



THE LAW OF ARMED CONFLICT

Internal security operations – Part A



ICRC



ICRC

International Committee of the Red Cross
Unit for Relations with Armed and Security Forces
19 Avenue de la Paix
1202 Geneva, Switzerland
T +41 22 734 60 01 F +41 22 733 20 57
E-mail: dc_com_fas.gva@icrc.org
www.icrc.org



AIM

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The aim of this lesson is to introduce the law and the international standards that apply to the conduct of internal security operations and their provisions on the use of force. The following topics will be covered:

1. The types of military operations associated with internal security operations.
2. The types of force available to deal with them.
3. The problems faced by the armed forces in such operations.
4. The applicable law.
5. The detailed human rights law and standards that apply.
6. The use of force.

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INTRODUCTION

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Lessons 11 and 12 complete the “land” section of the teaching file; they may come last, but they are by no means least. The role of a State’s armed forces is to defend the national territory against external threats or to deal with non-international armed conflict situations as defined and explained in lesson 10.

On occasion, however, they may be required to help the civil authorities deal with much lower levels of internal tension, violence or disturbances, for example to assist the civil police in maintaining or restoring law and order. Armed forces are increasingly involved in such operations, in their own national circumstances or in the context of United Nations peace support operations.

If this happens, then, as with any other operational commitment, the armed forces will be expected to deal with the situation professionally. They can do so only if the troops have been given comprehensive training in and have a clear understanding of the applicable law. Commanders, army staff and individual soldiers must know exactly what is expected of them. This might seem a difficult task for the armed forces. How can they be expected to cope with so many commitments and branches of the law?

The answer is that they can and, because the State will be relying on them, they must. The challenge is by no means as complicated as it might first seem. It really boils down to the need for the armed forces to **adjust** their operational procedures rather than to adopt new ones. The applicable law might at first seem new and bewildering, but in terms of what interests us most – the conduct of operations – although there are certainly differences there are also remarkable similarities between international human rights law and its associated codes or standards of behaviour and the law of armed conflict we have covered so far.

The two lessons that follow focus on what law the military “need to know” at the tactical or operational level. By this we mean what soldiers need to know on the ground when faced, for example, with a rioting crowd. How should they deal with someone they have arrested or detained?

We will not cover the details, for example, of subsequent trial or imprisonment. While the armed forces might be involved at the tactical level,



any subsequent proceedings should be dealt with by the civilian authorities, i.e. the judiciary, the prison service and of course the police.

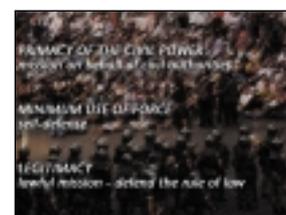
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We have mentioned that the armed forces will be assisting the civilian authorities. Often in this type of internal violence the term “**aid to the civil power**” is used to define the role of the military. It is an important term for us to remember. **The military are in a supporting role** and will be deployed only when existing police resources are too stretched to do the job properly. In cases where law and order has broken down completely and the civil authorities, including the police, are unable to cope with the situation, the armed forces, **on the instructions of the government**, may have to take over, but only until law and order can be restored, at which time responsibility will be handed back to the civil power.

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In these circumstances, the primary role of the military is not to conduct hostilities against an organized armed opponent but to fulfil some of the functions normally carried out by the police in restoring and maintaining law and order. They must apply the constraints that guide police forces, particularly in relation to the use of force and firearms.

The military do not become police overnight – as we have said, they have to adjust to their new role.



TERMINOLOGY

At the outset of these two lessons, we must make **an important point concerning the terminology** we will use when discussing international human rights law.

International human rights law and standards use the term *law enforcement officials* to describe the broad range of officials who can become involved operationally. They clearly stipulate that **the term *law enforcement officials* specifically includes military authorities in countries where police powers are exercised by them.**

Code of Conduct,
Art. 1 (b)
Basic Principles,
Preamble

As we are dealing with armed forces, we will replace *law enforcement officials* with terms that are more familiar to us (*military, army, soldiers, armed forces*) for the remainder of the lesson.

The purpose of the above is to personalize the lecture and thus make it more relevant to your audience. You may decide to substitute your own terminology, to refer to your own military unit or simply to use the second person ("you are, you must", etc.). If you are dealing with a para-military force you should use the exact unit designation and terminology that they will understand.

Armed forces and the police are subject to the laws of the country. These lessons cover only international rules. Accordingly, lectures on internal security operations must be given with a police or military lawyer who can present the relevant national legislation.

BACKGROUND

Definition of internal security operations

We have chosen the term *internal security operations* to describe this level of violence because it is well known to the military. Some armed forces may use the term *low intensity conflict* or *operations other than war* to describe the same thing. The law, for its part, does not mention these well-known military terms. So what exactly are we talking about?

As we know from lesson 10, the law of armed conflict contains no precise definition of situations of internal violence. The nearest it gets is Article 1(2) of Protocol II additional to the Geneva Conventions, which uses the expression “**situations of internal disturbances and tensions**” but does not define it. The reference to “**riots, isolated and sporadic acts of violence and other acts of a similar nature**” in the same paragraph is a good indication of what is involved but not a definition.

Is it possible to define internal security operations in more narrow terms that a soldier will understand? The answer is yes, as a direct result of the work carried out by the ICRC. The organization has been involved in situations of internal violence for many years and has lobbied to improve the applicable law. In doing so, it has produced useful definitions of the phenomenon. Scholars often use the ICRC’s definitions as a basis for discussion. Perhaps equally important, the armed forces can have little argument with them. The definitions we shall use, therefore, are those put forward by the ICRC at the first session of the 1971 Conference of Government Experts.¹

Internal disturbances – this involves situations in which there is no non-international armed conflict, but there exists an internal confrontation, characterized by a certain seriousness or duration and which involves acts of violence. These can assume various forms, from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. **In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules.**

1. Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, held in Geneva from 24 May to 12 June 1971 (Document submitted by the ICRC, Vol. V: Protection of victims of non-international armed conflicts, Geneva, January 1971, pp. 79-85).

Internal tensions – the term usually refers to situations of serious tension (political, religious, racial, social, economic, etc.) or to the consequences of an armed conflict or internal disturbances.

These situations (*might*) present any one, if not all, of the following characteristics:

- mass arrests;
- a large number of persons detained for security reasons;
- administrative detention, for long periods;
- probable ill-treatment, torture or material or psychological conditions of detention likely to be seriously prejudicial to the physical, mental or moral integrity of detainees;
- detainees held incommunicado for long periods;
- repressive measures taken against relatives of persons deprived of their liberty;
- the suspension of fundamental judicial guarantees, by the proclamation of a state of emergency or by a de facto situation;
- sweeping measures restricting personal freedom, such as exile, assigned residence, displacements;
- allegations of forced disappearances;
- an increase in the number of acts of violence (such as abduction and hostage-taking) which endanger defenceless persons or spread terror among the civilian population.

In addition to the ICRC definitions above one might also include other features of such internal violence such as:

- possible harassment of those reporting on the situation e.g. journalists and lawyers representing detainees, suspects etc.
- allegations of unlawful killings.

The terms *internal disturbances* and *tensions* described above give soldiers a good definition of the operational environment in which they might be called upon to perform their military duties. For our purposes, we will continue to incorporate these useful definitions into our term ***internal security operations***.

1. TYPES OF MILITARY OPERATIONS ASSOCIATED WITH INTERNAL SECURITY

Having looked at the descriptive definitions of internal security operations, let us now outline how they translate into the sort of operations in which the military might become involved.

General

- protecting persons and property (key points, VIPs, vulnerable people such as judges, key witnesses, etc.)
- apprehending violators and suspected violators of the law
- ensuring respect for the law
- preventing the escalation of violence
- surveillance, intelligence and reconnaissance operations
- evacuation operations

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Specific

- cordon and search operations (sealing off a village to search for offenders, weapons or equipment)
- urban and rural patrols, possibly joint patrols with police or paramilitary forces
- manning observation posts, again in urban or rural settings
- guard duties at key points or for VIPs
- road blocks or vehicle check points (VCPs)
- identity checks
- controlling peaceful demonstrations
- controlling or dispersing unlawful assemblies or demonstrations (riot situations)
- enforcing curfews
- making arrests
- detaining persons

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- acting as a reserve or reinforcement. i.e. quick reaction duties on standby for incidents
- keeping sides apart (manning a “peace line” or “green line”)
- escort duties for the police, civil defence units, the fire brigade
- hostage rescue
- ambush



- securing or picketing routes, for example to ensure safe passage of supplies through sensitive areas
- bomb disposal, or dealing with improvised explosive devices (IEDs)

Many of the above tasks can involve searching people, vehicles and property.

2. THE TYPES OF FORCE AVAILABLE TO A STATE FOR INTERNAL SECURITY OPERATIONS

Let us briefly examine exactly how States cope with internal security situations. What forces can they call in? Why might they have to turn to the armed forces for assistance and divert them from their primary task?

Generally the States have three main types of force at their disposal.

The armed forces – the army, air force and navy. As we know, their main role is to defend the national territory from outside aggression.

Paramilitary forces – these normally have two roles: to support armed forces' operations to defend the State against outside aggression and to conduct internal security operations. Many paramilitary forces around the world are specially trained for internal security duties. Many countries have "Gendarmes", which often fulfil the same roles as we have described for paramilitary forces. Sometimes they are purely police forces.

Police forces – these are usually trained and equipped for traditional policing roles and often also for certain levels of internal security duty. A State will use them for internal security operations for as long as possible. However, if the violence escalates, the police might be overextended and the civil authorities forced to request assistance. Any available paramilitary force will no doubt be the first to provide reinforcements. In many ways, this makes a lot of sense. To divert police from their primary role might actually contribute to a breakdown in law and order. Who does the policing? Police are not normally trained or equipped to deal with increasing levels of violence. In conflict situations or situations of internal violence, the police remain the police. The threat to them and their type of work might change but they do not overnight become armed forces.

What forces are used is entirely a matter for the State. For our purposes, it is important to note the range of options available. Why? Because as an armed force you might be called upon to assist. In providing this assistance, in the worst case you might be operating alone. In other situations, you might be operating in support of a paramilitary force, a police force, or both.

Operating in this sort of environment can pose problems for the military. It might be difficult to conduct **joint operations** if there has been no prior training or liaison. The **Standing Operating Procedures** (SOPs), even the basic ethos, ethics and outlook of these forces will differ considerably.

3. PROBLEMS FACED BY THE ARMED FORCES

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The armed forces need to adjust to the demands of internal security operations. Let us therefore highlight some areas where they may have problems adjusting at the operational level. One major problem for armed and paramilitary forces in internal security operations is that they may be unsure what law they are operating under. This point will be covered in detail later. Other problems might include:



TRAINING

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We know that the main role of the armed forces and the paramilitary is to deal with armed conflict. Their whole ethos, almost all their training and their equipment is based on inflicting maximum damage and destruction on their opponents and defeating them in the shortest possible time within the rules and the law of armed conflict. Key features of internal security operations, on the other hand, are **restraint and the use of minimum force**, exactly the opposite of what is usually required of soldiers in conventional warfare. The reason is clear: essentially they are now maintaining law and order among their own people in their own country.



Soldiers need proper training to adjust to this new way of operating.

Do not expect soldiers to know how to cope without training. If the army or paramilitary enter internal security operations completely cold, without training and detailed briefings on the applicable law, they will have problems. Because these situations require a cool head and maturity, particular problems may be caused if young and inexperienced soldiers, whether conscripts or professional forces, are deployed on operations. There are a number of examples of highly regarded and well-trained conventional forces performing badly on internal security operations. Some overreact to the situation facing them and actually exacerbate or prolong it, or cause more victims by their behaviour.

Why does this happen? It should not. Let us not make the mistake of downplaying the pressures and difficulties faced by soldiers on such operations. However, let us be equally clear that soldiers who are well trained to make the necessary adjustments and led by good professional commanders will be able to cope with the demands of internal security.

They quite simply must cope, otherwise they become a liability to themselves, their fellow soldiers and their unit. They are also a threat to the very people it is their duty to protect – the civilians caught up in the violence.

EQUIPMENT

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Often armed forces are not properly equipped to deal with internal security operations. Soldiers faced by a hostile mob and equipped with only a rifle will quite naturally use it if their lives are threatened. If they have defensive equipment, however (flak jackets, helmets with visors, batons and shields, rubber bullet guns, tear gas, water cannons, etc.), a graduated response can be used to dissuade or deter, without having to resort to extreme measures. It is difficult to demand restraint and minimum force from inexperienced soldiers whose lives are in grave danger if they are not properly equipped to do the job. Obviously they need to be taught how to use this equipment, which might be quite new and strange to them.

The forces involved in internal security operations need a range of equipment enabling them to produce a graduated response. They must be trained in the use of that equipment.



TACTICS

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Because they have been trained and equipped for armed conflicts, where in the main large-scale manoeuvres and concentrations of massive force are required, armed forces will need to adjust to the smaller scale of operations and the tactical mobility required at this lower level of violence.



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Dealing with a hostile crowd of civilians in a riot situation requires a completely different approach from an attack on an enemy position in conventional warfare. Command responsibility in these operations rests at very low levels – indeed, they are often referred to as platoon commander's or even corporal's "wars".



Again, adjustments in training and tactics are required to deal with these situations.

THE ARMED FORCES' ATTITUDE TO INTERNAL SECURITY OPERATIONS

A word on the attitude of the armed forces to their involvement in internal security operations. Some regard such operations with contempt. They consider that they have a more noble role. *"The only reason they've called us in is because the police are inefficient and incapable of maintaining law and order"*. This rather arrogant but nevertheless often prevalent attitude can create major problems. Operationally, as we have said, these forces should work in *"aid of the civil power"*, that is, in a secondary **or supporting role to the police**. In reality this quite often tends not to be the case on the ground. Armed forces in particular might be inclined to push the police aside and take the leading role. The legal system of most States will be based on **police primacy** in such operations. However, the armed forces will often use the police when it suits them and will do things their own way when it does not. A further difficulty might be occasioned if the police are inadequately trained to deal with what for them might be an abnormal situation. Distrust between the armed forces and police can create all sorts of additional problems. Intelligence information tends to be jealously guarded and not shared. Duplication of effort due to mistrust results in inefficiency and undermines the State's security efforts.

Joint training between the military and police will ease operational problems. Cooperation between the armed forces and civil authorities, including the police, is vital in such operations and the key to successfully restoring law and order.

4. THE LAW APPLICABLE IN INTERNAL SECURITY OPERATIONS – AN OVERVIEW

In internal security operations, it is of course the **State's domestic law** that applies. This law is influenced, however, by **the norms and standards of international law**.

Domestic law. The details of this law are clearly beyond the scope of this lecture. States requiring their armed forces to operate in internal security operations must ensure that training and preparation includes careful briefing on the key aspects of domestic law that will apply. This briefing can be carried out by army legal services or by the police.

INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

This branch of international law plays a **key role** in internal security operations. **It is most important that the armed forces understand and adjust to its provisions which directly affect operations** and which we will be covering in detail. International human rights law consists of:

- **treaties**, which are legally binding on those States which have agreed to be bound by them. **They are your State's law and as such, part of your military law;**
- **non-treaty standards**, which represent the consensus of the international community on standards the States should aspire to meet. They are usually called declarations, principles, rules, codes and so on. As we will see, some of them are particularly useful and relevant to the military, e.g. those dealing with law enforcement matters. **They elaborate on treaties and provide detailed guidance on how treaty rules should be implemented.** Although they do not have the legal power of treaties, they have the persuasive force of having been negotiated by governments over many years and of having been adopted by political bodies such as the United Nations General Assembly, usually by consensus. They therefore **carry considerable weight. They sometimes reaffirm principles that are already considered to be legally binding on all States under customary international law;**
- **customary international law**, which stems from the general and consistent practice of States, i.e. that which they follow out of a sense of legal obligation. The most obvious significance of customary international law is that it is binding on all States. **The 1948 Universal Declaration of Human Rights (UDHR)**, has now become

part of customary international law as a result of State practice. Many States refer to the UDHR in their domestic legislation. Similarly, the core of non-derogable rights common to **the International Covenant on Civil and Political Rights (ICCPR)** and regional conventions and charters is now generally accepted as binding on all States. **This common core consists of four rights: the right to life and the prohibition of torture, slavery and retroactive penal sanctions.** We will be discussing the first two in much greater detail as the lesson develops.

International human rights law applies both during armed conflicts and in peacetime. Its aim is to protect the rights of individuals against State authorities. Those rights are set forth in international treaties such as the ICCPR, in the non-treaty standards described above and in regional conventions and charters in Europe, Africa and the Americas.

Although all the rights listed in human rights treaties apply at all times, a State may **derogate**, under very specific conditions, from certain human rights in the event of a public emergency threatening the existence of the nation. A number of **core rights** nevertheless always apply. A State can only modify the scope of its human rights obligations if it notifies the relevant authorities that it is derogating. A domestic state of emergency may not in itself constitute derogation.

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The two most important rights to keep in mind are:

The right to life – every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

The prohibition of torture – no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Rape and sexual assault can also constitute torture; rape does not apply only to women.

Internal security operations are, as the term implies, an internal matter for the State. A State does not want to be told how to conduct itself when dealing with its own people. It might, as we will see, accept international conventions and standards that limit its power, but essentially in terms of operational law there is not a great deal on offer to the military. So what does an armed force do in this situation?

ICCPR, Art. 4



ICCPR, Art. 6 (1)

ICCPR, Art. 7

On the other hand, would a professional armed force trained in the law of armed conflict not wish to apply its fundamental rules and principles to internal security operations? Its soldiers have been trained in these rules, they should be part and parcel of their normal behaviour in action – **a reflex**. To change course to meet a new, albeit lower, level of operational commitment would not only cause utter confusion but seems totally unnecessary. The case can be made that having instilled the humanitarian reflex in soldiers, it is not necessarily helpful to say it does not apply at lower levels of violence.

Let us summarize the situation.

FACTS

- International humanitarian law does not apply in situations of internal disturbances and tensions, i.e. to internal security operations.
- Domestic law, customary international law and international human rights law do.
- There might, however, be “grey” situations which for short periods are similar to armed conflicts and which attain the threshold for application of humanitarian law before again becoming internal security situations. Therefore notions of both yardsticks are necessary.
- There are significant differences between military operations during armed conflicts and in internal security operations, for example concerning the use of force. Different rules must therefore be applied.
- It has often been the case, for example in recent UN operations, that what begins as a peacekeeping mission, where human rights law and domestic law are of paramount importance, drifts inexorably into a peace enforcement operation, where humanitarian law has primacy. Again, soldiers need to be familiar with both branches of the law if they are not to be caught out.

Having said this, although it would clearly be convenient or even useful to implement bits and pieces of the law as it suits our purposes, this is not the business of the military. **It is not for the armed forces to “change the law to fit the war”.**

At the very end of our lessons, we will briefly compare human rights law and the basic rules of the law of armed conflict to **see what similarities there are and if any major gaps exist** which could affect a soldier’s ability to operate effectively.

5. INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS APPLICABLE IN INTERNAL SECURITY OPERATIONS

We have pointed out that the armed forces need to **adjust their operational thinking and procedures** when dealing with internal security operations. **The purpose of this section is to explain in military terms exactly what those adjustments are.**

As soldiers, we are no longer dealing with an external enemy with all that this entails in terms of the level of force we have to mobilize to maintain our sovereignty and freedom. Nor are we dealing with a large internal rebellion or civil war.

We are dealing with low-scale disturbances. We are tasked with restoring or maintaining law and order. We are dealing with our own people. The key features of military operations are now based on the use of **minimum force and restraint**. This is certainly a change of emphasis for any armed force, but it is not in fact such a radical departure.

An armed force conducting internal security operations must adjust to the requirements of domestic law and human rights law in the following areas:

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- **the use of force;**
- **dealing with unlawful assemblies;**
- **procedures for arrest;**
- **procedures for detention.**

Before we study these topics, it is important to remind ourselves of the primacy of domestic law in these operations. It should nevertheless be assumed that States have complied with their international obligations and that domestic law will be in conformity with international human rights law and standards. It is on these that we will now focus.

6. THE USE OF FORCE

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Key law: the right to life is one of the most fundamental human rights and of course that most affected by the use of force. It is protected by



principles of customary international law and by international and regional human rights treaties dealing with the subject. The ICCPR expresses the right to life as follows:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

ICCPR, Art. 6 (1)

Three instruments have been adopted to protect people from being arbitrarily deprived of their lives and to provide guidance on the use of force. While none of them is legally binding, they do offer practical advice to armed forces operating in internal security situations. Compliance with their provisions is an essential element of the right to life. Those instruments are:

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- **the United Nations Code of Conduct for Law Enforcement Officials**, adopted by UN General Assembly resolution 34/169 of 17 December 1979 (Code of Conduct);
- **the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1990 (Basic Principles);
- **the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions**, adopted by resolution 1989/65 of the United Nations Economic and Social Council in May 1989.



Let us now look at what guidance these instruments provide in the conduct of internal security operations.

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PRINCIPLES APPLICABLE TO THE USE OF FORCE

In both the Code of Conduct and the Basic Principles we find two principles with which we are very familiar:

Necessity: force may only be used when strictly necessary. Its use must be regarded as an exceptional measure.



Code of Conduct, Art. 3
Basic Principles,
Preamble (para. 5)
& Principle 14

Proportionality: whenever the lawful use of force and firearms is unavoidable, force should be used only to the extent required for the performance of your duty. Never should force be used or authorized which is disproportionate to the legitimate objective to be achieved; collateral damage and injury must be minimized.

Code of Conduct,
Art. 3 (b)
Basic Principles,
Principles 5 (a) & (b)

HUMAN RIGHTS STANDARDS ON THE USE OF FORCE

The Basic Principles offer the following guidelines.

Rules and regulations: governments and law enforcement agencies must adopt and implement rules and regulations on the use of force and firearms against persons.

Basic Principles,
Principle 1

This is an important point for armed forces. Based on these rules the armed forces should put together training packages and guidelines for their soldiers. If an internal security situation develops, they will not be caught off guard and possibly ill-prepared.

Range of equipment and weapons: we mentioned earlier that armed forces might be hampered in dealing correctly with an internal security situation because they lack adequate equipment or the range of weapons enabling them to provide a graduated response. The Basic Principles offer guidance on this topic.

Governments and by analogy the military should develop a range of means as broad as possible to equip soldiers involved in internal security operations with various types of weapons and ammunition allowing for a differentiated use of force and firearms.

Basic Principles,
Principle 2

Non-lethal incapacitating weapons should be developed for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons.

Basic Principles,
Principle 2

For the same purpose as above, soldiers should be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transport, in order to limit the need to use weapons of any kind.

Basic Principles,
Principle 2

The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

Basic Principles,
Principle 3

Minimum force: in carrying out their duties, soldiers must, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use these only if other means remain ineffective or hold no promise of achieving the intended result.

Basic Principles,
Principle 4

If the lawful use of force and firearms is unavoidable, then the following rules must be followed:

- **restraint:** exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.
- **minimize damage** and injury, respect and preserve human life.
- **medical assistance:** ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.
- **notify next of kin:** ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

Basic Principles,
Principle 5 (a) to (d)

REPORTING OF INCIDENTS

Soldiers on internal security operations must promptly report any injuries or deaths caused by the use of force and firearms to their superiors, who must in turn ensure that an effective reporting system has been put in place and that the information is promptly passed on through the chain of command to the competent authorities responsible for administrative review and judicial control.

Basic Principles,
Principles 6 & 22

In addition, the military must adopt a system ensuring that whenever a firearm is used operationally the fact is reported.

Basic Principles,
Paragraph 11 (f)

These requirements constitute a major adjustment for the armed forces. They represent much tighter rules and procedures to control the use of force. In battle one is not normally required to report every single incident resulting in death or injury.

ABUSE OF POSITION OF TRUST

Governments must ensure that arbitrary or abusive use of force and firearms by soldiers is punished as a criminal offence under the law.

Basic Principles,
Principle 7

SPECIAL RULES FOR OPENING FIRE

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In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.

Apart from the general guidelines covered above, there are some special rules regarding opening fire in internal security situations. **These rules differ from those that apply in law of armed conflict situations and so must be explained in some detail, confirmed in training and of course applied on operations.**

The rules state that **soldiers shall not use firearms against persons except:**

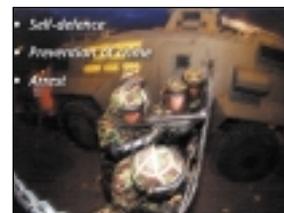
- **in self-defence or to defend others against an imminent threat of death or serious injury;**
- **to prevent the perpetration of a particularly serious crime involving grave threat to life;**
- **to arrest someone presenting such a danger and resisting the soldier's authority, or to prevent his or her escape.**

Even so, a **soldier should only open fire when less extreme means are insufficient to achieve any of the above objectives. In other words, in any operational internal security scenario firearms may only be intentionally used when strictly unavoidable in order to protect life.**

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These strict rules go hand-in-hand with another concerning **warning** before opening fire. **This is a major adjustment for a soldier.** As a soldier you are simply not required under the law of armed conflict to warn an opponent before you open fire, indeed to do so is tantamount to committing suicide. (One exception is POW escapes, when warning shots are appropriate). The guidelines say a number of things in relation to warnings.

In the circumstances described above in Basic Principle 9, soldiers must **identify themselves as such and give a clear warning of their intent to use firearms. They must allow sufficient time for the warning to be observed:**



Code of Conduct,
Art. 3 (c)

Basic Principles,
Principle 9



- **unless to do so would unduly place the soldier at risk or would create the risk of death or serious harm to other persons;**
- **or it would be clearly inappropriate or pointless in the circumstances of the incident.**

Basic Principles,
Principle 10

Why such a major adjustment? Is this not putting the soldier at unnecessary risk? The answer is quite clearly **NO**.

First, the use of firearms in internal security operations should be regarded as the **very last resort** by any well-trained professional soldier.

Secondly, the initiative and responsibility for opening fire still rests firmly with the soldiers. If they honestly believe that in the circumstances ruling at the time there is no alternative but to open fire because their lives (or the lives of others they are charged with protecting) are in immediate danger, they may do so. This is a considerable responsibility and not one to be taken lightly. There might be no time to seek or even be given orders for opening fire by superiors. Soldiers who are unsure about what they can or cannot do in a particular situation, perhaps because they do not understand the law or lack confidence, become a liability to themselves, their unit and to the civilians they are supposed to be protecting. It is imperative to ensure these rules are known and professionally applied. This can only be achieved by good training, careful briefing prior to any deployment and good command and control on operations.

Finally, the Basic Principles offer the following useful guidelines to armed forces.

Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of **unnecessary harm**. Prohibit the use of firearms and ammunition that **cause unwarranted injury or present an unwarranted risk** (this reflects a customary rule of the law of armed conflict). Ensure that soldiers are **accountable for the firearms and ammunition** issued to them.

Basic Principles,
Principles 11 (b),
(c) & (d)

Earlier we mentioned another human rights instrument applicable to the use of force: **the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principles)**. This instrument is designed to prevent unlawful killings by agents of the State, sometimes operating in groups known as *death squads*. In other cases the term *faked* or *false encounter* is used to refer to a fabricated incident where a suspect is falsely accused of attacking the military or police or of trying to escape and is killed unlawfully. The above instrument provides us with the following guidelines to prevent or investigate such illegal occurrences.

Governments must prohibit by law all extra-legal, arbitrary and summary executions and ensure that any such executions are recognized as offences under their criminal laws.

Principle 1

In order to prevent the above, governments must ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those authorized by law to use force and firearms.

Principle 2

Governments must prohibit orders from superior officers or public authorities authorizing or inciting persons to carry out extra-legal, arbitrary or summary executions. All persons have the right and duty to defy such orders. Training of soldiers must emphasize the above provisions.

Principle 3

There must be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions. A written report must be made within a reasonable time on the methods and findings of such investigations. The report and its recommendations must be made public. Persons found guilty of such offences are to be brought to justice.

Principles 9, 17 & 18

PRACTICAL APPLICATION OF THE HUMAN RIGHTS STANDARDS ON INTERNAL SECURITY OPERATIONS

The armed forces will need to translate the above standards into operational language and rules of engagement. For example, training and actual operations should highlight the **dangers of firing live rounds** in an urban environment. A bullet fired during conventional operations may or may not hit its target. If it misses, the consequences will probably not be too serious. However, a bullet fired on an internal security operation is quite another matter. Even if fired in accordance with the rules we covered above, a bullet may miss its target and ricochet off the ground or an object and kill or injure innocent bystanders. A high-velocity bullet may also strike and pass through the intended target and cause death or injury to others nearby. A balance must be struck between burdening soldiers with so many restrictions and “what if” scenarios that they will never open fire (“it’s just too risky and will get me into trouble”) and ensuring they have the confidence and backing of their commanders to do their job properly and not put their own lives at risk. Well-trained soldiers and good junior commanders will know the relevant rules and have the confidence and personal initiative to do things properly and minimize the risks. Untrained soldiers who are unsure of themselves or the situation or who are out of control will cause you problems. They become a real danger to those they are supposed to be protecting – the civilian population – and even to their fellow soldiers.

Certain weapons might initially be seen as offering advantages to the armed forces in internal security operations. For example, sniper rifles are sometimes used in urban settings. They offer advantages in terms of precision targeting and limiting collateral injury or damage. A sniper can clearly identify offenders at long range and can consider firing at them within the rules described above. On the other hand, high-calibre weapons of this type can cause massive injuries or pass through the target, injuring or killing other people. In choosing weapons for an internal security operation one must balance the military or security needs for the weapon with the need to minimize the danger to people and property who are not involved in the situation at hand.

“Non-lethal” weapons: the term “non-lethal” weapon is becoming more and more common in military circles and is specifically referred to in the Basic Principles. In general, they are weapons designed to be less lethal than conventional weapons so as to put an opponent out of action for a limited period of time while minimizing fatalities. As commanders and staff officers, it is quite possible that you will be asked for your advice on the use of such weapons or even be involved in their development and procurement. Such weapons include: rubber baton rounds, plastic bullets, stun grenades, nets, tasers, the laying of slippery surfaces, and more futuristic weapons such as acoustic and electromagnetic pulse weapons.

The use of these weapons might seem very attractive to the military. Is it not more in keeping with the principle of humane treatment to put someone out of action temporarily than to kill them with conventional weapons? Their use and development nevertheless requires close attention. In particular, as commanders and staff officers you must ensure that, like other weapons used in internal security operations, non-lethal weapons comply with the standards and rules intended to minimize civilian casualties and unintended deaths.

Among the relevant principles are, that these weapons:

- must not cause unnecessary suffering or superfluous injury;
- must be capable of being directed against a military objective and must not have indiscriminate effects;
- must not cause disproportionate incidental damage either to persons or property.

Soldiers will need careful training in the use of such weapons in order, for example, to know how to minimize danger to children when using **rubber bullets**. The rules of engagement for the use of rubber bullets might stipulate that they are to be fired at the rioters’ legs – which is exactly the level of children’s heads! **Rubber bullets** fired at the range

permitted under rules of engagement can provide a useful form of deterrent or a graduated response to incidents. Fired at closer ranges they can become lethal weapons. **Riot gas** is another example of a potentially lethal weapon. It might be used in the open to disperse a crowd. However, if fired into an enclosed space in which people are trapped, it will asphyxiate and kill them. If fired without due consideration for adequate escape routes it could create panic and cause death and injury, as incidents at football grounds have shown. Thus, so-called “non-lethal” weapons become lethal when used unprofessionally. Soldiers must know the capabilities and possible side effects of all their weapons and ammunition, including non-lethal weapons, and keep within the rules for their use.

Regarding **accountability**, soldiers, unlike the police, carry firearms as a matter of routine and are fully conversant with the need to be accountable for them. Ammunition is a different problem. **In battle no one asks a soldier to account for expended ammunition.** In an internal security situation, **every round is significant.** Every round fired must be reported, together with the circumstances surrounding the incident. This is a major adjustment. It requires careful explanation and must be applied. The requirement should be introduced into the training for such operations to ease the adjustment.

Investigations. Armed forces must be aware of the obligation to carry out thorough investigations, e.g. regimental inquiries, if there is evidence of violations of the law. The results of these investigations must be reported through the chain of command to headquarters. Soldiers must be aware that they may be required to justify and account for their actions in a civilian court room. The material produced during the investigation should be retained when the forces are deployed elsewhere. The armed forces may need to make specific arrangements as to who is to be responsible for the archive.

Threat to property. The human rights instruments do not refer directly to the use of force in relation to the protection of property. Certainly if the property contains persons and their lives are threatened, then the use of force to protect them under the guidelines we have already discussed would be allowed. Here domestic legislation might apply.

SUMMARY

We can see that human rights law and standards give the military valuable rules on the use of force. The military need to adjust to them and be trained to use them. The rules need to be professionally and sensibly interpreted and applied by the military on internal security operations.

This brings us to the end of our first lesson on internal security operations. In our next lesson we will look at other aspects of the use of force, in particular when dealing with unlawful assemblies. We will cover the need for soldiers to know the law when dealing with arrests, short-term detention of persons and searches.

Are there any questions so far?

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