

Office of the
Judge Advocate General



Cabinet du
Juge-avocat général

National Defence
Headquarters
Constitution Building
305 Rideau Street
Ottawa, Ontario
K1A 0K2

Quartier général de
la Défense nationale
Édifice Constitution
305, rue Rideau
Ottawa (Ontario)
K1A 0K2

31 August 2010

Mr. Bede Sheppard
Senior Researcher, Children's Rights Division
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
USA

By Email: bede.sheppard@hrw.org

Global Military Law Survey on Schools during Armed Conflict

Dear Mr. Sheppard,

Your letter of 14 July 2010 letter regarding the Global Military Law Survey currently being carried out by Human Rights Watch was forwarded to the Directorate of International and Operational Law in the Office of the Judge Advocate General from the Minister's Office. We are enclosing a response to the questions posed in your survey which, we understand, will be used to assess the current state of international protection and practice regarding attacks on schools and the use and occupation of schools around the world.

By way of background, the provisions of the *Geneva Conventions* of 1949 and the Additional Protocols of 1977 are implemented into Canadian law by virtue of the *Geneva Conventions Act*, R.S., 1985, c. G-3. Provisions of the *Rome Statute of the International Criminal Court* of 1998 are also implemented into Canadian law by virtue of the *Crimes Against Humanity and War Crimes Act*, 2000, c. 24. All personnel in the Canadian Forces (CF) are given mandatory instruction on International Humanitarian Law, which is also known as the Law of Armed Conflict.

The *National Defence Act* provides the legal basis for civil control of the armed forces and for command authority in the CF. The Act is available online in English at: <http://laws.justice.gc.ca/en/n-5/text.html> and in French at: <http://lois.justice.gc.ca/fr/N-5/index.html>. CF members are subject to the Code of Service Discipline and are liable to be charged, tried and punished under military law for committing "Service Offences". Service Offences include offences specified in the Code of Service Discipline, which is part of the *National Defence Act*. They also include offences under other Canadian law, in accordance with Section 130 of the *National Defence Act*. When CF members deploy overseas, they are liable for

the full range of Service Offences (criminal and military). Any offences committed by CF personnel while on overseas missions are triable in the military justice system and all actions that are considered crimes under International Humanitarian Law are also crimes punishable under Canadian military law.

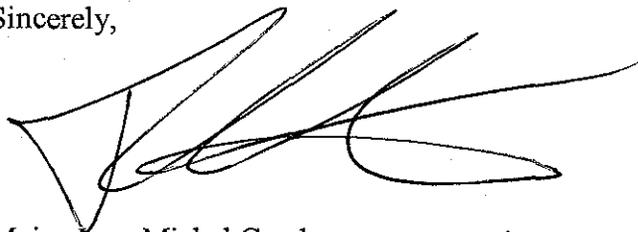
The CF Code of Conduct, which is a summary of Canada's obligations and duties under International Humanitarian Law, applies to operations where Canada is a party to an armed conflict and to peace support operations. It sets out the manner in which CF personnel must treat prisoners of war, wounded soldiers, civilians and their property. The Code is available on-line in English at: <http://www.forces.gc.ca/jag/publications/Training-formation/CFCC-CCFC-eng.pdf> and in French at: <http://www.forces.gc.ca/jag/publications/Training-formation/CFCC-CCFC-fra.pdf>.

In addition, the Joint Doctrine Manual: Law of Armed Conflict at the Operational and Tactical Levels (LOAC Manual), issued under the authority of the Chief of the Defence Staff, is complementary to the Code of Conduct and covers the law related to the conduct of hostilities and the protection of victims of armed conflict. This Manual provides the Canadian perspective of the LOAC based on Customary International Law and Treaties binding on Canada and is available online in English at: http://www.forces.gc.ca/jag/publications/Training-formation/LOAC-DDCA_2004-eng.pdf and in French at: http://www.forces.gc.ca/jag/publications/Training-formation/LOAC-DDCA_2004-fra.pdf.

These publications are referred to and inform the answers to your survey questions, which are attached in Appendix A.

Once again, thank you for your letter. We trust this information will be of assistance.

Sincerely,



Major Jean-Michel Cambron
Deputy Director, Directorate of International and Operational Law
Office of the Judge Advocate General
National Defence
305 Rideau Street, Ottawa, Ontario CANADA K1A 0K2
Email: [REDACTED]
Telephone: [REDACTED]

Enclosure

APPENDIX A

1. ***Does the domestic legislation, national military law, or current military policies or practices binding on the armed forces of your country provide that in either an international or a non-international (internal) armed conflict, civilian objects shall not be the object of attack, unless, and only for such time as, they are military objectives?***

Wanton destruction, theft or confiscation of civilian property is prohibited and is an offence under the *National Defence Act* as it is contrary to the Code of Service Discipline as per subsections 77(d), (f), (h) and (i). The *Crimes Against Humanity and War Crimes Act* is applicable to CF personnel either directly or through Section 130 of the *National Defence Act*.

In accomplishing a mission, CF personnel must use only the necessary force that causes the least amount of collateral civilian damage, which includes civilians and their property (Rule 2, Code of Conduct). There is a legal obligation to minimize harm to civilians and their property while carrying out the mission (known as the principle of proportionality): incidental civilian death, injury or damage created must not be excessive in relation to the direct military advantage anticipated. CF personnel must also respect the property of civilians (Rule 4, Code of Conduct). While military necessity may sometimes entail the destruction of civilian property in order to conduct operations, this destruction is not done needlessly. In addition, as a general rule, buildings and property dedicated to cultural or religious purposes may not be attacked and should not be targeted or used for military purposes (Rule 9, Code of Conduct).

Finally, the LOAC Manual summarizes Customary International Law with regard to civilians and civilian objects in the following paragraphs of Chapter 4:

411. The protection of civilians and civilian objects is a fundamental principle of LOAC. Parties to a conflict have a duty to distinguish between civilians and combatants as well as between civilian objects and military objectives. ... In conducting operations, care should always be taken to spare civilians and civilian objects.

413. The fact that an attack on a legitimate target may cause civilian casualties or damage to civilian objects does not necessarily make the attack unlawful under the LOAC. However, such collateral civilian damage must not be disproportionate to the concrete and direct military advantage anticipated from the attack. [...]

416. Indiscriminate are those that may strike legitimate targets and civilians or civilian objects without distinction. They are prohibited. [...]

423. As a general rule, civilians and civilian objects shall not be attacked. [...]

2. ***Is a violation of any such protection explicitly categorized as a "war crime"?***

Yes. The *Crimes Against Humanity and War Crimes Act* implements Canada's international obligations and incorporates, by reference, the war crimes provisions of the *Rome Statute of the International Criminal Court*. In particular, Canada's war crimes legislation criminalizes the same war crimes provisions of the *Rome Statute* applicable to civilian property in international armed conflicts [intentional directed attacks against civilian objects (Article 8(2)(b)(ii)) and intentional directed attacks against buildings dedicated to education (Article 8(2)(b)(ix))] and in non-international armed conflicts [intentional directed attacks against buildings dedicated to education (Article 8(2)(e)(iv))]. As mentioned above, indiscriminate attacks and wanton destruction of civilian property are offences under the Code of Service Discipline and triable in the Canadian military justice system.

3. *In your country, do you have legislation, national military law, or current military policies or practices binding on the armed forces of your country that state specifically (not implicitly) that schools and other educational institutions shall not be the object of attack by armed forces during international or non-international armed conflict unless they are military objectives?*

Yes, as set out in previous response.

4. *Is a violation of any such protection explicitly categorized as a "war crime"?*

Yes, as set out in response to question #2.

5. *Does domestic legislation, national military law, or current military policies or practices binding on the armed forces of your country provide any prohibition, regulation, or limitation on the use or occupation of schools and other educational institutions by armed forces for short-term shelters or long-term bases?*

Implicitly, yes. For example, Rule 4 of the CF Code of Conduct stipulates that civilian property must be respected. Rule 9 of the CF Code of Conduct states that, as a general rule, buildings and property dedicated to cultural or religious purposes may not be attacked.

In addition, the LOAC Manual elaborates on Customary International Law with regard to the obligation to protect civilians and civilian objects against the effects of attacks in Chapter 4:

421. 1. To protect civilians, the parties to a conflict shall, to the maximum extent feasible:
- a. endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of legitimate targets;
 - b. avoid locating legitimate targets within or near densely populated areas; and
 - c. take other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.

Another example of this implicit obligation is found in the LOAC Manual Chapter on Rights and Duties of Occupying Powers (Chapter 12). For example, during an armed conflict, the occupying power may not damage real property belonging to the State which is essentially of a civil or non-military character, such as a public building or office, unless the destruction is "imperatively demanded by the exigencies of war". In such a case, that occupying power becomes administrator of the property and able to use it, but it must not exercise this right in such a way as to decrease the value of the property, nor does the occupant have the right of disposal or sale of the property (see para. 1243).

Furthermore, the LOAC Manual summarizes a clear obligation regarding the treatment of schools as private property during an armed conflict:

1244. The property of municipalities, that of institutions dedicated to religion, charity and education ... shall be treated as private property even when owed by the state. All seizure or destructions of, or wilful damage to, institutions of this character ... is forbidden, and should be made the subject of legal proceedings.