



American Society  
of International Law



# THE RULES OF WAR: From the Civil War-Era Lieber Code to the Geneva Conventions

A RESOURCE FOR TEACHERS CREATED BY THE  
AMERICAN SOCIETY OF INTERNATIONAL LAW

The American Society of International Law  
International Law Curriculum Series

# The Rules of War: The Lieber Code and the Geneva Conventions

A resource for teachers

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With support from the Open Society Foundations

Essential Questions	Essential Understanding	Essential Knowledge	Essential Skills
<p>Why are there rules governing war?</p> <p>What are the rules of war?</p> <p>How did the United States contribute to their creation?</p> <p>Do rules of war change depending on the situation?</p> <p>What is the scope of military necessity?</p>	<p>The Lieber Code was the first collection of rules governing the actions of military commanders in conflict</p> <p>The American Civil War was the first industrial war and included examples of total warfare</p> <p>The International Committee of the Red Cross led the codification and dissemination of international rules for conflicts, drawing significantly from the Lieber Code.</p> <p>There are always going to be questions about how the laws of armed conflict should apply to new situations and technologies</p>	<p>The Lieber Code</p> <p>American Civil War</p> <p>Sherman’s March</p> <p>Geneva Convention</p> <p>International Humanitarian Law (IHL) / Laws of Armed Conflict (LOAC)</p> <p>International Committee of the Red Cross (ICRC)</p> <p>American Red Cross (ARC)</p>	<p>To read and analyze primary and secondary sources.</p> <p>To organize and evaluate information.</p> <p>Analyze trends in the evolution of international rules of war.</p> <p>Articulate complementary and conflicting principles.</p> <p>Engage in negotiation of important principles</p>

## **The Rules of War: The Lieber Code and the Geneva Conventions**

### **A resource for the teachers**

*“I charge you, therefore, and the officers and soldiers under your command, as you value your own safety and honor, and the favor and esteem of your country, that you consider yourselves as marching, not through the country of an enemy, but of our friends and brethren; for such the inhabitants of Canada and the Indian nations have approved themselves in this unhappy contest between Great Britain and America.”*

General George Washington, Commander of American Colonial Forces, Letter to Benedict Arnold, September 17, 1775

#### Overview:

War has been a part of the human condition since recorded history. It has not been until relatively recently, however, that humanity has attempted to regulate and reign in the horrors that war can provoke. From the founding of the United States, our political and military leadership has sought to prevent the worst of the atrocities that war can bring to enemy civilian populations, captured soldiers, and innocent bystanders. It wasn't until the American Civil War, however, that these efforts were codified, or put into writing in the context of a legal document. The “Lieber Code,” also known as General Orders No. 100, was a handbook for Union soldiers, and became the bedrock of professional soldiers' actions toward civilians, captured enemies, and non-combatants, on and off the battlefield. The Lieber Code's influence on the development of international humanitarian law (also referred to as the law of war or law of armed conflict) can be seen in the subsequent Hague Conventions on Land Warfare and the Geneva Conventions. As modern conflicts continue to evolve, they pose challenges to the interpretation and application of the law of armed conflict, and an understanding of its roots in American history is helpful in considering the law's relevance today.

This module assumes that students have already studied the American Civil War, including a review of major battles and actions taken by Union and Confederate forces, such as Sherman's March to the Sea.

## Lesson I: Leading the Way

### A. Introduction (15 minutes)

By the mid-1800's, much of the Western world had been engaged in sporadic conflict for decades. The Napoleonic Wars in Europe had consumed the entire continent and had threatened to cross the Atlantic and impact the New World as well. During this period, new technology and advances in military thinking had opened up new military options that led to many commanders questioning what was acceptable and what should be considered “off limits” for nations at war. While the “great armies” of Europe were still debating this issue, the United States entered the American Civil War, often considered the first war to be fought on an industrial scale. This meant that many new innovations, such as railroad travel, the industrial manufacture of rifled weapons, artillery, armored warships, and the telegraph were all available to military commanders of the time. At times, the fighting approached twentieth century concepts such as “total war” and “trench warfare.”

At the time, the Western nations considered appropriate battlefield behavior to be governed by the “laws and usages of war,” a phrase which sounds like it points to specific international laws, but really only meant that military commanders should act in accordance with the ways that other nations’ armies were acting. There were no written documents to govern combat actions on the battlefield. The closest Europe came to written laws were “exchange cartels,” the written documents set up to provide for prisoner exchanges in a conflict. These documents were usually only set for a single conflict and often changed from battle to battle. Even those documents often failed to address specific questions about how prisoners should be treated and were usually only obeyed to the extent that the individual military commanders involved decided to follow the cartels.

Classroom Exercise: Have students answer the following questions based on their own opinions, not on any reading they’ve done for the lesson or anything they might know about the laws of war outside of class:

- Should civilians be protected in war?
  - o Should civilians be intentionally targeted?
  - o What if they are accidentally harmed? Does it matter how many or how much civilian harm there is compared to the military goal?
- Should a captured enemy have any rights?
- Should a person suspected of terrorism have any rights?
- Who should decide the rules?
- What if the people you are fighting don’t follow the rules of war? Do you get to ignore the rules in that situation? Should people who don’t follow the rules be punished after the war? How? By whom?

## **B. From Custom to Code (15 minutes)**

Reading Assignment: Use STUDENT HANDOUT #1 (Excerpts from General Orders No. 100 – “The Lieber Code”). This should be assigned prior to the day the lesson will be taught.

By the early part of the American Civil War, both Union and Confederate politicians and generals were engaged in a debate over whether and how the “laws and usages of war” should be applied to this conflict. The Union didn’t want to apply international standards to the war, as they feared this would give legitimacy to the Confederate forces and make them appear to actually be a separate nation, rather than rebelling states. The issue came to a head when several different acts by Union and Confederate politicians and generals resulted in threats to execute captured prisoners from each side, rather than keeping them as prisoners of war (POWs).

Eventually, the Lincoln Administration decided that all Confederate combatants should be treated in accordance with international law. To some extent, this was due to political pressure in the Union, as well as concern for Union soldiers and sailors who might be mistreated if the Union government failed to extend the protections of international law to Confederate soldiers and sailors. But, since there was no codified source of what the “laws and usages of war” actually were, the military leaders of the Union forces had to figure out how to train their officers to obey these rules. In addition, many of the military officers in the Union forces had been pulled directly from a peacetime setting, and had no knowledge of or experience in applying the “customs” that governed wars in Europe at the time.

Upon his appointment to command the entire Union army, Major General Henry Halleck asked Dr. Francis Lieber, a professor at Columbia University, to write a pamphlet explaining the differences between proper Confederate soldiers, who were owed the right of POW status, and “guerrilla” fighters, who could be considered unlawful combatants and were subject to Union punishments. That document, “Guerrilla Parties Considered with Reference to the Laws and Usages of War,” was so helpful that General Halleck had thousands of copies printed and distributed to his officers. In December of 1862, Halleck formally appointed Dr. Lieber and four military generals to a committee to review and codify the Articles of War and the laws and usages of war. The Committee gave the job of codifying the laws and usages of war solely to Dr. Lieber.

Dr. Lieber had an acute understanding of the need for treating one’s opponent with dignity and humanity. He had been a soldier in the Napoleonic Wars in Europe and the Greek war of independence against Turkey in the early part of the 19<sup>th</sup> century, and he had sons fighting on both sides of the American Civil War. Dr. Lieber used the resources he had collected as a professor of history and political science to examine the patterns and behaviors of European militaries in the 1800s. In less than six months, Dr. Lieber drafted the entire 157 article text of “General Orders No. 100,” commonly known as The Lieber Code.

### C. Putting Protection into Practice (15 minutes)

The Code sought to advance the dual, and at times conflicting, goals of humanity and security in war through three key principles: military necessity, distinguishing combatants and civilians, and humane treatment. While many individuals praised the code, it wasn't without flaws. Confederate Secretary of War James Seddon complained that the code was so broad that "a military commander under this code may pursue a line of conduct in accordance with the principles of justice, faith, and honor, or he may justify conduct correspondent with the warfare of the barbarous hordes who overran the Roman Empire."

Indeed, promulgation of the Code did not halt significant civilian harm during the war. Notwithstanding the Code, Union General Ulysses Grant gave orders for General William Tecumseh Sherman to lay siege to Atlanta, Georgia and then move his army through the South, destroying vital food, military, and industrial supplies needed by the Confederate Army, while raiding civilian homes for food and supplies for his own army. The "March to the Sea" ended in Savannah, Georgia, where the city surrendered to Sherman's forces. After Savannah, Sherman's troops turned north, through South Carolina, where they caused even more damage than they had in Georgia. Columbia, the capital city, was the victim of large fires which destroyed most of the city. Historians still debate whether the fires were accidental, started by Union troops without orders to do so, or started under Sherman's direct command.

**Suggested Video (3:26):** "Sherman's Terrifying Tactics" reviews the "March to the Sea" and Sherman's tactics in bringing "total war" to the South. It is available on the History Channel at <http://www.history.com/topics/william-t-sherman/videos#shermans-terrifying-tactics>.

(Choose either of the following classroom exercises to complete this section of the lesson.)

Classroom Exercise: Use STUDENT HANDOUT #2 (Special Field Orders No. 120). Have students address the following questions:

- Does the decision to destroy civilian targets (farms, homes, factories, etc.) as a "military necessity" reflect a failure of the Lieber Code?
- Does the fact that the "March to the Sea" undoubtedly ended the Civil War faster make any difference in your decision?

Classroom Exercise: Use STUDENT HANDOUT #3. Distribute the blank version to students and have them work in groups to complete each section (or assign only certain issues to certain groups) then have each group submit its findings to the class. Using the Lieber Code, have students identify which article addresses which principle and use the articles to define each principle in their own words. After they have defined each term, students should explain why (or if) they believe each principle is important. Finally, students should identify the conflicting goals or practical challenges of each principle.

## **Lesson I Resources:**

### **Web-based Resources:**

- The AVALON Project (Yale Law School) has the entirety of the Lieber Code online (in hyperlinked articles) at [http://avalon.law.yale.edu/19th\\_century/lieber.asp](http://avalon.law.yale.edu/19th_century/lieber.asp).
- The American Red Cross has a Teacher Resource document on the Lieber Code that is available online at [http://ehl.redcross.org/resources/civil-war-lessons/pdf/TR\\_Background\\_on\\_Lieber\\_Code.pdf](http://ehl.redcross.org/resources/civil-war-lessons/pdf/TR_Background_on_Lieber_Code.pdf).
- The International Committee of the Red Cross web site has the complete text of the Lieber Code, the Hague and Geneva Conventions, and all treaties on the law of war since 1856, at <http://www.icrc.org/ihl>.
- The U.S. Library of Congress has a website collecting the works of both Dr. Francis Lieber and his son, who was a Judge Advocate General of the U.S. Army, Brigadier General Guido Lieber. It is available online at [http://www.loc.gov/rr/frd/Military\\_Law/Lieber\\_collection.html](http://www.loc.gov/rr/frd/Military_Law/Lieber_collection.html).
- The American Red Cross has a collection of lessons exploring humanitarian law built around the American Civil War. They are available online to teachers for free at <http://ehl.redcross.org/resources/civil-war-lessons/>.

### **Video Resources:**

- The History Channel has several resources on the American Civil War, including a specific video (3:26) on Sherman's March to the Sea. They are available online at <http://www.history.com/topics/william-t-sherman/videos#shermans-terrifying-tactics>.
- The American Society of International Law held a panel discussion (1:47:54) on the law of war in the American Civil War, featuring the Lieber Code. It is available online at <http://www.youtube.com/watch?v=yXRcPa2cbWA>.
- ASIL has a video interview with Dick Jackson, Special Assistant to the U.S. Army Judge Advocate General for Law of War Matters discussing the United States' laws on conduct in war. The video is available online at [www.youtube.com/watch?v=hLTw5psIZu4](http://www.youtube.com/watch?v=hLTw5psIZu4).

## Lesson II: Modern Rules of War

Lesson II contains four sections, each estimated to take about 15 minutes. The first two sections, A & B, are foundational and need to be included. Teachers can choose from either section C or D to provide the final element of the lesson.

### A. Introduction (15 minutes)

While Dr. Lieber was working on creating a codified system of rules for the “laws and usages of war”, individuals in Europe concerned with the horrific casualties of modern warfare began to press for the creation of a system of protections for those who would minister to wounded soldiers and civilians in combat zones. Henry Dunant, a Swiss businessman, was the key figure in this movement in Europe. He witnessed a battle in Solferino, Italy where thousands of wounded and dying soldiers were left behind. Even after convincing a local village to help him provide care to the wounded; thousands of soldiers died.

Henry Dunant wrote a book about the horrors of what he had witnessed, “A Memory of Solferino,” in which he argued for the creation of a legal agreement to protect those who sought to administer medical care and aid to wounded combatants. In 1864, the Swiss government hosted a conference in Geneva to invite other governments to contribute to a document designed to protect caregivers. Prompted by Dunant’s newly founded humanitarian organization, which would go on to become the International Committee of the Red Cross (ICRC), the representatives approved and signed the 1864 Geneva Convention.

The Geneva Convention established many of the basic principles that are still respected in modern combat, including the neutrality and protection of ambulances, hospitals, and medical personnel, the responsibility of all combatants to protect those providing medical aid to the wounded, the responsibility of both sides of a conflict to care for the wounded (no matter what side they were fighting for), and the creation of the red cross as the symbol to identify medical caregivers, buildings, and vehicles.

**Suggested Video (3:31):** “Story of an Idea” – this film from the ICRC is a wonderful telling of the story of the founding of the ICRC and its principles. It is available on YouTube at <http://www.youtube.com/watch?v=oIwB-Y6FUjY>.

Classroom Exercise: Engage students in a discussion about the idea of protecting certain people on a battlefield (medical caregivers) regardless of what side they come from. Why did it take so long for this idea to be applied? Does it limit the ability of one side or another to win a battle? If so, is it still a good idea? Emphasize the importance of protecting the wounded regardless of their native country and the idea that even in the face of conflict, there are certain acts that keep us grounded in our humanity. Explain that harming those who care for the wounded can lead to even more inhumane treatment on the battlefield.

## **B. Expanding the Rules (15 minutes)**

**Suggested Handout:** The American Red Cross has a five page handout that provides a brief review of this section's information. It includes charts and graphs to illustrate the sometimes confusing collection of international conventions addressing international humanitarian law. It is available online for free at

[http://www.redcross.org/images/MEDIA\\_CustomProductCatalog/m3640105\\_IHL\\_Development.pdf](http://www.redcross.org/images/MEDIA_CustomProductCatalog/m3640105_IHL_Development.pdf).

The 1864 Geneva Convention was a resounding success. Henry Dunant's humanitarian organization worked tirelessly to promote the ideas found in the Convention. During the American Civil War, Clara Barton, known as the "Angel of the Battlefield" was put in charge of the Union hospital in Virginia during the final year of the war. There she employed many of the ideas that Dunant had proposed, including rendering aid to soldiers on both sides of the conflict, recording the names and deaths of soldiers, storing and sending to families a soldier's personal effects, and other humanitarian ideals, even though she had yet to meet him. After the War, Ms. Barton traveled abroad, where she met Mr. Dunant and brought back his ideas for the creation of a local branch of the ICRC in every country. The United States became a party to the 1864 Geneva Convention in 1882 and officially created the American Red Cross (ARC) in 1881.

The success of the Lieber Code in the American Civil War and the 1864 Geneva Convention prompted further additions to the rules of war. Rather than simply focusing on the treatment of the wounded, governments began to seriously consider the idea of regulating certain types of military actions, weapons, and strategies. In 1868, governments met under the same premise as the 1864 Geneva Convention to adopt the "St. Petersburg Declaration" which prohibited the use of certain types of explosive and incendiary (burns on contact) ammunition. In 1899 and 1907, governments met again in The Hague, a city in the Netherlands, and adopted the Hague Conventions on Land Warfare, which were heavily influenced by the Lieber Code, and banned, for example, poison weapons, the bombing of undefended cities, and imposed further restrictions on some methods and means of waging war. They also added the first rules designed to govern the treatment of prisoners of war and civilians. Other treaties adopted at The Hague banned the use of "dum dum bullets" (which were designed to expand upon contact with a body) and applied the 1864 Geneva Convention's rules about wounded soldiers to battles at sea.

As more conventions were added, the ideas they contained became known as International Humanitarian Law (IHL) or the Laws of Armed Conflict (LoAC). Following the failure of both sides of the fighting in World War II to obey the existing IHL conventions, governments around the world met to update the Geneva Conventions, create a uniform text to apply to all foreseeable circumstances, and address new technologies. The Geneva Conventions of 1949 include four separate conventions that addressed a wide variety of topics, including the expansion of protection of wounded and sick combatants and medical caregivers, the application of those standards to maritime settings, the protection of prisoners of war, and the protection of civilians stuck in conflict settings.

**Suggested Video (1:22):** Brigadier General Patrick Finnegan on the Geneva Conventions and U.S. values. Available on YouTube at <http://www.youtube.com/watch?v=FQQVnVDXldA>.

### C. Contemporary Challenges to the Law of Armed Conflict (15 minutes)

Classroom Exercise: Have students review STUDENT HANDOUTS #1 & #4. Then have them complete STUDENT HANDOUT #5, comparing the provisions of the Lieber Code and the Geneva Conventions of 1949. Emphasize to students the common themes found within the two documents and how the Lieber Code represents America's longstanding commitment to just and humane behavior in conflict, in Lieber's words "a contribution by the United States to the stock of common civilization."

According to the U.S. Department of Defense, the United States has a policy of applying the laws of armed conflict to all conflicts. However, what rights and protections any individual has according to the laws of armed conflict depends in large part on their status as a civilian or a soldier. As modern day armed conflicts increasingly feature non-state actors and move away from the traditional model of state vs. state wars, the best way to apply the Geneva Conventions and the basic principles of the law of armed conflict has become a difficult challenge for modern military commanders and their legal advisors.

Current efforts to combat terrorism pose challenges to the existing structure and practical exercise of IHL rules since one side of the war is being fought by a non-state actor, not a traditional army. This raises questions such as: What rules should apply, are members of al-Qaeda soldiers, civilians, or a third category, and what constitutes "membership" in al-Qaeda?

Who can be targeted and killed in a war is determined by their status as either soldier or civilian. Civilians cannot be targeted (although they are often lawful collateral damage in times of war). What happens when military commanders cannot tell the difference between civilians and soldiers? Who decides how to determine the difference?

**Suggested Video (4:43):** "War by Remote" PBS Frontline has a video discussing the use of UAVs (unmanned aerial vehicles) in the current conflict. It is available online at <http://www.pbs.org/wgbh/pages/frontline/digitalnation/blog/2009/10/new-video-fighting-from-afar.html>.

Classroom Discussion: In what ways is drone targeting different from traditional war? Are the operators who control these drones "soldiers" under the Geneva Conventions? Could Captain Dan (from the video) be targeted while at home with his family? How is "military necessity" changed when the attack can be carried out remotely? What do you think happens to the balancing of "military necessity" and protection of civilians when fifty, one hundred, or three hundred other people are killed before the person targeted is killed?

#### **D. International Humanitarian Law in 15 Minutes (15 minutes)**

This exercise was created by the Canadian Red Cross for use by teachers. It is designed to engage students first hand in “creating” rules to govern conduct in war. The original version is online at <http://www.redcross.ca/article.asp?id=28760&tid=006>.

Set the stage for students by telling them that they are citizens in a country that is about to go to war. The two countries that are about to fight each other have decided that they are going to create some rules by which the war will be fought. Divide the class in two, to represent the two countries, and tell them that they have become advisors to their respective governments, and that they are going to create, and then negotiate the lists.

Their government has asked for advice. Both countries have agreed to set up a list of people and things that they promise not to attack, as long as the other side doesn't attack them either. The government is only prepared to prohibit attacks that cannot help them win the war.

Each group should brainstorm the people and things they recommend protecting. They should make a list of the things on chart paper or a black/white board. Protected groups can include things like hospitals, schools, civilians, wounded soldiers etc. You can give them hints and suggestions.

Students may also include things like bridges, roads, airports and factories on their lists. These targets are called “dual-use objectives.” Depending on specific circumstances, they may or may not be valid targets under international humanitarian law. Both sides will most likely not agree to protect these things as they could be vital to a war effort, and therefore a legitimate military target. In this situation, it is possible to comply with the spirit of international humanitarian law, for example by attacking factories in the middle of the night, when they will not be full of civilian workers. The effect of war on civilians should always be minimized.

Once the two lists are made, have the groups come back together and begin to go over their lists. Identify which items are on both lists and assume that both parties agree to these items. Then have students identify which items are not on both lists and have each side negotiate with the other on which ones they want to add. To make the negotiation exercise more interesting, you can impose a limit on the total number of added items. For example, you can say that each side can only add two additional items to the list – this forces students to evaluate which items are more important to their viewpoints.

Point out to students that by listing things like civilians, prisoners of war, wounded soldiers, hospitals, schools, food and water supplies, that they have agreed to provide protection similar to that of international humanitarian law.

Follow up discussion should include looking at the following questions:

1. What are the advantages of acknowledging and fighting by the rules?
  - Self Interest – Long term interest (even if you're winning), what if you need protection at some point?
  - International image
  - Reciprocity (fear of retaliation)—if you take care of the POWs, the same will be done for your soldiers
  - Emotion vs. Logic – logically the rules make sense, but in the heat of the battle things can get out of hand. Having neutral observers can assist in preventing the deterioration of the situation
  - Enforcement – If IHL rules are accepted, countries can demand that their opponents enforce the rules in their territory as well
  - Return to peace – When serious violations have occurred, this is harder to achieve
  
2. What are the consequences of breaking them?
  - Retribution/retaliation – if one side begins attacking civilians, then they will most likely be attacked themselves
  - Escalation – as attacks become more indiscriminate, the war could get out of control
  - Outside intervention and international pressure
  - Trial as a war criminal
  
3. Why would a country not be willing to comply with International Humanitarian Law?
  - Thinking one side of the conflict can bully the enemy into submission
  - Responding to threats or actions from the other side
  - Not taking the time to consider the consequences for their own people (or not caring)
  - Believing that all is fair in war

## **Lesson II Resources:**

### **Web-based Resources:**

- The International Committee of the Red Cross has an entire website, the EHL Virtual Campus, devoted to teaching basic principles of IHL. It is available online at <http://www.ehl.icrc.org/>.
- The Canadian Red Cross has a page dedicated to teacher's resources when addressing international humanitarian law. It is online at <http://www.redcross.ca/article.asp?id=26023&tid=006>.
- The American Red Cross has a website devoted to teachers for IHL, including links to other external resources. It is available online at <http://ehl.redcross.org/>. It also has additional resources at <http://www.redcross.org/what-we-do/international-services/educating-future-humanitarians/ihl-tools-resources>.
- The New Yorker magazine has an article by former war correspondent Jane Mayer examining the use of drones in war titled: "The Predator War." It is available online at [http://www.newyorker.com/reporting/2009/10/26/091026fa\\_fact\\_mayer](http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer).
- Joint Force Quarterly has an article by Professor Amitai Etzioni from the George Washington University examining "Unmanned Aircraft Systems: The Moral and Legal Case". It is available online in .pdf format at <http://www.gwu.edu/~ccps/etzioni/documents/Unmanned%20Aircraft%20Systems%20The%20Moral%20and%20Legal%20Case%20.pdf>

### **Video Resources:**

- A student documentary film project (9:59), submitted by John Dean for National History Day film competition, is a very good review of the entire history of the Geneva Conventions. It is available on YouTube at <http://www.youtube.com/watch?v=5SNneFCxJmA>.
- The American Red Cross has a YouTube channel with over 1,000 videos that can be used to supplement classroom discussions. It is available on YouTube at <http://www.youtube.com/user/AmRedCross>.
- The International Committee of the Red Cross has a YouTube channel with thousands of videos that can be used to supplement classroom discussions. It is available on YouTube at <http://www.youtube.com/user/icrcfilms>.

## **TEACHER BACKGROUND READING**

### **The “Lieber Code” and the Law of War in the Civil War**

**By Burrus M. Carnahan**

The Civil War produced one of the most significant American contributions to the development of international law in the nineteenth century, the “Lieber Code.” The Code, a concise handbook on the international law of war issued for the use of Union army officers, was one response by the United States government to a fundamental disagreement between the North and the South as to the nature of the war they were fighting.

The Confederate government, of course, rejected the very idea that it was fighting a civil war, and continually pressed the United States, as well as neutral governments, to accord the Confederacy all the international rights of a sovereign nation. On the other hand, the Lincoln administration and its supporters just as adamantly refused to recognize any legitimacy for the government in Richmond, arguing that, since secession from the Union was unconstitutional, the United States was fighting against a group of individual, but well-organized, rebels rather than a confederation of seceded states.

Nevertheless, within months of the fall of Fort Sumter the Lincoln administration slowly and reluctantly started to treat Confederate soldiers in accordance with the rights and privileges due to enemy personnel under international law. This process was well under way by July 14, 1861, when General Winfield Scott, commanding officer of the U.S. Army, ordered that Confederate soldiers captured in western Virginia be treated as prisoners of war under the “usages of war,” another term for the international law of war. By the end of August 1861 the U.S. War Department was using a “flag of truce boat” to communicate with Confederate military officials at Norfolk, Virginia. In October of that year the government appointed an officer as “Commissary of Prisoners,” to establish and run prisoner of war camps in the North. These decisions appear to have been taken due to a combination of factors, including practical necessity, Confederate threats of retaliation, and domestic political pressure to ensure that captured Union soldiers were treated as prisoners of war by the Confederates.

At first there were a few issues on which the Lincoln administration wanted to maintain a firmer line. In his April 19, 1861, proclamation declaring a blockade on seaports in the rebellious states, President Lincoln had also announced that “if any person under the pretended authority of the said [Confederate] States, or under any other pretense, shall molest a vessel of the United States, or the persons or cargo on board of her, such persons will be held amenable to the laws of the United States for the prevention and punishment of piracy.” In other words, if any Confederate officers or sailors attacked a Union merchant ship, they would not be treated as prisoners of war but instead tried and hanged as pirates.

When a captured officer from a rebel privateer (a privately-owned warship licensed by the Confederate government to prey on Union shipping) was actually sentenced to death as a pirate, the Confederate government, not surprisingly, threatened to hang a Union prisoner of war in retaliation if the sentence was carried out, and for that purpose a colonel of New York State Militia was placed on death row in the Virginia state penitentiary. After almost three months of

negotiations, the Lincoln administration capitulated and at the end of January, 1862, orders were given that naval and privateer prisoners were to be regarded as prisoners of war and turned over to the U.S. military.

At about the same time the Lincoln administration reversed itself on another aspect of prisoner policy. In the nineteenth century, it was customary for armies at war to conclude an agreement, known as an exchange cartel, to facilitate regular exchanges of prisoners while the war was still going on. Great political pressure was placed on the Lincoln administration to negotiate such a cartel with the Confederate army. Throughout 1861, Attorney General Edward Bates objected to negotiating an exchange cartel, believing it would grant increased recognition and legitimacy to the Confederate government. However, after consulting with experts on international law, including Columbia University professor Dr. Francis Lieber, Bates and other administration officials concluded that the Union could enter into an exchange cartel on a purely humanitarian basis, without implied recognition of the Confederate government. On February 11, 1862, Secretary of War Edwin M. Stanton directed Major General Wool, commanding officer at Fortress Monroe, Virginia, to begin cartel negotiations with his Confederate counterpart at Norfolk, Virginia, across the James River.

By early 1862, then, the U.S. government was according Confederate officers, soldiers and sailors all the rights and privileges established by the international laws and usages of war. This gave rise to a new problem for the Lincoln administration – ensuring that U.S. Army officers knew what the laws and usages of war required. As early as July 1861, when the administration was still formulating its prisoner policies, U.S. Army Quartermaster General Montgomery Meigs warned the Secretary of War that when handling prisoner of war issues, “[k]nowledge of military law and custom is needed in order not to offend by errors of ignorance in treating these delicate questions.” The rapid expansion of the Union army during the war meant that the vast majority of officers had been appointed directly from civilian life, and had no knowledge of the laws and usages of war.

By the time he was appointed commanding general of the U.S. Army in July 1862, Major General Henry Halleck was well aware of the need to provide practical guidance on the laws and usages of war to officers in the field. Even though he was himself an authority on international law, Halleck had faced a number of difficult problems, including ignorance on the part of his subordinates, when dealing with guerrilla warfare while he was in command of the Department of the Missouri. After assuming command of the entire U.S. Army, Halleck asked Professor Lieber for advice on how to distinguish legitimate enemy combatants, who were entitled to prisoner of war treatment, from unlawful guerillas who could be punished if captured. As a result, Lieber produced a pamphlet on Guerrilla Parties Considered with Reference to the Laws and Usages of War. Halleck was delighted with the pamphlet, and ordered 5,000 copies to be printed at government expense for the guidance of army officers. In December 1862, General Halleck took the next step and had the War Department appoint Lieber and four generals to a board “to propose amendments or changes to the Articles of War, and a code of regulations for the government of armies in the field, as authorized by the laws and usages of war.” The generals decided they would undertake review of the Articles of War, and left the codification of the laws and usages of war to Dr. Lieber.

Though a Prussian by birth, Francis Lieber (1800 – 1872) was uniquely qualified to write a summary of the international laws and usages of war for use during the American Civil War. Having served as a soldier in the Prussian army, he was a combat veteran who had been severely wounded in the final battles of the Napoleonic Wars. After earning a doctorate from the University of Jena, in the 1820s he volunteered to fight in the Greek war of independence from Turkey. Returning from Greece, he was persecuted by the Prussian police due to his democratic political beliefs and fled to Boston in 1827. Unable to find a permanent academic position in New England, in 1835 he accepted a position as professor of political economy at a college in South Carolina in spite of his personal opposition to slavery. He returned to the North in 1855 and was eventually appointed professor of political science at Columbia College (soon renamed Columbia University) in New York City.

The outbreak of the Civil War divided Lieber's family. His oldest son, who had remained in South Carolina, died while fighting for the Confederacy. His other two sons joined the Union army and one was severely wounded. The laws and usages of war were more than merely academic concepts to Francis Lieber.

Dr. Lieber was also uniquely qualified by the research resources available to him. During his years in South Carolina he had accumulated massive files documenting international military and diplomatic practices in Europe and the Americas. From these he was able to deduce patterns in international behavior that allowed him to test whether the rules and principles stated by earlier writers on international law were reflected in the actual practice of countries at war.

Drawing on these resources, by the end of February 1863 Lieber produced the first draft of a short guide to the laws and usages of war for review by the other members of the War Department board. After a few minor changes, Lieber's draft was signed by President Lincoln as commander in chief of army and issued by the War Department as General Orders No. 100, with an official date of April 24, 1863. Although issued as an official U.S Army document, it is commonly referred to as the Lieber Code.

Consisting of 157 articles, the Lieber Code was a concise summary, in plain language, of the laws and usages of land warfare as they had developed up to the middle of the nineteenth century. The Code covered almost all legal issues an army officer was likely to encounter in the field, including treatment of prisoners of war, the punishment of spies and guerillas, proper use of the white flag of truce, the conclusion of temporary cease-fire agreements with the enemy, and the treatment of enemy civilians and civilian property in occupied territory. By way of comparison, the 1949 Geneva Convention on Prisoners of War (currently in force) is 143 articles long, plus five annexes, and covers only some of the issues the Lieber Code dealt with.

One of Lieber's most significant achievements was clarifying the legal concept of "military necessity." While earlier books on international law had vaguely called for only the use of "necessary" force in war, the Lieber Code gave the following detailed guidance on what this legal principle did and did not permit:

Art. 14. Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

Art. 15. Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.

Art. 16. Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions.

It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

Confederate authorities were particularly critical of Lieber's principle of military necessity. Shortly after the Lieber Code was issued, Confederate Secretary of War James Seddon complained to a subordinate that the concept was so flexible that "... a military commander under this code may pursue a line of conduct in accordance with principles of justice, faith, and honor, or he may justify conduct correspondent with the warfare of the barbarous hordes who overran the Roman Empire ...." There was some truth in this criticism, particularly in relation to the treatment of private property later in the War by General Sherman in Georgia and the Carolinas (1864-65) and General Sheridan in the Shenandoah Valley of Virginia (1864).

Seddon failed to note, however, Lieber's warning that military necessity only justified acts "which are lawful according to the modern law and usages of war." Military necessity would not permit acts in violation of a specific rule of that law, such as the prohibition on use of poison or abuse of a flag of truce (for example, launching a surprise attack after the enemy ceased firing in response to the raising of a white flag). War crimes tribunals in the twentieth and twenty-first centuries have generally agreed with Lieber's position and have rejected "military necessity" as a defense for violations of specific rules of the law of war.

Another important, and lasting, contribution of the Lieber Code to international law was its declaration that the law of war did not allow racial discrimination. By 1863, the Union army was recruiting units of African-American soldiers. Confederate officials claimed the use of such

troops was intended to provoke a bloody slave rebellion (a “servile war”) in the South, and treated captured African-American soldiers as escaped slaves rather than prisoners of war. In response, the Lieber Code asserted that “law of nations knows of no distinction of color” (article 58) and that “[n]o belligerent has a right to declare that enemies of a certain class, color, or condition, when properly organized as soldiers, will not be treated” as prisoners of war (article 57). This condemnation of racial discrimination, at a time when it was lawful and even required in many states, laid the foundation for one of the most important principles of international human rights law as it developed in the late twentieth century.

The Lieber Code remained the standard guidance on the law of war for the U.S. Army until a new manual was issued in 1914, and even that extensively quoted from the Code. The Lieber Code had even more influence at the international level. Up until the mid-nineteenth century, the law of war developed gradually through the general acceptance of international custom by various countries. From that time on, however, it has developed principally through the negotiation of treaties (sometimes also called “conventions” or “declarations”) that were signed and ratified by a large number of nations. Early examples include the initial Geneva Convention of 1864, that established the red cross as an international symbol for military hospitals and medical personnel, and the 1868 Saint Petersburg Declaration that outlawed use of explosive rifle bullets in war.

The first successful effort to bring together all the rules of land warfare in a single treaty came at the 1899 Peace Conference held at The Hague, Netherlands. The Hague Conference adopted a set of Regulations on Land Warfare that were directly adapted from the Lieber Code. The Hague Regulations have been revised and updated by periodic negotiations since then, most recently in a 1977 Protocol to the Geneva Conventions. Through its influence on international negotiations up to the present day, the Lieber Code truly became, as Dr. Lieber had predicted, “a contribution by the U.S. to the stock of common civilisation.”

Source: Essential Civil War Curriculum, Virginia Center for Civil War Studies at Virginia Tech. A footnoted version of this text is available online at <http://www.essential.civilwar.vt.edu/assets/files/ECWC%20TOPIC%20Lieber%20Code%20Essay2.pdf>.

# STUDENT HANDOUT #1

## Excerpts from General Order 100: The Lieber Code

**Art. 5.** Martial Law should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where actual hostilities exist, or are expected and must be prepared for. Its most complete sway is allowed - even in the commander's own country - when face to face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion.

To save the country is paramount to all other considerations.

...

**Art. 14.** Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

**Art. 15.** Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.

**Art. 16.** Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

...

**Art. 19.** Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.

...

**Art. 22.** Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.

**Art. 23.** Private citizens are no longer murdered, enslaved, or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant in the overruling demands of a vigorous war.

...

**Art. 35.** Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.

...

**Art. 56.** A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

**Art. 57.** So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity, he is a belligerent; his killing, wounding, or other warlike acts are not individual crimes or offenses. No belligerent has a right to declare that enemies of a certain class, color, or condition, when properly organized as soldiers, will not be treated by him as public enemies.

...

**Art. 68.** Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war.

Unnecessary or revengeful destruction of life is not lawful.

...

**Art. 79.** Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.

**Art. 80.** Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information or to punish them for having given false information.

...

**Art. 82.** Men, or squads of men, who commit hostilities, whether by fighting, or inroads for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers—such men, or squads of men, are not public enemies, and, therefore, if captured, are not entitled to the privileges of prisoners of war, but shall be treated summarily as highway robbers or pirates.

## STUDENT HANDOUT #2

### William T. Sherman, Special Field Orders, No. 120

Headquarters Military Division of the Mississippi,

In the Field, Kingston, Georgia, November 9, 1864

...

4. The army will forage liberally on the country during the march. To this end, each brigade commander will organize a good and sufficient foraging party, under the command of one or more discreet officers, who will gather, near the route traveled, corn or forage of any kind, meat of any kind, vegetables, corn-meal, or whatever is needed by the command, aiming at all times to keep in the wagons at least ten days' provisions for his command, and three days' forage. Soldiers must not enter the dwellings of the inhabitants, or commit any trespass; but, during a halt or camp, they may be permitted to gather turnips, potatoes, and other vegetables, and to drive in stock in sight of their camp. To regular foraging-parties must be intrusted the gathering of provisions and forage, at any distance from the road traveled.

5. To corps commanders alone is intrusted the power to destroy mills, houses, cotton-gins, etc.; and for them this general principle is laid down: In districts and neighborhoods where the army is unmolested, no destruction of such property should be permitted; but should guerrillas or bushwhackers molest our march, or should the inhabitants burn bridges, obstruct roads, or otherwise manifest local hostility, then army commanders should order and enforce a devastation more or less relentless, according to the measure of such hostility.

6. As for horses, mules, wagons, etc., belonging to the inhabitants, the cavalry and artillery may appropriate freely and without limit; discriminating, however, between the rich, who are usually hostile and the poor and industrious, usually neutral or friendly. Foraging-parties may also take mules or horses, to replace the jaded animals of their trains, or to serve as pack-mules for the regiments or brigades. In all foraging, of whatever kind, the parties engaged will refrain from abusive or threatening language, and may, where the officer in command thinks proper, give written certificates of the facts, but no receipts; and they will endeavor to leave with each family a reasonable portion for their maintenance,

By order of Major-General W. T. Sherman,  
L. M. Dayton, Aide-de-Camp.

Source: William Tecumseh Sherman, *Memoirs of General William T. Sherman*, vol. 2 651-653 (New York, 1875), available at [http://www.sewanee.edu/faculty/Willis/Civil\\_War/documents/Sherman120.html](http://www.sewanee.edu/faculty/Willis/Civil_War/documents/Sherman120.html).

### STUDENT HANDOUT #3

Instructions: The Lieber Code is built on three main principles: military necessity, the distinction between a combatant and a civilian, and humane treatment of prisoners. Using the Lieber Code identify which article addresses which principle and use the articles to define each principle in your own words. After you have defined each term, explain why each principle is important. Finally, identify the conflicting goals or practical challenges of each principle.

#### Main Principles

	<b>Military Necessity</b>	<b>Combatant/Civilian Distinction</b>	<b>Humane Treatment</b>
<b>Which Articles of the Lieber Code deal with this principle?</b>			
<b>What is the principle? (Use your own words)</b>			
<b>Why is it important?</b>			
<b>What are some tensions within the principle?</b>			

### Main Principles (Answer Key)

	<b>Military Necessity</b>	<b>Combatant/Civilian Distinction</b>	<b>Humane Treatment</b>
<b>Which Articles of the Lieber Code deal with this principle?</b>	Articles: 5, 14, 15, 16, 19, & 68.	Articles: 19, 22, 23, 57, & 82.	Articles: 16, 56, 68, 79, & 80.
<b>What is the principle? Define in your own words</b>	Art. 14: “[C]onsists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war”.	Art. 57: “So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity, he is a belligerent; his killing, wounding, or other warlike acts are not individual crimes or offenses.”	Art. 56: “A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.”
<b>Why is it important?</b>	Requirement of military necessity limits what armies can do in war and condemns acts of cruelty.	By making the distinction between soldier and civilian, this principle protects non-combatants and removes them as targets of war. It also protects soldiers from being subject to criminal law for their actions as soldiers.	Prohibits cruel treatment of captured soldiers and civilians of the enemy state.
<b>What are some tensions/challenges within and among these principles?</b> Focus on general tensions of security/humanity or morality/pragmatism	- What concrete factors determine if an action is ‘indispensable’? - There is a tension in what is justified by military necessity and what is prohibited as inhumane treatment.	- Does military necessity affect the treatment of civilians? - Are these the only two classifications? What about pirates, gangs or terrorists? Which protections are these third groups afforded?	- Does humane treatment trump security concerns? - How is humane treatment frustrated by practical constraints? i.e. resources to provide medical aid, etc.

## **STUDENT HANDOUT #4**

### **The Geneva Conventions (1949)**

#### **Common Article 3**

**Art. 3.** In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

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

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

#### **Excerpt from Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949**

**Art. 12.** Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances.

They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex. The Party to the conflict which is compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care.

**Art. 13.** The present Convention shall apply to the wounded and sick belonging to ...

Members of the armed forces of a Party to the conflict, as well as [other persons entitled to be considered prisoners of war under Article 4 of the Geneva Conventions (III) on Prisoners of War, quoted below].

**Art. 15.** At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, an armistice or a suspension of fire shall be arranged, or local arrangements made, to permit the removal, exchange and transport of the wounded left on the battlefield.

Likewise, local arrangements may be concluded between Parties to the conflict for the removal or exchange of wounded and sick from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way to that area.

### **Excerpt from Geneva Convention (III) Relative to the Treatment of Prisoners of War; August 12, 1949**

**Art. 4. A.** Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

**Art. 13.** Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present

Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

**Art. 118.** Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

...  
Art 129. The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. ....

Art 130. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or willfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

## **Excerpt from Convention (IV) Relative to the Protection of Civilian Persons in Time of War, August 12, 1949**

### **Part 1. General Provisions**

**Art. 4.** Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, shall not be considered as protected persons within the meaning of the present Convention.

**Art. 5** Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the

State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication [with the ICRC] under the present Convention.

In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

## **Part II General Protection of Populations Against Certain Consequences of War**

**Art. 13.** The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

...

**Art. 16.** The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

**Art. 19.** The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded. The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants which have not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.

...

## **Part IV. Execution of the Convention**

...

Art. 146. The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. ...

Art. 147. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

## STUDENT HANDOUT #5

Instructions: Fill in the chart below by matching the article of the Lieber Code and of the Geneva Conventions with the listed topics. If you find more commonalities/topics, add your own at the end of the chart.

	<b>The Lieber Code</b>	<b>The Geneva Conventions</b>
<b>Military Necessity</b>		
<b>Protection of Civilians: Civilians Defined</b>		
<b>Prisoners of War</b>		
<b>Soldier: Defined</b>		
<b>Humane Treatment</b>		
<b>Medical Care</b>		
<b>No Torture</b>		
<b>Pirates, Spies, etc.</b>		

	<b>Lieber Code</b>	<b>The Geneva Conventions</b>
<b>Military Necessity</b>	Articles: 14, 15, 16.	Convention (IV) Articles 16, 147
<b>Protection of Civilians: Civilians Defined</b>	Articles: 19, 22.	Convention (IV) Articles: 4, 16
<b>Prisoners of War</b>	Article: 56	Convention (III) Article 4
<b>Soldier: Defined</b>	Article: 57	Convention (III) Article 4
<b>Humane Treatment</b>	Article: 68	Convention (I) Article 12. Convention (III) Articles 13, 130 Convention (IV) Article 147 Common Article 3
<b>Medical Care</b>	Article: 79	Convention (I) Articles 12, 15 Convention (III) Article 13 Common Article 3
<b>No Torture</b>	Article: 80	Convention (III) Article 130 Convention (IV) Article 147 Common Article 3
<b>Pirates, Spies, etc.</b>	Article: 82	Convention (IV) Articles 5, 19

## Glossary of Terms

**American Red Cross (ARC):** The American chapter of the International Red Cross movement. It was founded by Clara Barton following the American Civil War. It is a member of the International Federation of the Red Cross and Red Crescent Societies.

**Civilian:** An individual who is not a member of their state's armed forces, militias, or volunteer corps forming part of such armed forces.

**Clara Barton:** Also known as the "Angel of the Battlefield", she supervised medical aid to Union and Confederate wounded soldiers during the American Civil War. She later advocated for the United States to become a party to the 1864 Geneva Convention and founded the American Red Cross.

**Collateral Damage:** Unintended damage, to objects or individuals, as a result of an intended use of force.

**Combatants:** An individual participating in combat as part of a country's armed forces or an organized military group clearly identified by uniforms, insignia, and openly carrying weapons.

**Common Article 3:** The text present in all four Geneva Conventions of 1949 that is considered to be part of "customary international law" with which all nations must comply in non-international armed conflict.

**Convention:** A treaty. Treaties between more than two nations are often called "conventions."

**Detainee:** A person held in custody or confinement.

**Henry Dunant:** A Swiss businessman who witnessed a horrific battle in Italy and, as a result, pushed for the creation of a code protecting wounded soldiers and medical caregivers. He later founded the International Committee of the Red Cross.

**Enemy Combatant:** Member of the armed forces of the enemy state.

**Geneva Conventions:** The multiple international agreements that have codified international humanitarian law norms. They go all the way back to the 1864 Geneva Convention and include the Geneva Conventions of 1949 and the later Additional Protocols.

**Guerilla Forces:** Typically used to describe irregular armed forces fighting a larger military force and employing tactics of brief and surprise engagement.

**Hague Conventions:** Another set of international humanitarian law conventions that were created in 1899 and 1907 in The Hague, The Netherlands.

**Humane Treatment:** The principle of protecting civilians, wounded soldiers, and prisoners of war during a conflict, no matter which side they came from.

**International Committee of the Red Cross (ICRC):** The organization founded by Henry Dunant which supervises implementation of the Geneva Conventions and coordinates international humanitarian laws and norms. It is composed of prominent citizens of Switzerland.

**International Federation of Red Cross and Red Crescent Societies (IFRC):** An organization of 187 Red Cross and Red Crescent national societies, including the American Red Cross. The IFRC's work focuses on four core areas: promoting humanitarian values, disaster response, disaster preparedness, and health and community care.

**International Humanitarian Law (IHL):** Law that governs the conduct of armed forces in conflict; sometimes referred to as Law of Armed Conflict or Rules of War.

**“Laws and Usages of War”:** The term used to describe the principles that supposedly governed military commanders before the creation of the Lieber Code.

**Lieber Code / General Orders No. 100:** The text created by Dr. Francis Lieber upon the request of the Union Army during the American Civil War, laying out the first codified rules governing the behavior of military commanders during conflict.

**March to the Sea:** The American Civil War military campaign led by General William Tecumseh Sherman, which included the destruction of much of the cities of Atlanta and Savannah, Georgia. It was followed by a similar march through South and North Carolina that resulted in the burning of Columbia, SC. Both campaigns were characterized by a willingness to engage in total war on the civilian population.

**Military Necessity:** The principle that is supposed to govern the choices by military commanders during a conflict as to which targets are acceptable for military action.

**Prisoners of War (POWs):** Military personnel who have been captured by the opposing side of a conflict. Under international humanitarian law, they are owed certain rights and protections.

**Total War:** A theory of war that advances the use of devastating measures, including the targeting of civilians and their property, to exhaust a country's desire to fight.

**Unmanned Aerial Vehicle (UAV):** Also called drones, these are remotely piloted aircrafts used for a variety of tasks, including intelligence gathering and bombing missions.

## Frequently Asked Questions by Students

1. What happens if a country doesn't follow the Geneva Conventions?

*If a nation is a high contracting party and has adopted the Geneva Conventions, they are bound to comply. If the state violates the Geneva Conventions then they are subject to economic and political sanctions. The parties to the Conventions are required to have domestic laws implementing the Geneva Conventions that include penalties for non-compliance. If there are grave breaches of the Conventions and the state does not hold the violators responsible, they can be prosecuted and held accountable through international mechanisms or universal jurisdiction principles that might allow countries to prosecute individuals alleged to have violated the Geneva Conventions.*

2. Does the United States always follow the Geneva Conventions?

*The United States is a high contracting party and has implemented the Geneva Conventions domestically through Department of Defense directives. Through these directives, the international laws of armed conflict are applied to U.S. military personnel as a matter of policy. The United States is legally obligated to follow the Geneva Conventions and every administration reaffirms this commitment. There are, of course, arguments about how well the United States is complying with these obligations and whether or not it has lived up to its responsibilities under the Conventions.*

3. What are some examples of violations of international humanitarian law and how are they dealt with?

*The atrocities committed by the Axis Powers during World War II are the types of actions that the Geneva Conventions of 1949 were subsequently created to prevent. These include the abuse of prisoners of war, medical experimentation on prisoners of war and civilians in occupied territories, and indiscriminate targeting of civilian populations. A more modern-day example of war crimes are those committed in the context of conflicts in the 1990s in the former Yugoslavia. (For a more detailed discussion of these types of violations, refer to the ASIL module on "The Nuremberg Tribunal: Justice and Accountability") In the case of the United States, because international humanitarian law is incorporated into our domestic legal system, any violations of IHL should be prosecuted by the U.S. military justice system.*

## Class Trivia/ Quiz

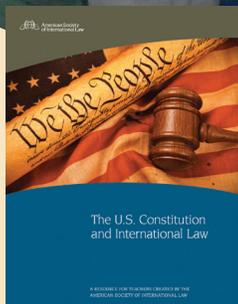
1. The Lieber Code was influenced by:
  - a. The Geneva Conventions
  - b. The St. Petersburg Declaration
  - c. The military customs and practices of Europe
  - d. None of the Above
2. Military Necessity allows for all but:
  - a. Measures indispensable for winning a war
  - b. Capturing, killing, injuring enemy forces
  - c. Destroying supply lines and infrastructure of the enemy
  - d. Cruel and vengeful acts
3. The Lieber Code forbade:
  - a. The torture of prisoners of war
  - b. Imprisoning of civilians
  - c. The targeting of civilians
  - d. All of the Above
4. According to the Lieber Code, prisoners of war are entitled to:
  - a. Medical aid
  - b. Immediate return to their home country
  - c. Their choice of food and housing while a prisoner
  - d. All of the Above
5. Sherman's March is criticized as an example of:
  - a. Military necessity
  - b. Total War
  - c. Torture tactics
6. (T/F) Sherman's Army's tactics in Georgia were characterized as vengeful because Georgia was the first state to secede from the Union.
7. Name three of the four main prohibitions in Common Article 3 of the Geneva Conventions:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
8. \_\_\_\_\_ was a Swiss businessman who founded the International Committee of the Red Cross and helped create the 1864 Geneva Convention.
9. (T/F) Civilians are protected by Geneva Convention of 1949 IV and can never lose their status and protection.

10. Clara Barton founded the American Red Cross. During the American Civil War, her nickname was \_\_\_\_\_.
11. (T/F) Military Necessity allows for the use of torture to obtain vital information.

## Class Trivia/ Quiz: The Answers

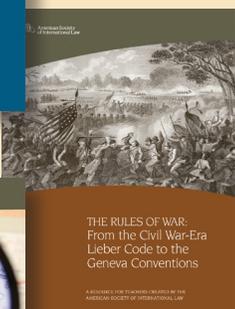
1. c
2. d
3. d
4. a
5. b
6. False
7. Four Protections of Common Article 3
  - a. violence, murder, torture
  - b. taking hostages
  - c. humiliating and degrading treatment
  - d. punishment without a ruling of a regularly constituted court
8. Henry Dunant
9. True
10. Angel of the Battlefield
11. False

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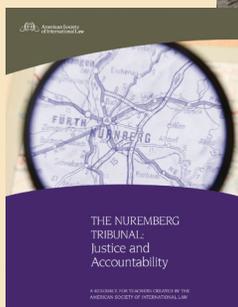
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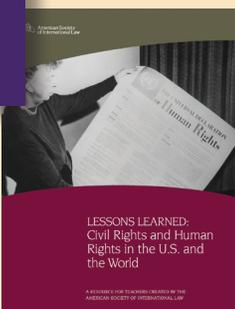
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