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## **Asymmetric Warfare and the Geneva Conventions:**

### **Do we need a new Law of Armed Conflict in the Age of Terrorism?**

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**Abstract:**

The increasing prevalence of asymmetric warfare and asymmetric threats to Western nations pose moral, ethical, and legal dilemmas to Canada and the Canadian Forces. The 1949 Geneva Conventions were negotiated in order to regulate the actions of nation states in armed conflict and the humanitarian treatment of combatants and non-combatants (civilians). The rise of terrorism and the power and actions of non-state actors make the traditional application of the 1949 Geneva Conventions extremely difficult, if not impossible. This is particularly true of the Third Convention, which outlines the definitions of Prisoners of War and other detainees and specifies the required legal actions of the Detaining Power. This paper explores the history of the Law of Armed Conflict, the Rise of Terrorism as a major component of Modern Conflict and the application of the Geneva Conventions to such conflict. It argues that the Geneva Conventions are either silent or, at best, ambiguous about the status of terrorists in a wider conflict and that there is a need to develop a new international law concerning unlawful combatants, their status, their rights and the obligations of detaining powers.

## Introduction

The aspect of opponents conducting asymmetric operations outside of the accepted norms of warfare and the law of armed conflict poses a moral dilemma to Western nations bound by these restrictions. [1]

“Dunant’s Dream”[2], the civilization or regulation of war along humanitarian principles has been severely challenged since it was first proposed in a “A Memory of Solferino” over 140 years ago. That dream led to both the founding of the International Committee of the Red Cross (ICRC) and the codification of the Laws of Armed Conflict (LOAC), principally in the 1949 Geneva Conventions. Nationalism, patriotic fervor, the use of public charity to support war efforts and the strict observation of neutrality to the point of silence on some of the greatest war crimes of the 20<sup>th</sup> century have challenged those idealistic sentiments, the very existence of the Red Cross and the legitimacy of the Geneva Conventions.[3] However, perhaps nothing has challenged those principles and their application by the western democracies as much as the rise of terrorism.

Following the 11 September 2001 terrorist attack on the World Trade Center and the Pentagon, the United States launched a “War on Terrorism” that has caused widespread discussion about the application of the Law of Armed Conflict to this undeclared war. In particular, the issue of the status of captured al-Qaeda and Taliban fighters has engendered considerable debate. The United States has refused to accord them the status of Prisoner of War which has caused legal and political debate as to whether the Geneva Conventions apply

and whether or not Canada might be in violation of the Conventions by transferring custody of Taliban and al-Qaeda fighters to US Military control.[4] The concept of asymmetric warfare has been used to describe attacks by weaker smaller powers on powerful adversaries.[5] It might be argued that the current “War on Terrorism” is in fact an asymmetric war or at least a response to an asymmetric attack. This paper explores the definitions of asymmetric warfare, briefly touches on the asymmetric threats to Canada’s security and then explores whether the Law of Armed Conflict and more specifically the Humanitarian Law of Armed Conflict addresses or perhaps more accurately fails to address some of the concerns raised by such a conflict. In particular, the issue of the status of the Taliban and al-Qaeda fighters as combatants will be addressed. It will be argued that the conventions do apply through the application of common article three, Protocol I, and Protocol II[6] but that the status of the detainees is at best ambiguous. Finally, there is a need for clarification or perhaps addenda to the current Third Geneva Convention regarding the Treatment of Prisoners of War in order to deal with situations such as those faced by the US and its allies in Afghanistan.

### **Asymmetric Warfare**

In order to understand the concept of asymmetric warfare, one must first define it. Canada’s Armed Forces Council has endorsed the US DoD Joint Staff definition:

The asymmetric threat is a term used to describe attempts to circumvent or undermine an opponent's strengths while exploiting his weaknesses, using methods that differ significantly from the opponent's usual mode of operations.[1]

Armed Forces Council, in its recently released paper on Asymmetric Threats to Canada, has identified three broad categories of threat: Information Operations (IO), use of Weapons of Mass Destruction (WMD) and Non-conventional Operations.[1] The DND report on Asymmetric Threats assesses the overall likelihood of a non-conventional attack on Canada as Medium to High and the significance of such attack as Low to Medium. [1] Thus, while the threat is not assessed as being very high, it is clear that Canada and the CF will increasingly have to deal with such attacks against Canada and the people who conduct such operations. In order for CF members do so legally and ethically, they must understand how the Law of Armed Conflict applies to combatants in an asymmetric war.

There has been much written about the asymmetric threat, its definition(s) and the appropriate strategies to combat it, as well as the implications for armed forces around the world. Interestingly, one US author, Thomas, has argued that in fact most of the dialogue is about threats that are not in fact asymmetric, as the United States (and by inference NATO) has considerable capability in IO and WMD. He argues that the US is by definition the "world's most asymmetric military force." [7] His arguments, however, do not necessarily apply to Canada except when Canada acts in conjunction with the US as in the current conflict.

The CF does not possess any WMD, but Canada possesses a nascent IO warfare capability as well as some special operations capability in the JTF 2.

However, the threat posed by Non-conventional Operations (the major component of which is terrorism) is indeed real and will continue to pose a threat to Canada both at home and abroad. The CF “will most likely encounter armed bodies directed by social entities that are not necessarily states and made up of people who are not necessarily soldiers.”[1] The challenge of facing these forces is that:

Even though they may be lightly armed, it is not weaponry but rather the lack of moral and political constraints that give irregular forces their strength and credibility. Terror will be a central part of their strategy. In such conflicts the battlespace will be an extended one, over all types of terrain, with our forces vulnerable to attack not only in the theatre of conflict but along the lines of communications to the home base. Such attacks will not be confined to military targets, but could include government, commerce, the local civilian population, refugees and Western expatriates.[1]

As Canada encounters asymmetric warfare, one of its vital national interests will be threatened, that is the maintenance of the Rule of Law.[8] As one US writer, Thomas, states: “Unlike nation-states, guerillas are not bound by international treaties, codes of conduct or operating principles.” [7] Perhaps more concerning though is the observation by Walter Laqueur, one of the foremost thinkers on terrorism and terrorists, that: “Twentieth-century terrorists argue that they, and only they, know the truth, and therefore ordinary law does not apply to them.”[9] This lack of moral, legal, and ethical constraint demonstrates perhaps the most challenging asymmetry of all: namely the

asymmetry of will or of norms.[10] The dilemma for Western democracies is how to fight such a war without sacrificing the very ideals and values that define them as nations.

In a recent address to the Royal Military College at Kingston, Ontario, Michael Ignatieff has defined four asymmetries that characterize the current conflict with the al-Qaeda in Afghanistan:

1. Asymmetry of power.
2. Asymmetry of weaponry
3. Asymmetry of organization
4. Asymmetry of morality [11]

The first asymmetry is self-evident, in that a small group of terrorists attacked the foremost military, economic, and strategic power in the world. The asymmetry of weapons is evidenced by the contrast between the vast arsenal of the US and the simple box cutters used by the terrorists. Finally, a small force of twenty people were able to inflict a major blow on the world's only remaining superpower.

It is the final asymmetry concerning morality that is most interesting and most challenging to Canada and the CF. Ignatieff argues that there is a clear distinction between "the morality of the warrior and the morality of the terrorist"[11] His central thesis is that in fighting threats to Canada, there are moral, ethical and legal imperatives that Canadian Forces personnel must follow. In essence, CF members must remain moral warriors. One of the characteristics of that moral warrior is observance of and compliance with the Geneva

Conventions and the rule of law. What then is the guidance that these conventions give to the moral warrior in the treatment of and status of terrorist combatants?

### **The Law of Armed Conflict**

There are three widely acknowledged principles regarding armed conflict *jus ad bellum*, *jus in bello* and *jus post bellum*. In other words, in order for the use of armed conflict to be just it must have just cause, the war must be conducted by just means and must have a just end to hostilities. These principles are well described in the literature[12] In addition, Canadian doctrine states that: “three primary concepts underlie the LOAC: military necessity, humanity and chivalry.”[13] Ignatieff makes a compelling case that the current War on Terror does fulfill the *jus ad bellum* criteria.[11] He points out that the US has invoked article 51 of the United Nations Charter and the right to self defence and for the first time in history Article 5 of the NATO treaty has been invoked, which is that an attack on one is an attack on all. The CF JAG recently confirmed that the “Canadian and allied military response is firmly supported by international law”[14], but that is not the focus of this paper. What is of concern is a just conduct of operations and the observance of widely accepted principles, laws, and treaties in the conduct of an asymmetric war. In other words, how does *jus in bello* guide, constrain, and justify actions in an asymmetric war against terrorism.

From earliest times there have been documented constraints on war or armed conflict as it has come to be known. One of the earliest, from the 6<sup>th</sup> Century BC was Sun Tzu's:

The general rule for the use of the military is that it is better to keep a nation intact than to destroy it. It is better to keep an army intact than to destroy it, better to keep a division intact than to destroy it, better to keep a battalion intact than to destroy it, better to keep a unit intact than to destroy it.[15]

This widely acknowledged need has been written about and debated by legal scholars, theologians, military thinkers, diplomats and politicians. In the 19<sup>th</sup> and 20<sup>th</sup> centuries these ideas were codified in international law most notably in the Geneva Conventions 1949[6] and the Hague Conventions 1907[16]. The Geneva Conventions are now also referred to as the Humanitarian Law of Armed Conflict.[17] The extant Geneva Conventions were signed in 1949, but there were two major protocols attached to them in 1977[18]. Protocol I updates the language of the conventions and extends the definition of international conflict to include national liberation movements seeking the right to self-determination.[17] It also defines and expands the definitions of legal combatants in the Third Convention and for the first time defines mercenaries and essentially outlaws them.[6] Protocol II extends the Conventions into the realm of non-international conflict, although as Green has noted the threshold test for applicability is so high that a state of civil war must exist in which both the government and the rebels would need to be in control of territory.[17] It is this body of law that is the subject of the current controversy and most specifically the treatment of prisoners of war. Geneva Convention III outlines not only the required treatment of prisoners of

war (PoW) but in fact defines who is accorded the status of PoW. Article 1 defines the requirement that “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.”[Article 1, Convention III 19] And article 2 specifically outlines that the requirement remains whether or not war is declared, whether or not armed resistance is encountered and whether or not one of the parties to the conflict is a signatory to the Convention.[6] In other words if Canada is involved in hostilities of any kind, the convention applies and all members of the CF must abide by its provisions.

While the applicability of the conventions to CF personnel and CF operations is not in question. There is considerable debate on the interpretation of the language of the conventions and particularly on the definition of legal combatant that is found in Article 4 of the Third Convention. (Appendix 1)

The argument has been put forth that al-Qaeda members fail to meet the requirements for PoW status because they do not meet the test set forward in Article 4, Part A, para. 2 (b)(c) and (d) in that they do not wear uniforms, carry their arms openly or conduct operations in accordance with the laws and customs of war.[14, 20] Green makes the further point:

However acts of violence committed by private individuals or groups which are regarded as acts of terrorism, brigandage, or riots which are of a purely sporadic character are outside the scope of such regulation and remain subject to national law or specific treaties relating to the suppression or punishment of terrorism. Such acts occurring during an international armed conflict may amount to war crimes or grave breaches of the Geneva Conventions or Protocol I and render those responsible liable to trial under the law of armed conflict. [17]

The opposing argument put forward is that the definitions are very broad and that Article 5 of Geneva Convention III is indeed inclusive in that it states that any doubt as to the status of those captured be resolved in favour of the detainee[18]. Therefore, these authors contend that the Taliban and al-Qaeda clearly must be classed as PoWs or else the United States and Canada will be guilty of violating International Law.[21] Among the problems with this reasoning is that international law is a result of either treaties between the parties involved or customary law that guides the behaviour of nations in international relationships. One cannot have a treaty with a non-state actor and customary law in general does not have a category or a custom for persons who are not either legal combatants, non-combatants (such as medical personnel and the clergy) or civilians. The other problem with this reasoning is that most of the commentators confuse treatment of prisoners with status. It is of course incumbent on the US and Canada to treat the detainees in accordance with the Geneva Conventions and all other humanitarian laws. Both countries are signatories to the Conventions.[22] Although the United States has not signed or ratified the 1977 protocols[22]. It could be argued that the protocols are considered customary law and hence apply to the US as well as Canada. The US would undoubtedly dispute this.

It is not incumbent on either country to accord terrorists the status of Prisoner of War. PoW status is accorded to captured warriors or legal combatants under the criteria set out in both the 1949 Geneva Conventions and the 1907 Hague Conventions.[23] The definition and status is based on ancient

traditions of chivalry and the idea that warriors fight for a noble cause in a noble or at least lawful way. When they kill in a legal war or commit violence in a legal conflict they are not guilty of crimes as they would be in civil society. They are acting at the behest of the state and are thus morally, legally and ethically justified in their actions so long as they obey the laws and customs of war. In the words of Ignatieff:

“What distinguishes a warrior is not the uniform you wear, or your complex chain of command, or your formal training in the use of arms. It is your ethical discrimination. That is what distinguishes a warrior from a bandit, a mere killer, a terrorist. A warrior uses violence according to certain rules. That is what defines you as a group of men and women. Warriors distinguish between civilians and non-civilians. A terrorist does not.”[11]

In choosing to attack the World Trade Center, clearly a civilian target, al-Qaeda broke the warrior code. Its members also disguised themselves as civilians both in the United States and in Afghanistan. They forfeited any right to claim legitimacy as warriors and legal combatants. The case may not be so straight forward for the Taliban fighters who have fought only on their only territory and who have observed the Laws of Armed Conflict.[24] Neither group however forfeit their rights as human beings and their rights under law to humane treatment and due process.[11, 14]

The current state of affairs poses a moral and legal dilemma for the United States and Canada. The Geneva Conventions do not include the phrase “illegal combatants”. However, the Conventions do have sanctions for civilians who take up arms illegally. There is also a sanction for the action of perfidy, the crime committed when protected status as a non-combatant or civilian is used to hide

the intent to commit a hostile act.[13] Thus, in a sense, an illegal combatant is defined as one who is not a legal combatant, which is a rather circular definition.

The conventions do not contain the word terrorist. The authors of these conventions either did not envision or chose not to deal with persons who would engage in violence for no other reason than to elicit terror. There is no direction in these humanitarian documents as to how to deal with such persons. They are not spies; they are not secretly collecting information for a government or company, which is the dictionary definition of a spy. Terrorists want to be noticed for their violent actions; they may employ secrecy to conceal their identities but they do not generally keep their actions secret. Could they be mercenaries? The Oxford Dictionary defines a mercenary as a foreign soldier who works for money. Many terrorists are foreigners to the place they work for, or out of. Most al-Qaeda members are reportedly not Afghanistan nationals; yet their main base of operation, at least initially, was Afghanistan. They work, according to the best information available, out of over 60 countries including Canada and several of the detainees in the US Guantanamo Facility hold Saudi and UK passports.[25] Mercenaries have long been used in armed conflict but their status has been controversial. The 1977 Protocol I additional to the Geneva Conventions denies them combatant status.[26] This protocol was specifically worded this way in response to the situation with the mercenaries used in several African conflicts. So, even if terrorists could be construed as mercenaries they would still be illegal combatants under current international law.

Among the many myths about terrorism exposed by Walter Laqueur is the idea that terrorists are some form of urban guerillas. He effectively argues that the guerilla has the desire to build up his forces and his power base and eventually found a new political entity. Guerillas may from time to time use terror tactics but these are not and cannot be sustained if the transformation to a nation-state is to be achieved.[27] Terrorists do not generally fight for territory. Certainly, al-Qaeda has made no territorial demands of the United States. Nor do they fight as an extension of politics or diplomacy because they do not represent a single polity. Terrorists appear to fight because they are committed to the use of violence. They do not fight under a nation-state, although they are often aided abetted by such states. In many ways they are stateless, although they may legitimately carry the passport of a recognized state, they are not fighting for that state. There are a series of UN resolutions condemning terrorism and the financing of terrorism, but all such declarations and conventions suffer from a lack of definition of terrorism. The international community cannot agree on a definition of terrorism nor can the academics.[28, 29]

## **Terrorism**

Terrorism is not a new phenomenon. The *sicarii* was a religious sect that arose in Palestine A.D. 66-73 who practiced what we would now classify as terror; perhaps better known were the Assassins of 11<sup>th</sup> century Persia and Syria.[30] If political assassination is included in acts of terror one can go even further back to the time of Plato and Aristotle and of course Brutus.[30] It is not

the newness of the act that should concern us but the powerful means now available and the subtle change in the practitioners who, at least according to one author, observed a certain code of behaviour until about two decades ago.[28]

Many commentators and observers especially in the western press put forward the idea that most terrorists (or at least most Muslim terrorists) are fighting for a cause (liberation of Palestine or getting the US Forces out of Saudi Arabia) and thus in some sense must be regarded as legitimate warriors in a fight for national liberation. They argue that terror is a necessary strategy used by the weak against the strong, the ultimate asymmetric war. Laqueur refutes this logic :

Most terrorists claim to conduct a just war and insist on being treated as soldiers. But they want to have it both ways, for at the same time they think they are entitled to ignore the norms anchored in international law that protect the rights of innocent noncombatants and require the humane treatment of hostages, to give but two examples. International law does not bind them; it is an invention of the imperialist West or of the exploiting classes; it does not apply to the treatment of infidels, or to those who belong to another class, or people, or religion. [28]

Not “playing by the rules” tempts one to respond in kind. If they won’t play by the rules why should we? The answer of course is that as moral warriors who hold the Rule of Law to be one of our defining values, we must abide by the rules and we, as an international community must attempt to deal with such persons in a humane and just way.

Ignatieff goes further by maintaining that not only do the terrorists claim international law does not apply, their very intent is to break the law by targeting



the name of our state. It has been argued that this is the core of military leadership.[11]

Terrorists refuse to fight according to the rules. Ignatieff states:

“...Terrorists count on the systematic exploitation of [our] reluctance to cross these lines. And that it seems to me, is the nut of the moral and political problem we have in fighting a war on terrorism: How do we keep ourselves from being drawn over the line by an enemy whose whole rationale is to cross that line?”[11]

The rules extant do not define how one deals with such combatants.

Illegal combatants are only defined as not fitting the definition of legal combatant. There is no direction in international law as to how one is to handle, process and deal with such persons. Article 5 of the Third Convention does state that if there is any doubt as to detainee status, it is to be resolved by an undefined “competent tribunal”. [16] Are they to be tried by the newly proposed International Criminal Court, local courts, or Military Courts Martial? Does the international community need some new entity that must first establish its legitimacy and then develop procedures and rules of evidence and eventually punishment that are seen to be fair and just within the international context? [20, 32] The actions of the US in handling the al-Qaeda will set precedent that will undoubtedly bring about changes in the customary international law.

There are good practical reasons to ask these questions and to find simple ethical answers to them. Strategic level planners and operational commanders must be able to give clear and unambiguous direction to war-fighters. The soldier on the frontline does not have the time nor capacity to determine the nuances of international law. In the “Three Block War” [33], they

will have to make these decisions rapidly while under extreme stress. As General Krulak, Commandant of the US Marine Corps states: “These decisions will be subject to the harsh scrutiny of both the media and the court of public opinion.”[33] For them a detainee is a detainee and must be treated humanely, compassionately and in accordance with commonly accepted ethical principles. The soldier in the field cannot be a judge and jury and cannot be the arbiter of who is a legal and illegal combatant. That is for the courts to decide.

Again Ignatieff has perhaps said it best:

One of the most difficult ideas about human rights - the least popular one - is that all human beings have them and no human being can lose them. Civil and political rights can be derogated; if you commit a crime, you may lose some civil and political rights. In some places you may lose the right to vote, but you never lose your human rights. You cannot lose your human rights because of conduct. The bottom line here – is that even terrorists have human rights. Osama bin Laden and Mullah Omar have human rights. Therefore to violate them is to violate the principles you hold dear.[11]

In other words, it can be argued that if CF personnel are going to retain the moral legitimacy to apply violence in the name of Canada they must accord everyone on the field of battle the Human Rights for which Canadians fight.

### **Application of Existing Geneva Conventions to Modern “Terrorist Warfare”**

From the foregoing discussion it is clear that the Geneva Conventions apply to the behaviour of Canada and its allies in all armed conflict. That being so, the application of the third Geneva Convention and its attendant protocols to the al-Qaeda and Taliban detainees would seem to be required. In order to

comply with international obligations, Canada and the United States must treat the detainees humanely in accordance with accepted standards. Canada has never publicly questioned this stance, but certain US pronouncements have been open to interpretation[24], although the ICRC has recently announced that the United States has acknowledged its obligations.[34] The tone of that announcement would suggest however that the ICRC believes that the al-Qaeda and Taliban detainees should be accorded PoW status.[34] It is unclear why the ICRC holds this view and given past practice, and ICRC policy they are unlikely to explain their reasoning publicly. In guarding its neutral status, the ICRC has had a long-standing practice of not publicly criticizing detaining powers directly.[35]

Aside from the previously discussed definitional problems, there are practical considerations as well. Should hostilities cease, to whom does the United States transfer the detainees? The Taliban could be reasonably returned to the current Afghani regime, although recent reports of atrocities committed by members of the Northern Alliance could make this problematic. The US has an obligation under the Conventions to not transfer detainees to another power that does not abide by the Conventions. Similarly, there could be reason to speculate that some of the nations where the al-Qaeda members could be transferred would not abide by all of the Conventions. This would put the US in the position of again violating the Conventions. There are no easy answers. Humane treatment of the detainees and the application of due process to their cases is

paramount. It appears that within limits the US is attempting to do this with its military commissions.[36]

## **Conclusion**

The current “War on Terrorism” certainly challenges “Dunant’s Dream”. [2] For: “How do you teach the warrior’s code of honor to men trained in Islamic jihad? How do you teach the laws of war to people who have never heard of the Geneva Convention?” [35]

Terrorists by their very nature reject humanitarian principles. They reject international law and they defy easy definition under those laws. This challenges the international community and the rule of law. This lack of definition allows nations and others to interpret the law “on the fly”. History would suggest that this is dangerous. The very reason the Geneva Conventions exist is to avoid such ambiguity.

Observing human rights isn’t just about proper treatment; it is about due process and the rule of law. In order for laws to be applied, definitions and status of people must be clear. After all, the Geneva Conventions were not written solely for the International Courts they were written “by warriors for warriors.” [14] They clearly define legal combatants and civilians. In the “Age of Terrorism” [27], it is time for a clear definition of illegal combatants and their status.

The lack of definition of illegal combatants and most specifically terrorists puts the moral, ethical, and legal status of CF combatants at risk in the current

conflict in Afghanistan. The ambiguity in the law leaves the CF and Canada open to criticism and brings the justness of the current combat operations into question. There is a compelling need to rectify this situation by amending the current conventions to define not only the illegal combatant but also what the international community considers to be the appropriate consequence for such behaviour.

## Appendix 1

### *“Article 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.

B. The following shall likewise be treated as prisoners of war under the present Convention:

1. Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

2. The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention. “[Article 4, Convention III 19]

## Endnotes

1. Ajilon, C., *Asymetric Threat Report, DND 2001*. 2001, Department of National Defence: Ottawa. p. 202.
2. Moorehead, C., *Dunant's Dream: War, Switzerland and the History of the Red Cross*. 1998, New York: Carrol and Graf Publishers Inc. 780.
3. Hutchinson, J.F., *Champions of Charity: War and the Rise of the Red Cross*. 1996, Boulder Co.: Westview Press. 448.
4. Watson, R.M., Daniel, *Terror Prisoners Escape Military Tribunals*, in *Times Online*. 2002: London.
5. Paul, T.V. *Asymmetric conflicts : war initiation by weaker powers /*. in *War (International law)*. 1994.: Cambridge University Press,.
6. *Summary of the Geneva Conventions of August 12, 1949 and their additional protocols*. 1988, International Committee of the Red Cross,. p. 22 p. .
7. Thomas, T.L., *Deciphering Asymmetry's Word Game*. *Military Review*, 2001(July-August): p. 32-37.
8. Macnamara, W.D., *Strategic Thinking*. 2002: Toronto.
9. Laquer, W., *The New Terrorism: fanatacism and the arms of mass destruction*. 1999, New York: Oxford University Press.
10. Metz, S., *Strategic Asymmetry*. *Military Review*, 2001(July-August): p. 23-31.
11. Ignatieff, M., *Ethics and the New War*. *Canadian Military Journal*, 2002. **2**(4): p. 5-10.
12. For a comprehensive discussion of the history of the law of Armed Conflict see Green L.C. 1993, Green L.C. 1999 and St. Amour D., 2001
13. JAG, C., *The Law of Armed Conflict: At the Operational and Tactical Level*. 2000, CF.
14. Pitzul, G.B., *Lecture on Discipline NSSC 4*. 2002: Toronto.
15. Tzu, S., *The Art of War*. 1988 Paperback ed. 6th. cent. B.C., Boston: Shanbhala Publications Inc. 174.
16. *Collection of documents on the law of armed conflict : Hague Conventions, Geneva Conventions and additional protocols, Charter of the United Nations, other treaties and related Canadian statutes /*. 1999., Directorate of Law Training, Dept. of National Defence,. p. 273 p. .
17. Green, L.C.L.C., *The contemporary law of armed conflict /*. 1993.: Manchester University Press ; Distributed exclusively in the USA and Canada by St. Martin's Press,. 374 p. .
18. *Basic rules of the Geneva Conventions and their additional protocols /*. 1983., The Committee,. p. 63 p.
19. Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War (1949 : Geneva, S., *The Geneva conventions of August 12, 1949*. 1983, International Committee of the Red Cross,. p. 245 p. .
20. Scheffer, D., *Options for Prosecuting International Terrorists*. 2001, United States Institute of Peace.
21. Gee, M., *When is a PoW not a PoW?*, in *The Globe and Mail*. 2002: Toronto. p. A11.
22. ICRC, *Geneva Conventions of 12 August 1949 and Additional Protocols of 8 June 1977 : ratifications, accessions and successions*. 2002.
23. A point often missed is that not all members of the Armed Forces are accorded PoW status. For example, detained medical personnel are not PoWs. They are "protected" by the Geneva Conventions and retain their status as non-combatants unless they illegally take up arms.
24. Roberts, A., *The Prisoner Question: If the U.S. has acted lawfully, what's the furor about?*, in *Washington Post*. 2002: Washington D.C. p. B01.
25. Ibbiston, J., *Prison camp faces rights challenge*, in *The Globe and Mail*. 2002: Toronto.
26. Green, L.C., *Essays on the Modern Law of War*. 2nd ed. 1999, New York: Transnational Publishers.
27. Laqueur, W., *The Age of Terrorism*. 1987, London: Weidenfeld and Nicolson.
28. Laqueur, W., *The New Terrorism: fanatacism and the arms of mass destruction*. 1999, New York: Oxford University Press.
29. Jordan, M.J., *Terrorism's slippery definition eludes UN diplomats*, in *The Christian Science Monitor*. 2002: Salt Lake City.

30. Laqueur, W., ed. *The Terrorism Reader: A Historical Anthology*. 1978, Temple University Press: Philadelphia. 289.
31. Thompson, J.C., *The Essentials of Terrorism*. 2002: Toronto.
32. Wedgwood, R., *The Case for Military Tribunals*. 2002, Global Summit #8226.
33. Krulak, C.C., *Cultivating Intuitive Decision Making*. Marine Corps Gazette, 1999(May 1999): p. 18-22.
34. ICRC, *Geneva Convention on prisoners of war*. 2002.
35. Ignatieff, M., *The Warrior's Honor: Ethnic War and the Modern Conscience*. 1998, New York: Metropolitan Books. 207.
36. Mintz, J., *U.S. Adds Legal Rights in Tribunals*, in *Washington Post*. 2002: Washington, D.C. p. A01.

## Bibliography

*Medical services in war : the principal medical lessons of the Second World War : based on the official medical histories of the United Kingdom, Canada, Australia, New Zealand and India* /. 1968, Great Britain: H.M.S.O.

*Protocols additional to the Geneva Conventions of 12 August 1949 : Resolutions of the Diplomatic Conference : Extracts from the Final Act of the Diplomatic Conference / Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (1974-1977 : Geneva, Switzerland)*. 1970 [i.e., 1977], [The Committee].

*Prisoner of war resistance*. 1982, United States: Headquarters, Dept. of the Army.

*Basic rules of the Geneva Conventions and their additional protocols* /. 1983, The Committee.

*Summary of the Geneva Conventions of August 12, 1949 and their additional protocols*. 1988, International Committee of the Red Cross.

*War, Medicine and Modernity*. Paperback 1999 ed, ed. R.H. Cooter, Mark;Sturdy, Steve. 1998, Phoenix Mill: Sutton Publishing Limited.

*Collection of documents on the law of armed conflict : Hague Conventions, Geneva Conventions and additional protocols, Charter of the United Nations, other treaties and related Canadian statutes* /. 1999., Directorate of Law Training, Dept. of National Defence.

*The changing face of conflict and the efficacy of international humanitarian law* /. 1999.: M. Nijhoff Publishers.

Ajilon, C., *Asymmetric Threat Report, DND 2001*. 2001, Department of National Defence: Ottawa.

Best, G., *War and law since 1945* /. 1994, Clarendon Press.

Cyrulik, J.C., *Asymmetric warfare and the threat to the American homeland*/. 1999, Institute of Land Warfare.

Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War (1949 : Geneva, S., *The Geneva conventions of August 12, 1949*. 1983, International Committee of the Red Cross.

Finnemore, M., *National interests in international society*. 1996. Cornell University Press.

Freedman, L., *The revolution in strategic affairs*. 1998, Oxford University Press for The International Institute for Strategic Studies.

Gardam, J.G., *Non-Combatant Immunity as a Norm of International Humanitarian Law*. 1993, Dordrecht, The Netherlands: Martinus Nijhoff Publishers.

Garrett, L., *Betrayal of Trust: The Collapse of Global Public Health*. 1st Paperback ed. 2000, New York: Hyperion.

Gee, M., *When is a PoW not a PoW?*, in *The Globe and Mail*. 2002: Toronto. p. A11.

Green, L.C., *The contemporary law of armed conflict /*. 1993.: Manchester University Press ; Distributed exclusively in the USA and Canada by St. Martin's Press.

Green, L.C., *Essays on the Modern Law of War*. 2nd ed. 1999, New York: Transnational Publishers.

Headquarters, C.A., *Application of the 1949 Geneva Conventions in the Korean Conflict / memorandum /*. 1950.

Hutchinson, J.F., *Champions of Charity: War and the Rise of the Red Cross*. 1996, Boulder Co.: Westview Press.

Ibbiston, J., *Prison camp faces rights challenge*, in *The Globe and Mail*. 2002: Toronto.

ICRC, *Geneva Conventions of 12 August 1949 and Additional Protocols of 8 June 1977 : ratifications, accessions and successions*. 2002.

ICRC, *Geneva Convention on prisoners of war*. 2002.

Ignatieff, M., *The Warrior's Honor: Ethnic War and the Modern Conscience*. 1998, New York: Metropolitan Books.

Ignatieff, M., *Ethics and the New War*. Canadian Military Journal, 2002. 2(4): p. 5-10.

JAG, C., *The Law of Armed Conflict: At the Operational and Tactical Level*. 2000, CF.

Jordan, M.J., *Terrorism's slippery definition eludes UN diplomats*, in *The Christian Science Monitor*. 2002: Salt Lake City.

Krulak, C.C., *Cultivating Intuitive Decision Making*. Marine Corps Gazette, 1999(May 1999): p. 18-22.

Laqueur, W., ed. *The Terrorism Reader: A Historical Anthology*. 1978, Temple University Press: Philadelphia.

Laqueur, W., *The Age of Terrorism*. 1987, London: Weidenfeld and Nicolson.

Laqueur, W., *The New Terrorism: fanaticism and the arms of mass destruction*. 1999, New York: Oxford University Press.

Leaning, J., *Medicine and international humanitarian law*. BMJ, 1999. **319**(7207): p. 393-394.

Macleod, B.W., *Pre-Commitment Criteria for Canadian Soldiers: Canada's Moral Responsibility*. 2001: Toronto.

Macnamara, W.D., *Strategic Thinking*. 2002: Toronto.

McKenzie, K.F., *The revenge of the Melians : asymmetric threats and the next QDR*. 2000. Institute for National Strategic Studies, National Defense University.

Meron, T., 1930-, *Henry's wars and Shakespeare's laws : perspectives on the law of war in the later Middle Ages*. 1993.: Clarendon Press ; Oxford University Press,.

Metz, S., *Strategic Asymmetry*. Military Review, 2001(July-August): p. 23-31.

Miles, F.B., *Asymmetric warfare : an historical perspective*. 1999. U.S. Army War College,

45. Ministry of Defence, *A soldier's guide to the law of armed conflict*. (CFC) UK Doctrine 355.005 1998., Great Britain. Ministry of Defence.

Mintz, J., *U.S. Adds Legal Rights in Tribunals*, in *Washington Post*. 2002: Washington, D.C. p. A01.

Moorehead, C., *Dunant's Dream: War, Switzerland and the History of the Red Cross*. 1998, New York: Carrol and Graf Publishers Inc.

Newman, N., J., *Asymmetric threats to British military intervention operations*. 2000, Royal United Services Institute for Defence Studies.

Paul, T.V. *Asymmetric conflicts : war initiation by weaker powers*. in *War (International law)*. 1994. Cambridge University Press.

Pitzul, G.B., *Lecture on Discipline NSSC 4*. 2002: Toronto.

Pullinger, S., *Fighting biological warfare*. BMJ, 2000. **320**(7242): p. 1089-1090.

Roberts, A., *The Prisoner Question: If the U.S. has acted lawfully, what's the furor about?*, in *Washington Post*. 2002: Washington D.C. p. B01.

Rogers, A.P.V., *Fight it right : model manual on the law of armed conflict for armed forces* /: International Committee of the Red Cross.

Scheffer, D., *Options for Prosecuting International Terrorists*. 2001, United States Institute of Peace.

St.Amour, D., *Strategic Level Ethics: From theory to practice*. 2001: p. 35.

Thomas, T.L., *Deciphering Asymmetry's Word Game*. *Military Review*, 2001(July-August): p. 32-37.

Thompson, J.C., *The Essentials of Terrorism*. 2002: Toronto.

Tzu, S., *The Art of War*. 1988 Paperback ed. 6th. cent. B.C., Boston: Shanbhala Publications Inc.

Varma, S., *Asymmetry : levelling the playing field*. 2000., Canadian Forces College.

Ward, J., *The Rules of War*, in *The Globe and Mail*. 2002: Toronto. p. A6.

Watson, R.M., Daniel, *Terror Prisoners Escape Military Tribunals*, in *Times Online*. 2002: London.

Wedgwood, R., *The Case for Military Tribunals*. 2002, Global Summit #8226.