

ARTICLE VII

1. Subject to the provisions of this Article,

(a) the military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State:

(b) the authorities of the receiving State shall have jurisdiction over the members of a force or civilian component and their dependents with respect to offenses committed within the territory of the receiving State and punishable by the law of that State.

2. (a) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with respect to offenses, including offenses relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

(b) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian component and their dependents with respect to offenses, including offenses relating to the security of that State, punishable by its law but not by the law of the sending State.

(c) For the purpose of this paragraph and of paragraph 3 of this article a security offense against a State shall include

(i) treason against the State;

(ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defence of that State.

3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

(a) the military authorities of the sending State shall have the primary right to exercise jurisdiction over a member of a force or of a civilian component in relation to

(i) offenses solely against the property or security of that State, or offenses solely against the person or property of another member of the force or civilian component of that State or a dependent;

(ii) offences arising out of any act or omission done in the performance of official duty.

(b) In the case of any other offense the authorities of the receiving State shall have the primary right to exercise jurisdiction.

(c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where the other State considers such waiver to be of particular importance.

ARTICLE VIII

1. Each contracting party waives all its claims against any other contracting party for damage to any property owned by it and used by its land, sea or air armed services, if such damage--

(i) was caused by a member or an employee of the armed services of the other Contracting Party in the execution of his duties in connection with the operation of the North Atlantic Treaty; or

(ii) arose from the use of any vehicle, vessel or aircraft owned by the other Contracting Party and used by its armed services, provided either that the vehicle, vessel or aircraft causing the damage was being used in connection with the operation of the North Atlantic Treaty, or that the damage was caused to property being so used.

Claims for maritime salvage by one Contracting Party against any other Contracting Party shall be waived, provided that the vessel or cargo salvaged was owned by a Contracting Party and being used by its armed services in connection with the operation of the North Atlantic Treaty.

2. (a) In the case of damage caused or arising as stated in paragraph 1 to other property owned by a Contracting Party and located in its territory, the issue of the liability of any other Contracting Party shall be determined and the amount of damage shall be assessed, unless the Contracting Parties concerned agree otherwise, by the sole arbitrator selected in accordance with sub-paragraph (b) of this paragraph. The arbitrator shall also decide any counterclaims arising out of the same incident.

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5. Claims (other than contractual claims and those to which paragraphs 6 or 7 of this Article apply) arising out of acts or omissions of members of a force or civilian component done in the performance of official duty, or out of any other act, omission or occurrence for which a force or civilian component is legally responsible, and causing damage in the territory of the receiving State to third parties, other than any of the Contracting Parties, shall be dealt with by the receiving State in accordance with the following provisions:

(i) Where one sending State alone is responsible, the amount awarded or adjusted shall be distributed in the proportions of 25 per cent, chargeable to the receiving State and 75 per cent chargeable to the sending State.

6. Claims against members of a force or civilian component arising out of tortious acts or omissions in the receiving State not done in the performance of official duty shall be dealt with in the following manner:

(a) The authorities of the receiving State shall consider the claim and assess compensation to the claimant in a fair and just manner, taking into account all the circumstances of the case, including the conduct of the injured person, and shall prepare a report on the matter.

(b) The report shall be delivered to the authorities of the sending State, who shall then decide without delay whether they will offer an ex gratia payment, and if so, of what amount.

(c) If an offer of ex gratia payment is made, and accepted by the claimant in full satisfaction of his claim, the authorities of the sending State shall make the payment themselves and inform the authorities of the receiving State of their decision and of the sum paid.

(d) Nothing in this paragraph shall affect the jurisdiction of the courts of the receiving State to entertain an action against a member of a force or of a civilian component unless and until there has been payment in full satisfaction of the claim.

ARTICLE XV

1. Subject to paragraph 2 of this Article, this agreement shall remain in force in the event of hostilities to which the North Atlantic Treaty applies, except that the provisions for settling claims in paragraphs 2 and 5 of Article VIII shall not apply to war damage, and that the provisions of the Agreement, and in particular of Articles II and Vii, shall immediately be reviewed by the Contracting Parties concerned, who may agree to such modification as they may consider desirable regarding the application of the agreement between them.

SENATE RESOLUTION ACCOMPANYING ITS ADVICE AND CONSENT TO RATIFICATION OF
THE NATO SOF AGREEMENT (15 JULY 1953)

"It is the understanding of the Senate, which understanding inheres in its advice and consent to the ratification of the Agreement, that nothing in the Agreement diminishes, abridges, or alters the right of the United States of America to safeguard its own security by excluding or removing persons whose presence in the United States is deemed prejudicial to its safety or security, and that no person whose presence in the United States is deemed prejudicial to its safety and security shall be permitted to enter or remain in the United States.

"In giving its advice and consent to ratification, it is the sense of the Senate that:

1. The criminal jurisdiction provisions of Article VII do not constitute a precedent for future agreements;

2. Where a person subject to the military jurisdiction of the United States is to be tried by the authorities of a receiving state, under the treaty the Commanding Officer of the Armed forces of the United States in such state shall examine the laws of such state with particular reference to the procedural safeguards contained in the Constitution of the United States;

3. If, in the opinion of such commanding officer, under all the circumstances of the case, there is danger that the accused will not be protected because of the absence or denial of constitutional rights he would enjoy in the United States, the commanding officer shall request the authorities of the receiving state to waive jurisdiction in accordance with the provisions of paragraph 3(d) of Article VII (which requires the receiving state to give 'sympathetic consideration' to such request) and if such authorities refuse to waive jurisdiction, the commanding officer shall request the Department of State to press such request through diplomatic channels and notification shall be given by the Executive Branch to the Armed Services committees of the Senate and House of Representatives;

4. A representative of the United States to be appointed by the Chief of Diplomatic Mission with the advice of the senior United States military representative in the receiving state will attend the trial of any such person by the authorities of a receiving state under the agreement, and any failure shall be reported to the commanding officer of the armed forces of the United States in such state who shall then request the Department of State to take appropriate action to protect the rights of the accused, and notification shall be given by the Executive Branch to the Armed Services Committees of the Senate and House of Representatives."

APPENDIX 8

EXTRACTS FROM THE UNIFORM CODE OF MILITARY JUSTICE

ART. 99. Misbehavior before the enemy.

Any member of the armed forces who before or in the presence of the enemy--

- (1) runs away; or
- (2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend; or
- (3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property; or
- (4) casts away his arms or ammunition; or
- (5) is guilty of cowardly conduct; or
- (6) quits his place of duty to plunder or pillage; or
- (7) causes false alarms in any command, unit, or place under control of the armed forces; or
- (8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which is his duty to encounter, engage, capture, or destroy; or
- (9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

ART. 100. Subordinate compelling surrender.

Any person subject to this code who compels or attempt to compel a commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to any enemy or to abandon it, or who strikes the colors or flag to any enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

ART. 104. Aiding the enemy.

Any person who--

- (1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other thing; or
- (2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct.

ART. 105. Misconduct as a prisoner.

Any person subject to this code who, while in the hands of the enemy in time of war--

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

ART. 133. Conduct unbecoming an officer and gentleman.

Any officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

APPENDIX 9

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES

ARMED FORCES

I

I am an American fighting man. I serve in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command I will never surrender my men while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am bound to give only name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American fighting man, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.

APPENDIX 10

STUDENT OUTLINE

FIRST HOUR - INTERNATIONAL LAW AND CIVIL WAR

Introduction

I. What is International Law?

A. Development of International Law

1. The Role and Attitude of the United States

a. U. S. Constitution

b. U. S. Courts

c. The President and International Law

2. Is International Law Realistic?

3. The Importance of International Law

B. International Relations

1. Stable or Normal Situations

2. Unstable Situations

a. Renegades

b. Insurgents - What are they?

Examples:

(1) Application of International Law in Insurgency

(a) Effect on International Relations

1. Relations Between Loyalist Government and Outside States

2. Responsibility of Outside Government

3. Insurgency Inspired and Supported by Outside Governments

(2) Internal Defense/Development Operations Defined - Legal Affect of Definition?

1. Prior to 1949

2. Article 3

c. Belligerency

(1) Conditions

(a)

(b)

(c)

(d)

(e)

(2) Legal Consequences

(3) Conditions for Revolutionary Army

(a) Two Schools of Thought

1.

a.

b.

c.

d.

2.

SUMMARY

SECOND HOUR

I. Conduct of Hostilities

A. Few Rules

B. Contrast Insurgency - Conventional Warfare

1. Technique of Combat

2. Lack of Established Targets and Objectives

3. No Distinction Between Soldier and Civilian

4. Insurgents Ruthlessness

II. Article 3 Provisions

A. Content

1. Quarter

2. No Torture
3. No Hostages
4. No Degrading Treatment
5. No Execution Without Fair Trial
6. Right of Intercession

B. Implementation and Obstacles Thereto

1. When and Where does it Apply?
2. Who is Bound?
3. Who is Protected?
4. What Acts are Prohibited?

Examples:

a. Status of Participants in Insurgency Type Civil Wars

(1) Insurgent not in Uniform - Distinguished Renegade

(a)

(b)

(c)

(d)

(2) Wearing of Uniform - What Difference does it make?

(a)

(b)

(c)

(d)

(3) Private Foreign Volunteer Supporters of Insurgents

(4) Foreign Military Supporters of Insurgents

(a)

(b)

(5) Loyalist Government and its Foreign Supporters

(6) Insurgents vs Foreign Supporters of Loyalists

(a)

(b)

(c)

(d)

(e)

(7) The American Soldier and the United States
Government

(a)

(b)

(c)

The Purpose of Internal Defense/Development Operations