

LIEBER NOTES

Quarterly Newsletter of the Lieber Society on the Law of Armed Conflict
Interest Group of the American Society of International Law

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Lieber Notes is the quarterly newsletter of the Lieber Society. Any views expressed in this newsletter are those of the authors in their private capacities and do not purport to represent the official view of the Society or any government or organisation.

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The Lieber Society - Who Are We?

By Charles Keever

We are sure that all of you admired the rebirth of our newsletter when you received the Fall 2007 issue of *Lieber Notes*. This gives us an excellent vehicle for developing the “Who We Are – Where We Live – Why We Joined the Lieber Society” document that was recommended at our last annual meeting. As a starting point, pages 2 and 3 of this issue provide tables setting out which countries and U.S. states Lieber Society members currently live in, based upon data provided by the ASIL staff as at 1 December 2007.

The minutes of our 2007 annual meeting were published in the Fall 2007 issue of *Lieber Notes*. Your attention is drawn to the article on pages 7 and 8 under the title “Proposals For Expanding Lieber Society Membership.” This was taken from the report made by our Membership Committee at the annual meeting.

When the concept of the “Who – Where – Why” document first surfaced more than a year ago it was warmly received by all who were consulted. Several ex-

amples of entries from those consulted are included in the article. It is readily apparent that a steady stream of these entries in future issues of *Lieber Notes* from the dedicated persons already active with us would be very effective in expanding our membership.



It would doubtless be very helpful if persons submitting future entries for publication in *Lieber Notes* would include comments on activities that would make it easier for each of us to participate more actively in our collective efforts. We urge you to start submitting entries for the next issues of *Lieber Notes*.

Newsletter Editor: Chris Griggs (e-mail christopher.griggs@nzdf.mil.nz)

Lieber Society Members Resident Outside the U.S.

Area	Nation	No.	% of Total Membership	Area Total	% of Total Membership
Asia Pacific	Australia	5	1.37%		
	Hong Kong	1	0.27%		
	India	1	0.27%		
	Japan	8	2.20%		
	New Zealand	2	0.55%		
	Pakistan	1	0.27%		
	South Korea	1	0.27%	19	5.22%
Europe	Austria	3	0.82%		
	Belgium	3	0.82%		
	Bosnia-Herzegovina	1	0.27%		
	Finland	1	0.27%		
	France	2	0.55%		
	Germany	7	1.92%		
	Greece	4	1.10%		
	Hungary	1	0.27%		
	Ireland	4	1.10%		
	Italy	2	0.55%		
	Netherlands	17	4.67%		
	Norway	2	0.55%		
	Slovenia	1	0.27%		
	Sweden	1	0.27%		
	Switzerland	16	4.40%		
	United Kingdom	20	5.49%	85	23.35%
Middle East	Israel	5	1.37%		
	Jordan	1	0.27%	6	1.65%
North America	Canada	16	4.40%	16	4.40%
South America	Brazil	2	0.55%		
	Paraguay	1	0.27%	3	0.82%
Total		129	35.44%	129	35.44%

News from the U.S. Naval War College

Professor Dennis Mandsager asks that Lieber Society members take note that the latest edition of the U.S. Navy Commander's Handbook on the Law of Naval Operations is now available for downloading at:
[http://www.nwc.navy.mil/cnws/ild/documents/1-14M_\(Jul_2007\)_\(NWP\).pdf](http://www.nwc.navy.mil/cnws/ild/documents/1-14M_(Jul_2007)_(NWP).pdf).

Lieber Society Members Resident in the U.S.

State	No.	% of U.S. Membership	% of Total Membership
Hawaii	6	2.55%	1.65%
Illinois	5	2.13%	1.37%
Indiana	2	0.85%	0.55%
Louisiana	1	0.43%	0.27%
Massachusetts	9	3.83%	2.47%
Michigan	2	0.85%	0.55%
Minnesota	3	1.28%	0.82%
Missouri	12	5.11%	3.30%
Missouri	2	0.85%	0.55%
Montana	1	0.43%	0.27%
New Hampshire	1	0.43%	0.27%
New Jersey	3	1.28%	0.82%
New Mexico	1	0.43%	0.27%
New York	35	14.89%	9.62%
North Carolina	5	2.13%	1.37%
Ohio	1	0.43%	0.27%
Pennsylvania	7	2.98%	1.92%
Rhode Island	4	1.70%	1.10%
South Carolina	1	0.43%	0.27%
Tennessee	1	0.43%	0.27%
Texas	6	2.55%	1.65%
Utah	1	0.43%	0.27%
Vermont	2	0.85%	0.55%
Virginia	28	11.91%	7.69%
Washington State	3	1.28%	0.82%
West Virginia	1	0.43%	0.27%
Wisconsin	2	0.85%	0.55%
<hr/>			
APO Europe	1	0.43%	0.27%
Total	235	100%	64.56%

Introducing...

Taking the lead from our Secretary's call on page 1 of this issue, your Editor, Chris Griggs, makes this initial contribution...

"I am a Commander in the Legal Branch of the Royal New Zealand Navy. My current posting is as Deputy Director of Legal Services - Personnel Law at Headquarters New Zealand Defence Force in Wellington, New Zealand. I have been in the Navy for about 19 years and have had a range of mainly legal specialist postings, at sea and ashore. This includes operational service with U.S. Navy Carrier Group Three in the Arabian Gulf in 1998-99 and a period teaching military law at Massey University. I have a relatively long-standing interest and practice in international law as it affects the armed forces, and joined the ASIL in 1993."



The Complement and a Compliment

By **Agnieszka Jachec-Neale**

Last November, customary international humanitarian law was in the spotlight again with the launch of *Perspectives on the ICRC Study on Customary International Humanitarian Law* (eds. E. Wilmschurst and S. Breau, Cambridge University Press, 2007). This book comes as the most comprehensive response thus far to the two-volume publication by Jean-Marie Henckaerts and Louise Doswald-Beck ("the Study"), which by now will be well familiar to the readers of *Lieber Notes*. *Perspectives* is the culmination of a project embarked upon jointly by two leading UK-based institutions, namely the British Institute of International and Comparative Law and Chatham House. The project involved over thirty top IHL experts (both practitioners, including military lawyers, and academics), mostly but not exclusively from the UK, who met once a month for over a year in order to review the Study. Each meeting was dedicated to a different topic and, as such, a different part of the Study and was attended by the specialised ICRC staff, who contributed to the discussion. Each session resulted in a chapter of *Perspectives*, incorporating the debates which took place during the rel-

evant meeting to the extent possible.

The book is organised into three major parts, starting with three chapters discussing: the methodology of the Study; its approach to customary international law in general; and, specific areas such as customary human rights law. The second part of the book contains theoretical chapters on issues related to the existence of an armed conflict and the status of combatants. The real gem though presents itself in the third part, consisting of ten chapters, the authors of which scrupulously reviewed the relevant substantive rules in detail - from the law of targeting, through the natural environment and the methods and means of warfare, weapons, fundamental guarantees, status and treatment of POWs and other detainees to the implementation issues and war crimes. Such in depth examination of the Study allowed the authors to present not only their sometimes rather critical assessment of Henckaerts' and Doswald-Beck's publication but also to include high quality recommendations and suggestions for its future improvement, which it is hoped will be taken onboard by the team working on the updating of the Study, as reported in

the last *Lieber Notes* (Vol. 1 Issue 1, p.11).

As the author of one of the chapters I do not purport in this commentary to undertake a review of this book, however as one of the organisers of the project from which this book was born, I cannot help but writing this short note of introduction as my way of saying thank you to all who have taken part and supported this lengthy, and sometimes even fastidious process. As the editors in the book's preface indicate, *Perspectives* constitutes a complement to the Study and a true compliment to it (p. vii). In my eyes it also represents a tribute to all those involved in *Perspectives* project itself, whose commitment in the past three years resulted in this unique academic response. In the hope that the Study will continue to stimulate academic thought and writing of this quality in the coming year, I invite you to study the Study with *Perspectives* in mind!

Agnieszka is a doctoral candidate at the University of Essex and a tutor in international law at the Centre for International Studies and Diplomacy, School of Oriental and African Studies, United Kingdom

News from the ICRC

By **Jean-Marie Henckaerts**

Commemorations

8 June 2007 marked the 30th anniversary of the adoption of the Additional Protocols in 1977. A number of events were organised to commemorate this anniversary by the ICRC, together with some governments and other organisations, notably in Beijing (18 to 19 June), Colombo (16 August) and Jakarta (4 to 5 September).

18 October 2007 marked the 100th anniversary of the adoption of the Hague Convention Respecting the Laws and Customs of War on Land. This anniversary was commemorated by the Spanish Red Cross during a three-day event in Madrid at the University Centre "General Gutiérrez Mellado" from 17 to 19 October 2007 and by

the Netherlands Red Cross at a conference in The Hague on 19 October.

Publications

The ICRC published the reports of the Roundtables on Customary International Humanitarian Law which were held in Kuala Lumpur and Beijing: *Customary IHL Roundtable Reports, Reports of the Roundtables on Customary International Humanitarian Law, Kuala Lumpur, 6-7 June 2006 and Beijing, 25-26 October 2006* (2007)

Cambridge University Press, Chatham House and the British Institute of International and Comparative Law published a collection of essays containing commen-

tary on the ICRC study on customary international humanitarian law: Elizabeth Wilmschurst and Susan Breau (eds.), *Perspectives on the ICRC Study on Customary International Humanitarian Law* (2007). [See commentary above.]

The *International Review of the Red Cross* published the US government response to the International Committee of the Red Cross study of customary international humanitarian law in *International Review of the Red Cross*, Vol. 89, No. 866, 2007, pp. 443-471, as well as the response thereto on behalf of the ICRC by Jean-Marie Henckaerts, "Customary International Humanitarian Law - a response to US comments", *International Review of the Red Cross*, Vol. 89, No. 866, 2007, pp. 473-488.

30th International Conference of the Red Cross and Red Crescent

The 30th International Conference of the Red Cross and Red Crescent took place in Geneva from 26 to 30 November 2007. The conference adopted four resolutions by consensus, which can be found on the ICRC website at <http://www.icrc.org/>

[web/eng/siteeng0.nsf/html/30-international-conference-resolutions-061207](http://www.icrc.org/web/eng/siteeng0.nsf/html/30-international-conference-resolutions-061207).

The resolution of most relevance to the Lieber Society is the one entitled "Reaffirmation and Implementation of Inter-

national Humanitarian Law - Preserving Human Life and Dignity in Armed Conflict". The full text of this resolution is set out below.

Reaffirmation and Implementation of International Humanitarian Law: Preserving Human Life and Dignity in Armed Conflict

The 30th International Conference of the Red Cross and Red Crescent ("the Conference"), *Recalling* the Declaration and the Agenda for Humanitarian Action adopted by the 28th International Conference of the Red Cross and Red Crescent, *stressing* that these documents remain as pertinent today as they were in 2003, and *encouraging* all members of the Conference to continue to work towards their full implementation,

Convinced that international humanitarian law remains as relevant today as ever before in international and non-international armed conflicts and continues to provide protection for all victims of armed conflict,

Underlining, in this regard, that the protection offered by human rights law does not cease in case of armed conflict, save through the effect of provisions for derogation, *recalling* that while some rights may be exclusively matters of international humanitarian law,

others may be exclusively matters of human rights law, yet others may be matters of both these branches of international law, and *emphasizing* that human rights law, international humanitarian law and refugee law, provide protection to victims of armed



conflict, within their respective spheres of application, *Renewing* the unequivocal commitment of all members of the Conference to respect and ensure respect for international humanitarian law in all circumstances, *Stressing*, however, that international humanitarian law governs only situations of armed conflict, and should not be extended to other situations, *Welcoming* ongoing discussions

on international humanitarian law in view of its reaffirmation and implementation in facing the challenges posed by contemporary armed conflict,

Deeply concerned that civilian populations and individual civilians continue to bear the brunt of armed conflicts and remain the main victims of violations of international humanitarian law committed by parties to an armed conflict, and *strongly condemns*, in this regard, attacks on civilians not taking a direct part in hostilities and civilian objects, including humanitarian relief personnel, journalists, other media professionals and associated personnel, as well as the use of human shields, *Recalling* the need to take into account the specific requirements in terms of protection, health and assistance of women, children, persons who are elderly, disabled, or infirm, displaced persons,

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refugees, persons deprived of their liberty and other persons with specific needs,

Welcoming the universal ratification of the 1949 Geneva Conventions, *expressing* the hope that other international humanitarian law treaties will also achieve universal acceptance and *calling upon* all States to consider adhering to international humanitarian law treaties to which they are not yet party,

Noting the entry into force of Protocol III additional to the 1949 Geneva Conventions on 14 January 2007,

Noting that the principles and provisions of international humanitarian law derive not only from international treaties, but also from customary international law, *Recalling* that the obligation to respect international humanitarian law binds all parties to an armed conflict, and *emphasizing* that this obligation is not based on reciprocity,

Welcoming the progress made in the implementation of international humanitarian law and *acknowledging* the importance of taking measures at all levels to achieve effective implementation, dissemination and enforcement of international humanitarian law, *Noting* with appreciation the increasing number of partnerships and synergies in the fields of implementation, dissemination and development of international humanitarian law between States, international and regional organizations, the ICRC, National Red Cross and Red Crescent Societies and their International Federation, academic institutions, nongov-

ernmental organizations and civil society,

Recalling, in particular, the special responsibilities of National Societies as auxiliaries to the public authorities of their respective States in the humanitarian field, to co-operate with and assist their governments in the dissemination and implementation of international humanitarian law, including the protection of the emblems, *Acknowledging* that, while progress has been made, efforts to enforce international humanitarian law at the domestic and international levels still fall far short of the requirements of justice, and *recognizing* that impunity for crimes under international law is not acceptable and that victims' rights can no longer be disregarded,

Resolves as follows:

Respect and Ensure Respect

1. *Reaffirms* the obligation of all States and parties to an armed conflict to respect and ensure respect for international humanitarian law in all circumstances;
2. *Stresses*, in this regard, the obligation of all States to refrain from encouraging violations of international humanitarian law by any party to an armed conflict and to exert their influence, to the degree possible, to prevent and end violations, either individually or through multilateral mechanisms, in accordance with international law;

Fundamental Guarantees

3. *Reaffirms* that all persons in the power of a party to an armed

conflict, including persons deprived of their liberty for reasons related to the armed conflict, are entitled to the fundamental guarantees established by international humanitarian law in both international and non-international armed conflict and that, as a result, no one can be outside the law;

4. *Stresses* that these fundamental guarantees apply without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria;

5. *Reaffirms*, in this regard, the continued importance of full compliance with Article 3 common to the 1949 Geneva Conventions, expressing certain fundamental guarantees, as supplemented by applicable treaty law and customary international law;

6. *Reaffirms* the obligation of humane treatment for all persons in the power of a party to an armed conflict, including persons deprived of their liberty for reasons related to the armed conflict, and the obligation to respect their personal convictions and religious practices, and *reaffirms*, in this regard, the prohibition of murder, torture, whether physical or mental, cruel or inhuman treatment, outrages upon personal dignity, in particular humiliating and degrading treatment, corporal punishment, mutilations, medical or scientific experiments, rape and other forms of sexual violence, the taking of hostages, enforced disappearance and collective punishments;

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7. *Stresses* the vital importance of providing all persons deprived of their liberty for reasons related to an armed conflict, whether detained or interned, with procedural safeguards aimed at ensuring that such detention or internment is lawful and does not amount to arbitrary deprivation of liberty, including a review of the basis and continued legality of the detention or internment by an independent and impartial body, without prejudice to the legal regime applicable to prisoners of war;

8. *Reaffirms* that all persons subject to arrest on a criminal charge and those on trial are entitled to a fair trial affording all essential judicial guarantees, including the presumption of innocence, trial by an independent, impartial and regularly constituted court, and necessary rights and means of defence;

9. *Recognizes* that additional, specific protections are provided under international humanitarian law to prisoners of war and other protected persons, such as civilian internees;

Humanitarian and Medical Assistance

10. *Reaffirms* the obligation of parties to an armed conflict, as well as third States, to grant humanitarian relief and relief workers rapid and unimpeded access to civilian populations in need, subject to and in accordance with international humanitarian law, including sovereign consent, and *further reaffirms*, in this regard, the obligation to respect and to protect humanitarian

relief personnel;

11. *Recalls* the obligation to respect and to protect medical personnel, including Red Cross and Red Crescent workers, their means of transport, as well as medical establishments and other medical facilities at all times, in accordance with international humanitarian law, and *recognizes* the importance of medical personnel having access to any place where their medical services are required;

12. *Stresses* the obligation of all parties to an armed conflict to recognize and uphold the protective value of the distinctive emblems recognized by the Geneva Conventions and, where applicable, their Additional Protocols;

13. *Deplores* the misuse of medical establishments and other medical facilities and of the distinctive emblems to carry out military operations that place civilians, the wounded and sick, and medical personnel in danger;

Conduct of Hostilities

14. *Reaffirms* the principle of distinction between civilians and combatants and between civilian objects and military objectives as a cardinal principle of international humanitarian law strictly to be observed by all parties to armed conflict at all times, regardless of the motives underlying the armed conflict;

15. *Reaffirms* the prohibition of attacks directed at civilians or civilian objects, the prohibition of indiscriminate attacks, the principle of proportionality in attack, the obligation to take all feasible precautions in attack, as well

as against the effects of attack, to protect and spare the civilian population, and the prohibition on using human shields;

16. *Reaffirms* the prohibition of acts or threats of violence, the primary purpose of which is to spread terror among the civilian population;

17. *Reaffirms* that the right of the parties to an armed conflict to choose methods and means of warfare is not unlimited and that it is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering;

18. *Calls on* all States to increase their efforts to strengthen the protection of civilians against the indiscriminate use and effects of weapons and munitions and recognizes, in this regard, the need to urgently address the humanitarian impact of explosive remnants of war and cluster munitions, including through rigorous application of existing rules of international humanitarian law and additional national and international actions that will minimize the harmful effects of these munitions on civilians, including assistance to victims;

19. *Recalls* the obligation as expressed in Additional Protocol I (Art. 36) to review the legality of new weapons, means and methods of warfare and urges all States to consider establishing specific review mechanisms to this effect;

20. *Stresses* that, in light of the obligation of States to respect and ensure respect for international humanitarian law, adequate measures to control the availability of

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arms and ammunition are required so that they do not end up in the hands of those who may be expected to use them to violate international humanitarian law;

Achieving Effective Implementation

a. National Implementation

21. *Recalls* that the obligation to respect international humanitarian law cannot be fulfilled without domestic implementation of international obligations and therefore reiterates the need for States to adopt all the legislative, regulatory and practical measures that are necessary to incorporate international humanitarian law into domestic law and practice;

22. *Emphasises*, in this regard, the need to adopt such measures for the use and protection of the distinctive emblems, the repression of serious violations of international humanitarian law, the protection of cultural property, the regulation of means and methods of warfare and the protection of the rights of missing persons and their families, among others;

23. *Acknowledges* with satisfaction the effective role and increasing number of national committees and other bodies involved in advising and assisting national authorities in implementing, developing and spreading knowledge of international humanitarian law, and *encourages* States which have not yet established such a national committee or similar body to consider doing so;

b. Doctrine, Training and Education

24. *Recalls* that, in order to ensure respect for international humanitarian law in the conduct of military operations, it is essential that the law be translated into measures and mechanisms, at both the level of doctrine and procedures. It is equally important that armed forces personnel at all levels be properly trained in the application of international humanitarian law;

25. *Stresses*, in this regard, the responsibility of military commanders for the training of their personnel and for the orders they give to their subordinates, and recalls that it is essential therefore that commanders receive training commensurate with their responsibility;

26. *Recalls* the importance, to this end, of the availability within armed forces of legal advisers to advise commanders, at the appropriate level, on the application of international humanitarian law;

27. *Reaffirms* that it is equally important that the civilian population be educated about international humanitarian law and, in this regard, encourages States to intensify their efforts and, in particular, to adopt educational programmes for young people, such as the education modules *Exploring Humanitarian Law*, and *encourages* National Societies to increase their efforts to spread knowledge of international humanitarian law in all sectors of society;

c. Ending Impunity

28. *Recognizes* that while implementation, training and education are prerequisites for States to

comply with their obligation to respect international humanitarian law, enforcement, in particular through the rigorous application of the system of individual responsibility for serious violations of international humanitarian law, is required to put an end to impunity and to encourage future respect;

29. *Stresses*, in this regard, that it is indispensable that all States create a domestic legal framework for the investigation of crimes under international law, in particular war crimes, and for the prosecution or extradition of persons suspected of having committed such crimes;

30. *Underlines* the importance of visible, predictable and effective sanctions, whether penal or disciplinary, in order to ensure respect for international humanitarian law and to deter future violations;

31. *Urges* States to make further progress in promoting accountability for the commission of crimes under international law by making domestic criminal justice more effective through, *inter alia*, assistance to States in developing the capacities of their domestic courts, by improving international judicial cooperation among States, as well as between States and international and "mixed" criminal courts and tribunals, by considering becoming party to the Statute of the International Criminal Court and by providing for jurisdiction over such crimes consistent with international law;

32. *Encourages* the use of fact-finding mechanisms, such as the International Fact-Finding Commission established under

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Article 90 of Additional Protocol I, in restoring respect for international humanitarian law;
33. *Invites* the ICRC, in furtherance of its previously reported

efforts, to continue its reflection and work on improving compliance with international humanitarian law, and to include, where appropriate, an update in its reporting to the next International Conference on this issue;

34. *Reminds* States of the need to address victims' rights in accordance with international law;
35. *Calls upon* all Members of the Conference to take effective measures to implement this resolution.

Call for Papers: 2008 Lieber Society Military Prize

The Society bestows each year, without regard to nationality, a prize based upon an exceptional writing in English by a member of or person retired from the regular or reserve armed forces of any nation that significantly enhances the understanding and implementation of the law of war.

The Prize. The winner will receive a Certificate confirming that he or she has won a Lieber Society Military Prize and a monetary grant of \$500.00. The judges may also select up to two additional persons to receive Lieber Society Certificates of Merit for exceptional papers.

Definition of the Law of War. For this competition, the Law of War is that part of international law that regulates the conduct of armed hostilities. Papers may address any aspect of the law of war, including, but not limited to: the use of force in international law, the conduct of hostilities during international and non-international armed conflicts, protected persons and protected objects, the law of weapons, rules of engagement, treatment of detainees, to include interrogation procedures, and occupation law. Papers addressing practical problems con-

fronting members of armed forces are preferred.

Qualifications for entering the competition. Persons submitting papers must be a member, active or retired, of their nation's regular or reserve armed forces.

Papers that may be entered. Papers submitted in this competition must be in English and not more than 35 pages long if printed with single line spacing or 70 pages if written with double line spacing. Papers that have been published are acceptable for this competition. Papers that have not been published will be equally considered. A condition of considering a paper that has not been published, however, is that the author must give the Lieber Society authority to have the paper published in a journal of the Society's choice.

Required Contact Data. All submissions must contain the following data on the author of the paper: full name and rank or rating, if any; current postal and e-mail addresses; current telephone and fax numbers. If a person other than the author is making the submission, it must also contain the above data for the person submitting the paper.

Deadline for submitting papers. Papers for the 2008 competition must be received no later than Wednesday, 2 January 2008.

Use of email to submit papers. Electronic submissions in Adobe format (.pdf) or Microsoft Word (.doc) will be accepted. They should be sent to: ckeever@hawaii.rr.com.

Use of the postal system to submit papers. Submissions by postal mail must be sent to:

Colonel Charles J. Kever USMC (Ret.)
2176 Aha Niu Place
Honolulu, Hawaii 96821
Tel. & Fax: 808-732-7598

If the postal system is used, two copies of the paper must be submitted.

Acknowledgement of submissions. All submissions will be acknowledged by e-mail.

Announcement of winner. The winner and any person receiving Certificates of Merit will be announced at the 2008 Annual Meeting of the American Society of International Law.