and handicap the Government in its measures of legitimate repression.

The advocates of the Stockholm draft, on the other hand, regarded the proposed text as an act of courage. Insurgents, said some, are not all brigands. It sometimes happens in a civil war that those who are regarded as rebels are in actual fact patriots struggling for the independence and the dignity of their country. Others argued that the behaviour of the insurgents in the field would show whether they were in fact mere brigands or, on the contrary, fought like real soldiers who deserved to receive protection under the Conventions.

*(Cont'd)* of the present Convention shall be obligatory on each of the adversaries. The application of the Convention in these circumstances shall in no wise depend on the legal status of the Parties to the conflict and shall have no effect on that status.
Again, it was pointed out that the inclusion of the reciprocity clause in all four Conventions, and not merely (as had been proposed at Stockholm) in the Third and Fourth Conventions, would be sufficient to allay the apprehensions of the opponents of the Stockholm proposals. It was not possible to talk of "terrorism", "anarchy" or principles. Finally, the adoption of the Stockholm proposals would not in any way prevent a de jure Government from taking measures under its own laws for the repression of acts considered by it to be dangerous to the order and security of the State.

After discussion, a second Working Party was appointed with instructions to draw up a text containing a definition of humanitarian principles applicable to all cases of noninternational conflict, together with a minimum of mandatory rules.

To borrow the phrase of one of the delegates, Article 3 is like a "Convention in miniature". It applies to non-international conflicts only, and will be the only Article applicable to them until such time as a special agreement between the Parties has brought into force between them all or part of the other provisions of the Convention. It is very different from the original draft produced by the International Committee of the Red Cross, which provided for the application of the Conventions in their entirety. But, as the International Committee's representative at the Diplomatic Conference remarked, since that text had obviously no chance of being accepted by the Governments and it was necessary to fall back on a less far-reaching solution, the wording finally adopted was the one which was to be preferred amongst the various drafts prepared during the Conference. It has the merit of being simple and clear. It at least ensures the application of the rules of humanity which are recognized as essential by civilized nations, and provides a legal basis for charitable interventions by the International Committee of the Red Cross or any other impartial humanitarian organization--interventions which in the past were all too often refused on the ground that they represented unfriendly interference in the internal affairs of a State. This text has the additional ad-
vantage of being applicable automatically, without any condition in regard to reciprocity. Its observance does not depend upon preliminary discussions on the nature of the conflict or the particular clauses to be respected, as would have been the case with the other drafts discussed. It is true that it merely provides for the application of the principles of the Convention and not for the application of specific provisions, but it defines those principles and in addition lays down certain mandatory rules. Finally, it has the advantage of expressing, in each of the four Conventions, the common principle which governs them.

Paragraph 1. -- Applicable Provisions

1. Introductory sentence-Field of application of the Article

A. Cases of armed conflict. - What is meant by "armed conflict not of an international character"?

That was the burning question which arose again and again at the Diplomatic Conference. The expression was so general, so vague, that many of the delegations feared that it might be taken to cover any act committed by force of arms--any form of anarchy, rebellion, or even plain banditry. For example, if a handful of individuals were to rise in rebellion against the State and attack a police station, would that suffice to bring into being an armed conflict within the meaning of the Article? In order to reply to questions of this sort, it was suggested that the term "conflict" should be defined or--and this would come to the same thing--that a list should be given of a certain number of conditions on which the application of the Convention would depend. The idea was finally abandoned--wisely, we think....

We think...that the scope of application of the article must be as wide as possible. There can be no drawbacks in this, since the Article in its reduced form, contrary to what might be thought, does not in any way limit the right of a State to put down rebellion, nor does it increase in the slightest the authority of the rebel party. It merely demands respect for certain rules, which were already recognized as essential in all civilized countries, and embodied in the municipal law of the States in question, long before
the Convention was signed. What Government would dare to claim before the world, in a case of civil disturbances which could justly be described as mere acts of banditry, that, Article 3 not being applicable, it was entitled to leave the wounded uncared for, to torture and mutilate prisoners and take hostages? However useful, therefore, the various conditions stated above may be, they are not indispensable, since no Government can object to observing, in its dealings with internal enemies, whatever the nature of the conflict between it and them, a few essential rules which it in fact observes daily, under its own laws, even when dealing with common criminals.

Speaking generally, it must be recognized that the conflicts referred to in Article 3 are armed conflicts, with armed forces on either side engaged in hostilities—conflicts, in short, which are in many respects similar to an international war, but take place within the confines of a single country. In many cases, each of the Parties is in possession of a portion of the national territory, and there is often some sort of front.

But it must be borne in mind that insurgents are, in fact, violating the laws of their State (e.g., treason) and are, therefore, criminals who may be prosecuted by the loyalist government. Ed.

B. Obligations of the Parties—The words "each Party" mark the great progress which the passage of a few years had brought about in international law. Until recently it would have been considered impossible in law for an international Convention to bind a non-signatory Party—a Party, moreover, which was not yet in existence and which need not even represent a legal entity capable of undertaking international obligations.

The obligation is absolute for each of the Parties. The reciprocity clause, which appeared in the Stockholm draft of the Fourth Convention, has been deliberately dropped. That represents a great step forward—offset, it is true, by the fact that it is no longer the Convention as a whole which will be applicable, but only the actual provisions of Article 3 itself.
The obligation resting on the Party to the conflict which represents established authority is not open to question. The mere fact of the legality of a Government involved in an international conflict suffices to bind that Government as a Contracting Party to the Convention. On the other hand, what justification is there for the obligation on the adverse Party in revolt against the established authority? At the Diplomatic Conference doubt was expressed as to whether insurgents could be legally bound by a Convention which they had not themselves signed. But if the responsible authority at their head exercises effective sovereignty, it is bound by the very fact that it claims to represent the country, or part of the country. The "authority" in question can only free itself from its obligations under the Convention by following the procedure for denunciation laid down in Article 158. But the denunciation would not be valid, and could not in point of fact be effected, unless the denouncing authority was recognized internationally as a competent Government. It should, moreover, be noted that under Article 158 denunciation does not take effect immediately.

If an insurgent party applies Article 3, so much the better for the victims of the conflict. No one will complain. If it does not apply it, it will prove that those who regard its actions as mere acts of anarchy or brigandage are right. As for the de jure Government, the effect on it of applying Article 3 cannot be in any way prejudicial; for no Government can possibly claim that it is entitled to make use of torture and other inhuman acts prohibited by the Convention, as a means of combating its enemies.

Care has been taken to state, in Article 3, that the applicable provisions represent a compulsory minimum. The words "as a minimum" must be understood in that sense. At the same time they are an invitation to exceed that minimum.

2. Sub-paragraphs (1) and (2) - Extent of the obligation

A. Sub-paragraph (1): Humane treatment. -- We find expressed here the fundamental principle underlying the four Geneva Conventions. It is most fortunate that it should
have been set forth in this Article, in view of the decision to dispense with Preamble or prefatory Article, in which it would normally have been placed. The sub-paragraph defines the principle which, not then expressed, led to the founding of the Red Cross movement and to the conclusion of the original Geneva Convention.

Taken literally, the phrase "including members of armed forces who have laid down their arms" can be interpreted... in one of two ways, depending on whether the words "who have laid down their arms" are taken as referring to "members" or "armed forces". The discussions at the conference brought out clearly that it is not necessary for an armed force as a whole to have laid down its arms for its members to be entitled to protection under this Article. ... The important thing is that the man in question will be taking no further part in the fighting. (Pictet, Commentary on POW Convention, 38-39.)

In view of the fact that four Conventions were being drawn up, each providing protection for a particular category of war victims, it might be thought that the paragraph should have been divided up, the relevant portion only being included in each Convention. (In the Fourth Convention, for example, mention might have been made only of civilians.) It was thought preferable, however, in view of the indivisible and inviolable nature of the principle proclaimed, and its brevity, to enunciate it in its entirety and in an absolutely identical manner in all four Conventions.

What Article 3 guarantees is humane treatment.... There is less difficulty in enumerating things which are incompatible with humane treatment. That is the method followed in the Convention when it proclaims four absolute prohibitions. The wording adopted could not be more definite: "To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever..." No possible loophole is left; there can be no excuse, no attenuating circumstances.

Items (a) and (c) concern acts which world public opinion finds particularly revolting--acts which were committed frequently during the Second World War. It may be asked whether
the list is a complete one. At one stage of the discussions, additions were considered—with particular reference to the biological "experiments" of evil memory, practised on inmates of concentration camps. The idea was rightly abandoned, since biological experiments are among the acts covered by (a). Besides, it is always dangerous to try to go into too much detail—especially in this domain. However great the care taken in drawing up a list of all the various forms of infliction, it would never be possible to catch up with the imagination of future torturers who wished to satisfy their bestial instincts; and the more specific and complete a list tries to be, the more restrictive it becomes. The form of wording adopted is flexible, and, at the same time, precise. The same is true of item (c).

Items (b) (taking of hostages) and (d) (sentences and executions without a proper trial) prohibit practices which are fairly general in wartime. But although they were common practice until quite recently, they are nevertheless shocking to the civilized mind. The taking of hostages, like reprisals, to which it is often the prelude, is contrary to the modern idea of justice in that it is based on the principle of collective responsibility for crime. Both strike at persons who are innocent of the crime which it is intended to prevent or punish.

Sentences and executions without previous trial are too open to error. "Summary justice" may be effective on account of fear it arouses—though that has yet to be proved—but it adds too many further innocent victims to all the other innocent victims of the conflict. All civilized nations surround the administration of justice with safeguards aimed at eliminating the possibility of judicial errors. The Convention has rightly proclaimed that it is essential to do this even in time of war. We must be very clear about one point: it is only "summary" justice which it is intended to prohibit. No sort of immunity is given to anyone under this provision. There is nothing in it to prevent a person presumed to be guilty from being arrested and so placed in a position where he can do no further harm; and it leaves intact the right of the State to prosecute, sentence and punish according to the law.
Reprisals, to which we have just referred, do not appear here in the list of prohibited acts. Does that mean that reprisals, while formally prohibited under Article 33, are allowed in the case of non-international conflicts, Article 3 being the only Article which then applies? As we have seen, the acts referred to under items (a) to (d) are prohibited absolutely and permanently, no exception or excuse being tolerated. Consequently, any reprisal which entails one of these acts is prohibited, and so, speaking generally, is any reprisal incompatible with the "humane treatment" demanded unconditionally in the first clause of sub-paragraph (1).

It should be noted that the acts prohibited in items (a) to (d) are also prohibited under other Articles of the Convention, in particular Articles 27, 31 to 34, and 64 to 77.

...All the persons referred to in (1) without distinction are entitled to humane treatment. Criteria which might be employed as a basis for discrimination against one class of persons or another are enumerated in the provision, and their validity denied. Memories of the crimes perpetrated during the last World War led the authors of the 1949 Convention to adopt this formula, which is repeated in several other clauses of the Convention, in particular in Articles 13 and 27...

B. Sub-paragraph (2): Care of the wounded and sick. -- Article 3 here reaffirms, in generalized form, the fundamental principle underlying the original Geneva Convention of 1864. The clause, which is numbered separately, does not form part of the preceding provision, although it completes it; it is concise and particularly forceful. It expresses a categorical imperative which cannot be restricted and needs no explanation. There is every reason to be satisfied with it.

The safeguards enjoyed by the military wounded and sick under the First Convention are, as we know, extended by the present Convention to wounded and sick civilians. In its Article 12 the First Convention says that the wounded and sick are to "be respected and protected in all circumstances", while under Article 16 of the present Convention they are to "be the object of particular protection and
respect". In spite of a slight difference in wording, the
basic idea is the same in both cases; the wounded and sick
must be respected and protected.

Paragraph 2. -- Humanitarian Initiative

It is obvious that any organization can "offer its serv­
ices" to the Parties to the conflict at any time, just as any
individual can. The offer of services costs little and, what
is more important, in no way binds the recipient, since
they need not be accepted. The International Committee
of the Red Cross, for its part, has not failed to offer its
services for humanitarian purposes during various civil
wars, whenever it considered that this was in the interests
of those suffering as a result of hostilities, just as it has
offered them when any international conflict has broken out.
This paragraph may therefore appear at first sight to be
merely decorative and without any real significance.
Nevertheless, it is of great moral and practical value. Al­
though it is extremely simple, it is adequate, and the Inter­
national Committee itself asked for nothing more. It is a
reduction, to the scale of the "Convention in miniature"
represented by Article 3, of the provision contained in
Article 9, below, which applies to international conflicts,
when the whole Convention is applicable.

Although the International Committee of the Red Cross
has been able to do a considerable amount of humanitarian
work in certain civil wars, in others the doors have been
churlishly closed against it, the mere offer of charitable
services being regarded as an unfriendly act--an inadmis­
sible attempt to interfere in the internal affairs of the State.
The adoption of Article 3 has placed matters on a different
footing, an impartial humanitarian organization now being
legally entitled to offer its services. The Parties to the
conflict may, of course, decline the offer if they can do
without it. But they can no longer look upon it as an un­
friendly act, nor resent the fact that the organization mak­
ing the offer has tried to come to the aid of the victims of
the conflict.

It is obvious that outside help can only, and should only,
be supplementary. It is for the Parties to the conflict to
apply Article 3 and ensure the observance of all its provisions. It is also obvious that it is, in the first place, for the National Red Cross Society of each country, in its capacity as an auxiliary organization, to help in this and, by its words and actions, win recognition for the requirements of humanity throughout the national territory. But the national authorities and National Red Cross Society of a country may not always be able to cope with requirements; nor may the National Red Cross always be in a position to act everywhere with the necessary efficiency. Additional help will then be necessary. The Party to the conflict which in such cases refuses offers of charitable service from outside its frontiers will incur a heavy moral responsibility.

For offers of service to be legitimate, and acceptable, they must come from an organization which is both humanitarian and impartial, and the services offered and rendered must be humane and impartial also. The International Committee of the Red Cross is mentioned here for two reasons—firstly on its own account, as an organization called upon, by its statutes and traditions, to intervene in cases of conflict, and, secondly, as an example of what is meant by a humanitarian and impartial organization...

Paragraph 3. -- Special Agreements

If the Convention was to include provisions applicable to all non-international conflicts, it was necessary, as we have seen, to give up any idea of insisting on the application to such conflicts of the Convention in its entirety. Legally, therefore, the Parties to the conflict are bound to observe Article 3 and may ignore all the other Articles. It is obvious, however, that each one of them is completely free—and should be encouraged—to declare its intention of applying all or part of the remaining provisions. Another possibility is that an internal conflict may, as it continues, become to all intents and purposes a real war. The situation of thousands of sufferers is then such that it is no longer enough for Article 3 to be respected. It becomes desirable to settle in detail the treatment they are to receive, the relief which is to be brought to them, and various other matters. A time may come when it is as much in the interest of the Parties to the conflict as of the victims
that this should be done, and surely the most practical way of doing it is not to negotiate special agreements in great detail, but simply to refer to the Convention as it stands, or at all events to certain of its provisions.

The provision does not merely offer a convenient possibility, but makes an urgent request, points out a duty: "The Parties to the Conflict should further endeavour..." Although the only provisions which each of the Parties is bound to apply unilaterally are those contained in Article 3, they are nevertheless under an obligation to try to bring about a fuller application of the Convention by means of a bilateral agreement.

Is there no danger of the paragraph becoming inoperative as a result of the fear of increasing the power of the rebel party, which was so often expressed during the discussions? Will a de jure Government not be afraid that the conclusion of such agreements may increase the authority of those who have risen in revolt against it, by constituting an implicit recognition of the legal existence and belligerent status of the party concerned? It should be remembered that although the de jure Government must endeavour to conclude such agreements, it remains free in regard to its final decision. It is also free to make the express stipulation that its adherence to the agreement in no way implies recognition of the legality of the opposing party. Besides, in practice the conclusion of the agreements provided for in paragraph 3 will depend on circumstances. They will generally only be concluded because of an existing situation which neither of the parties can deny, no matter what the legal aspect of the situation may in their opinion be.

Lastly, it must not be forgotten that this provision, like those which precede it, is governed by the last clause of the Article.

Which provisions could most easily be brought into force by means of special agreements?* First of all those

* It should be noted that when signing the present Convention one
contained in Articles 27 and 34, which apply both to the territory of the Parties to the conflict and to occupied territory. The provisions dealing with occupied territory could no doubt also be applied. This is also true of those dealing with the treatment of internees (Articles 79 to 135). It would, on the other hand, be more difficult to apply in case of civil war the provisions relating to aliens in the territory of a Party to the conflict, for in a civil war the struggle takes place in a territory whose citizens are all of the one nationality. That was one of the objections raised to the full and unconditional extension of the Convention to such conflicts. Several delegates pointed out that a great many of its provisions could not be applied in case of civil war, or would at all events have to be modified to a considerable extent. In order to solve the problem, the International Committee of the Red Cross presented the Diplomatic Conference with a definition of protected persons in cases of civil war and of the treatment which should be applied to them. The definition reads as follows: "Furthermore, in case of a conflict not international in character, the nationals of the country where the conflict takes place, who do not belong to the armed forces, are likewise protected by the present Convention, under the provisions relating to occupied territories."

Paragraph 4 -- Lack of Effect on the Legal Status of the Parties to the Conflict

This clause is essential. Without it neither Article 3, nor any other Article in its place, would ever have been adopted. It meets the fear--always the same one--that the application of the Convention, even to a very limited extent, in cases of civil war may interfere with the de jure Government's lawful suppression of the revolt, or that it may confer belligerent status, and consequently increased authority

(Cont'd) Signatory State (Argentina) made a reservation stating that Article 3, common to all four Conventions, was, to the exclusion of all other Articles, the only one which would be applicable in cases of armed conflict not of an international character.
and power, upon the adverse Party. The provision was first suggested at the Conference of Government Experts convened by the International Committee of the Red Cross in 1947 and has been re-introduced in much the same words in all the succeeding drafts. It makes it absolutely clear that the object of the Convention is a purely humanitarian one, that it is in no way concerned with the internal affairs of States, and that it merely ensures respect for the few essential rules of humanity which all civilized nations consider as valid everywhere and under all circumstances and as being above and outside war itself.

Consequently, the fact of applying Article 3 does not in itself constitute any recognition by the de jure Government that the adverse Party has authority of any kind; it does not limit in any way the Government's right to suppress a rebellion by all the means—including arms—provided by its own laws; nor does it in any way affect that Government's right to prosecute, try and sentence its adversaries for their crimes, according to its own laws.

In the same way, the fact of the adverse Party applying the Article does not give it any right to special protection or any immunity, whatever it may be and whatever title it may give itself or claim.

Article 3 resembles the rest of the Convention in that it is only concerned with the individual and the physical treatment to which he is entitled as a human being without regard to his other qualities. It does not affect the legal or political treatment which he may receive as a result of his behaviour.
The ICRC and the Conflict in Cuba

For nearly a year the International Committee has followed the events in Cuba with careful attention, and sought to assist all the victims of the conflict without distinction.

Early in July, 1958, following a request received from the leader of the rebel forces for assistance in the evacuation of the wounded and sick of the regular armed forces in his hands, and which he proposed to hand over unconditionally, the ICRC took steps to perform this humanitarian task which took place under its auspices and in the presence of its delegates, Mr. P. Jequier and Mr. J. P. Schoenholzer, on July 23, 1958; 253 prisoners, including 57 wounded, were thus evacuated during a truce arranged between the two parties concerned by the ICRC.

A little later the rebel forces again asked the International Committee to assist in the release, for health reasons, of a number of prisoners who had fallen into their hands. On August 12 and 13, therefore, another intervention of the ICRC enabled 170 prisoners and wounded to be handed over by the rebel forces to the representatives of the Cuban Red Cross. During this operation, at the request of the ICRC, emergency medicaments were handed over to the rebel forces following a request for these supplies.

As it continued to receive appeals for assistance, the ICRC re-opened negotiations with the Cuban Red Cross and the Cuban authorities for sending a further mission to Cuba. Its delegate, Mr. M. Thuichum, went to Havana in September to ascertain, on the spot, to what extent and on what basis the ICRC could lend its assistance over the whole of the Cuban territory to all the direct and indirect victims of a conflict which was becoming more and more serious. However, as the numerous approaches made by the delegate met with no response on the part of the former Government, he was obliged to leave Cuba without completing his mission. The ICRC nevertheless continued its efforts and sought in vain during the ensuing weeks to find some means of affording assistance in the areas under governmental control as well as those controlled by the rebel forces.