



THE LAW OF ARMED CONFLICT

Integrating the law into military operations



ICRC



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INTEGRATING THE LAW INTO MILITARY OPERATIONS

BASIC TERMINOLOGY AND DEFINITIONS



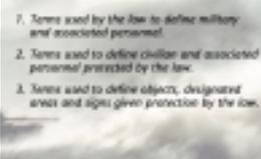
AIM

This lesson lends itself to use as a basis for discussion in class rather than as a formal presentation. The text below can be handed out prior to the class for private study, and the class itself shortened to a question-and-answer session bringing out the main points. The accompanying illustrations provide the instructor with a basis on which to focus discussion. Suggested questions and short case studies are also included in the Appendix to the lesson.

[Slide 2]

The aim of this lesson is to explain:

1. Terms used by the law to define military and associated personnel.
2. Terms used to define civilian and associated personnel protected by the law.
3. Terms used to define objects, designated areas and signs given protection by the law.



1. Terms used by the law to define military and associated personnel.
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INTRODUCTION

Just as the military have their jargon to describe equipment and what they do, so does the law of armed conflict have a terminology all its own. Although many of the terms will sound familiar to you, you may not, perhaps, be aware of their exact meaning. It is therefore important at this early stage that we understand exactly what those terms are and what they mean.

1. DEFINITIONS RELATING TO MILITARY AND ASSOCIATED PERSONNEL

[Slide 3]

ARMED FORCES

The armed forces of a State consist of all the organized units and personnel that are under a command responsible for the conduct of its subordinates.

They are subject to an internal disciplinary system that enforces compliance with the law of armed conflict.

How does an armed force ensure compliance with the law? Quite simply, it has a clear command structure. It has its own system of military law to enforce discipline and the law. It has good leadership and training.



HR IV, Art. 1
GP I, Art. 43

COMBATANTS

A combatant is any member of the armed forces, man or woman, except medical and religious personnel. Remember also that sadly, in many parts of the world children, male or female, are used as combatants. Only combatants may take a direct part in hostilities, i.e. actually fight or be attacked by the opponent. Captured combatants (if they have complied with the obligation to distinguish themselves from the civilian population – see below) are entitled to prisoner-of-war (POW) status.

Combatants must distinguish themselves from the civilian population when engaged in or preparing for any military operation. Normally, members of regular armed forces distinguish themselves by wearing military uniform; camouflage combat gear also counts as uniform. Combatants who are not members of uniformed armed forces – members

HR IV, Art. 1
GC III, Art. 4
GP I, Arts. 43-44

of militias, volunteer corps, organized resistance movements belonging to a party to a conflict and operating in or outside their own territory – must wear a fixed distinctive sign that is visible from a distance and carry their arms openly.

The law recognizes that there are circumstances where a combatant does not need to be in uniform or wear a fixed distinctive sign in order to be entitled to POW status. This is the case in occupied territories where, owing to the nature of the conflict, combatants cannot so distinguish themselves from the civilian population. In this case they will still be regarded as combatants as long as they are under a responsible command and subject to an internal disciplinary system. In addition, they must carry their arms openly:

- during each military engagement;
- while visible to the enemy when deploying for a military operation.

In other words, in combat they are quite clearly armed men or women and do not attempt to disguise their military intentions.

GP I, Art. 44 (3)

Those who break the rules and do not carry their arms openly lose their combatant status. They give up their entitlement to POW status, though they are entitled to equivalent protection. This means for example that if, after capture, they are tried for the mere fact of unlawfully taking a direct part in hostilities, they should be treated as if they were prisoners of war throughout the trial.

GP I, Art. 44 (4)

These rules apply in international armed conflicts only. In non-international armed conflicts combatant status does not exist, but you must still distinguish between fighters and other people.

PARAMILITARY AND POLICE FORCES

When a party to a conflict decides to incorporate a paramilitary force or an armed enforcement agency into its armed forces, it must notify its opponent accordingly. These forces are sometimes known as *gendarmerie* or may even be elements of a police force. They have the right to participate directly in hostilities and must of course fully comply with the requirements laid down for combatants and described above. They in turn are entitled under the law to the same protection as POWs if captured.

GP I, Art. 43

SPECIAL FORCES

Many armies have special forces in their order of battle. These are usually highly trained units employed deep in the opponent's rear areas for raids, reconnaissance or sabotage operations. They may also be employed for internal security tasks such as anti-hijack or anti-terrorist operations. Such units are as much a part of any armed force as those described above. When on an operation they must be recognizable as combatants by their uniform, insignia, etc. Special forces who operate wearing plain clothes or the uniform of their adversary are liable to punishment (see *Spies* below). They nevertheless have the right to a fair trial and must be treated in a manner equivalent to POWs throughout the judicial process.

GC III, Art. 87
GP I, Art. 39
GP I, Art. 75 (4)

PRISONERS OF WAR

[Slide 4]

We have already used the term prisoner of war, or POW, but what exactly does it mean? It applies to enemy combatants (male or female) who in an **international armed conflict** fall into the power of the adverse party, e.g. have been captured or have surrendered. It also applies to civilians who directly accompany the enemy armed forces, such as war correspondents, supply contractors and members of labour units or welfare services. The latter are directly accredited to the armed forces and should be issued with ID cards to prove their accreditation.

The term does not apply to military medical or religious personnel, who although they are part of the armed forces and, if detained, receive at least the same treatment as POWs, are subject to special rules (see below).

POWs are prisoners of the State, not of the unit or individual that captured them. This means that the State must answer for their treatment and safety. Of course, individuals are also responsible for any improper treatment of POWs.

The rules regarding the capture and subsequent treatment of POWs will be dealt with in greater detail as we progress.



GC III

MEDICAL AND RELIGIOUS PERSONNEL ATTACHED TO THE ARMED FORCES

[Slide 5]

Medical and religious personnel attached to the armed forces have a very special place within the law of armed conflict. As you know, they do not actually fight, although medical staff can be armed with light weapons for self-defence and for the defence of those under their care. Both categories should wear on their left arm the insignia of **the red cross or the red crescent (or the red lion and sun)** to identify them. Both categories are very clearly protected from attack under the Geneva Conventions.

Medical and religious personnel, if captured, are not POWs. If they are not actually required by your superiors to carry out medical and religious duties, then under the law they should be repatriated. If, on the other hand, there is a job for them to do, for example, caring for the sick in a POW camp or, in the case of religious personnel, looking after the prisoners' spiritual needs, then they can be retained for those purposes. In that case, they must be given the same treatment and privileges as POWs. They must be protected and allowed to get on with their job.

If you decide to employ combatants in a temporary role as medical orderlies, they remain classified under the law as combatants. For example, there might be an urgent need for stretcher-bearers to carry wounded from the front lines. These are quite clearly combatants assigned to a temporary duty. They are not medical staff in the sense described above. However, when they are carrying out medical duties they must be respected and protected. If captured, they are POWs.



GC I, Arts. 24-25 & 40
GP I, Arts. 8-9

SPIES

The law clearly tells us who these people are. They are persons who, acting clandestinely or under false pretences, i.e. not wearing the uniform of their armed forces, gather or try to gather information on your territory for the purpose of giving it to the other side. Their protection under the law is, as you might expect, limited. If captured, they are not entitled to POW status. They can be punished for their activities. They do still have the right to humane treatment and to a fair trial.

If a State decides to employ as spies soldiers who are then captured, those soldiers cannot claim combatant status and ask to be treated as POWs. On the other hand, soldiers who were employed as spies in the

past and, having returned to normal duties, are captured, cannot be punished for their previous spying activities.

There should be no confusion with our own forces who might be sent on reconnaissance patrols or special forces operations deep in enemy territory. As we have said, such units will be wearing uniforms and should in no way be treated as spies.

HR IV, Arts. 29-31
GP I, Arts. 46 & 75
(1 & 4)

MERCENARIES

Mercenaries have always existed. They are essentially fighters who regard conflict as a trade to be plied for private gain. The law defines mercenaries using six cumulative criteria. Those who fall within that definition are not considered combatants and are not entitled to POW status.

In view of the complexity of the definition, you would be well advised to treat captured suspected mercenaries as POWs until their status has been correctly determined by higher military authorities.

The term "mercenary" applies to those acting individually and to formed units. It is important to note that soldiers serving officially in foreign armed forces are not mercenaries, e.g. those serving in the French Foreign Legion or Gurkha soldiers serving in the Indian or British armies. Nor are loan service personnel sent to help train the soldiers of other countries considered mercenaries, even if they take a direct part in hostilities.

If captured, mercenaries who have taken a direct part in hostilities may be put on trial as unlawful combatants under the conditions described above.

Try to avoid the complicated definition of a mercenary. For your own information, however, or in case you are pressed for a brief explanation, here are the details.

Mercenaries are people who, acting as individuals or as formed units:

- are specially recruited locally or abroad in order to fight in an armed conflict;
- do in fact take a direct part in the hostilities;
- are motivated by the desire for private gain, are promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to the combatants of similar rank and functions in the armed forces of that party;
- are neither nationals of a party to the conflict nor residents of territory controlled by a party to the conflict;
- are not members of the armed forces of a party to the conflict;
- are not on official military duty representing a country that is not involved in the conflict, e.g. loan service or a training appointment.

GC IV, Art. 5
GP I, Arts. 47 & 75
(1 & 4)

2. DEFINITIONS OF CIVILIAN AND ASSOCIATED PERSONNEL PROTECTED BY THE LAW OF ARMED CONFLICT

CIVILIANS

Civilians are not to be attacked. A civilian is a person who is not a member of the armed forces. When in doubt, treat people as civilians. Civilians are not permitted to take a direct part in hostilities. If they do, they lose their protection against attack **for the time of their direct participation**. "Civilians" refers in all cases to men and women and, of course, children of either sex.

GP I, Arts. 50-51

CIVILIANS WHO ACCOMPANY THE ARMED FORCES

We referred to this term briefly in the section on POWs. Civilians who accompany the armed forces are people such as war correspondents, welfare, supply, labour or contractor personnel or civilian members of military aircraft crews. Normally they are issued with a special identity card (an example is given in Annex IV A to GC III). They are in the same position as other civilians in that they must not take a direct part in hostilities in order to be protected against attack. They share the dangers of

conflict in the same way as the armed forces they accompany. If captured, they are entitled to POW status and treatment.

GC III, Art. 4

JOURNALISTS

In addition to accredited war correspondents, you may well find journalists operating well forward on dangerous professional missions in conflict zones. They must be treated in all respects as civilians. They must be protected and may not be attacked. They must, however, behave in such a way as to make themselves recognizable as civilians to guarantee their immunity, i.e. they must not take a direct part in hostilities. They may also obtain an identity card from their own government proving their status as journalists (an example is given in Annex II to GP I). Again, they must accept the dangers and risks of conflict. If captured, they must be treated humanely, protected and handed over to your superiors, who will deal with them in accordance with specific provisions of the law applying to alien civilians. In contrast to war correspondents, they are not entitled to POW status.

GC IV, Arts. 35-46
GP I, Art. 79

CIVILIAN MEDICAL AND RELIGIOUS PERSONNEL

The law grants the same status to civilian medical and religious personnel as it does to military medical and religious personnel. Both must be respected and protected. Every effort should be made to enable them to continue with their work. The only difference is that if captured and required to be retained, military medics or religious personnel receive POW treatment as a minimum because they are considered part of the armed forces. Civilian medical and religious personnel should wear a distinctive armband with the **red cross or red crescent (or red lion and sun)** but this might not always be the case.

GC I, Arts. 22,
24 & 28
GC II, Arts. 35-37
GC III, Art. 33
GP I, Arts. 8 & 15

CIVIL DEFENCE

[Slide 6]

The purpose of civil defence is to protect the civilian population as far as possible from the effects of hostilities and to help it survive. Civil defence tasks might include warning, rescue and fire-fighting operations, the construction of shelters, and emergency assistance in restoring and maintaining order in distressed areas. Civil defence organizations belong to the civilian sphere, although military units might be assigned to support them. Their personnel, buildings and equipment should be



marked with the distinctive sign of civil defence: a blue triangle on a square orange background. Their personnel should also be issued with an identity card certifying their status. Civil defence workers can be armed with light individual weapons for their own protection or for the purpose of maintaining order.

Civilian civil defence organizations and their personnel must be respected and protected. They must be allowed to perform their civil defence tasks except in cases of imperative military necessity.

Civilian civil defence workers lose their protected status if they commit or are used to commit acts which are outside their normal duties and are harmful to the enemy. Even then the protection does not cease until a warning has been given and the offenders have had sufficient time to heed it and react.

Similarly military personnel assigned solely to civil defence tasks must be respected and protected. Whilst assigned they should wear the international distinctive sign for civil defence.

GP I, Arts. 61-67

3. OBJECTS, DESIGNATED AREAS AND SIGNS PROTECTED BY THE LAW OF ARMED CONFLICT

The law also gives protection to certain objects, buildings and designated areas, and the people they contain, when marked with agreed signs.

CIVILIAN OBJECTS

Civilian objects are not to be attacked. **Civilian objects are all objects which are not military objectives.** Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances ruling at the time offers a definite military advantage. Examples of civilian objects are:

- buildings and facilities used by civilians, as long as they are not used for military purposes, e.g. houses, apartment blocks, hospitals, factories and workshops producing goods of no military significance;
- offices, markets, warehouses, farms, schools, museums, places of worship and other similar buildings, as well as means of transport such as civil aircraft, cars, trains and buses;

- foodstuffs and food-producing areas, springs, wells, water works, reservoirs.

In all cases, the key question is the use to which the object is being put. We will discuss the definition of a military objective in much more detail in a later class. When in doubt, treat an object as civilian until proved otherwise.

GP I, Arts. 52 & 57

THE NATURAL ENVIRONMENT

In their military planning, commanders should always take into account the effect their operations might have on the natural environment.

We should, as a starting point, consider the basic principles of the law of armed conflict in relation to operations that might affect the natural environment. Are the means and methods you are going to use justified, or are they likely to cause unnecessary damage to the environment? Is the collateral environmental damage you are likely to cause excessive in relation to the concrete and direct military advantage you expect? Turning to specific provisions of the law, we find that:

- in the conduct of military operations, care must be taken to spare the environment;
- it is prohibited to employ methods and means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the environment and so prejudice the health or survival of the population.

GP I, Art. 55

GP I, Arts. 35
(3) & 55 (1)

Other rules protecting the environment – for example, those protecting forests from incendiary attack, the rules on dangerous forces, and the protection of objects that are indispensable for the survival of the civilian population – will be discussed in greater detail as we progress.

WORKS AND INSTALLATIONS CONTAINING DANGEROUS FORCES

[Slide 7]

The law contains a very specific definition of the term “dangerous forces”, which applies only to dams, dykes and nuclear electrical generating stations. Such facilities and military objectives in their vicinity must not be attacked, if doing so may result in the release of dangerous forces which would be catastrophic for the civilian population, e.g. severe flooding or the release of radioactive material. The consequences of such an attack could also, of course, affect your operations or troops.



This rule also imposes a duty on your opponents. They should not site military objectives close to these installations. They are, however, authorized to provide close or defensive protection for them, e.g. anti-aircraft guns or guards to protect against terrorist attack or sabotage.

In addition, if your opponents abuse the protection of the law and use these installations to regularly, significantly and directly support their military operations, then the protection ceases. In such cases, imperative military necessity might well require you to neutralize them as the only means left of putting a stop to the abuse. In that case, all practical precautions must be taken to avoid the release of the dangerous forces and due regard must be paid to the safety of the civilian population, e.g. warnings could be given to evacuate certain areas, the attack itself could be limited in scope, etc. In practical terms, bearing in mind the consequences, such decisions are likely to be made at the highest military or even political level. They are not within the decision-making sphere of a platoon commander.

The law also contains guidelines on how these installations should be marked so that they can be clearly seen as protected sites by ground and air forces. The sign consists of a group of **three bright orange circles in a line**. At night these protective signs should be illuminated.

Remember, these and other protective signs we will mention might not always be correctly placed or indeed used at all. This does not relieve you in any way from your obligation to stick to the law and avoid attacking installations, works or buildings that could obviously release dangerous forces.

GP I, Art. 56
GP I, Annex I
(protective sign)

PROTECTED ZONES IN INTERNATIONAL ARMED CONFLICTS

The law of armed conflict provides for a variety of protected zones or localities. It is important for you to know the purpose of these zones because you may well be involved as a staff officer in setting them up or as a combatant in guaranteeing their safety and protection. Although the zones go by a number of names, they all have two features:

- to protect civilian or military victims from the effects of hostilities;
- to keep those victims out of harm's way by guaranteeing to you and your opponent that there are no military objectives in the areas you have defined. In this way, if your opponent respects the law, the victims run no risk of being harmed by the effects of hostilities.

Attacks against any of these zones or localities are prohibited.

Let us briefly look at these various protected zones.

HOSPITAL ZONES AND LOCALITIES

Established under GC I and aimed at providing protection for the sick and wounded of the armed forces and medical personnel, these zones are created by written agreement between the two parties or by a unilateral declaration recognized by your opponent. They are usually well back from the front line and marked with **red crosses or red crescents (or red lion and sun)**.

GC I, Art. 23

The concept was developed in the Fourth Geneva Convention to include the term **safety zone** as well. Safety zones are essentially aimed at protecting specific categories of civilians rather than just military victims. The Convention mentions in particular the wounded and sick, aged persons, children under 15, expectant mothers and mothers of children under seven. Again, they are situated well back from the front lines and are created by exactly the same type of agreement. In this case they are marked with **oblique red bands on a white ground**.

GC IV, Art. 14

NEUTRALIZED ZONES

These provide protection for all civilians who do not take part in hostilities as well as wounded and sick combatants. Another key difference is that they are intended for use inside the combat zone. They are set up by written agreement between you and your opponent. The agreement includes details of exact location, how the zone is to be marked, food supply, supervision and for how long the zone is to remain open. Obviously, neutralized zones should not be used for any military purpose, otherwise the protection disappears. These zones are likely to encompass larger areas than those described earlier. They might, for example, include whole towns.

GC IV, Art. 15

NON-DEFENDED LOCALITIES

These are places deliberately left undefended in order to protect the civilian population and its property from injury and damage. They are set up by a unilateral declaration to the opposing party. They may also be the subject of separate agreements as required by both sides. These agreements define as precisely as possible the limits of the non-defended locality, which is open for occupation and which your opponent's armed forces may enter and take over. Non-defended localities are established near or inside the combat zone. They must be evacuated by all your military personnel and your mobile military weapons and equipment. They must not be used to support military operations, i.e. gun positions

or missile sites for offensive purposes. The party in control of the locality should try to mark its limits by using signs on the perimeter or main entry roads. These localities are sometimes also referred to as **open towns**.

GP I, Art. 59

DEMILITARIZED ZONES (DMZ)

These are battle-free areas established to protect the civilian population from attack. They may be cities or towns or even a stretch of land separating two opposing parties. They are set up by clear agreement between the parties. All military personnel, mobile military equipment and weapons must be evacuated. DMZ may not be occupied by your opponent or used in any way for military purposes. The party in control should as far as possible clearly mark the DMZ's perimeter by signs as may be agreed upon with the opponent.

GP I, Art. 60

The protected zones described above provide you with various practical options all designed to protect civilians or those who are wounded or sick. The other feature they share, as no doubt you have noticed, is that they all depend very much on one of our original principles, i.e. **good faith**. Without this and the honest agreement of your opponent the protection afforded by the law will surely fail.

[Slide 8]

The above provisions, as the keen student may note, apply to international armed conflicts. Is there nothing available to us in non-international armed conflict situations? Yes, there is. Article 3 common to all four Geneva Conventions deals with non-international armed conflicts and states that the parties should endeavour to bring into force, by means of special agreements, all or part of the other provisions of the Conventions. To put it simply, therefore, if the parties agree, there is nothing to prevent any of the above protective measures being implemented.



GC, common
Art. 3 (2)

PROTECTION OF CULTURAL PROPERTY AND PLACES OF WORSHIP

It is forbidden to commit hostile acts against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples. It is also forbidden to use such monuments, work or places in support of the military effort.

Cultural property and places of worship are protected under customary international law, and modern treaty law strengthens that protection. The **Hague Regulations** require those carrying out sieges and bombardment

to spare, as far as possible, buildings dedicated to religion, art or science, and historic monuments.

HR IV, Art. 27

Geneva Protocol I confirms and expands this requirement by stating that no acts of hostility may be directed against such property, which must not be used in support of the military effort. Such property must not be made the object of attack. Doing so is a grave breach of the law, if the property is subject to special protection, extensive destruction is caused and the object is not in the immediate proximity of military objectives.

GP I, Art. 53

GP I, Art. 85 (4)

In addition, the protection of cultural property is covered by a specific treaty, namely **the 1954 Hague Convention on Cultural Property**, which was supplemented with a new protocol as recently as 1999. The Convention and the Protocol apply equally in international and non-international armed conflicts. The two instruments provide for three forms of protection. The most relevant to us is the first, known as **General Protection** and it is on this that we will concentrate.

The forms of protection also include Special Protection and now, under Protocol II, Enhanced Protection. Should you be asked questions on these two categories, you could answer as follows:

Special Protection – States can decide to move important cultural objects to shelters, but it may be impossible to move some centres still containing cultural objects. These permanent or temporary centres must not be used for military purposes and must be situated well away from likely military objectives, e.g. an industrial area, a port or an airport. Few if any States have used the opportunity to provide for this higher level of protection. To date only the Vatican and four shelters designated for movable cultural property, all in Europe, have been registered for Special Protection.

Enhanced Protection – the latest protocol to the Cultural Property Convention (Protocol II) creates an even higher level of protection, known as Enhanced Protection. This is granted to property of obvious importance to our common heritage as human beings. Such property should be entered in an international list maintained by the Committee for the Protection of Cultural Property in the Event of Armed Conflict. At the time of writing, Protocol II had not yet entered into force and no list of protected properties or objects existed.

[Slide 9]

GENERAL PROTECTION

This applies to objects or property of great significance to a nation and its people, such as monuments, archaeological sites, major museums or libraries. You must respect such property, avoid damaging it and not put it at risk by improper military use, e.g. by using it to store military or communications equipment or by siting weapons close by.

Only if the site is misused or in the case of imperative military necessity should this protection cease. This decision must not be taken lightly and should be made at battalion commander level or higher. To facilitate recognition of such property, it should be clearly marked with the sign as shown in the picture.

As for your obligations towards cultural property, do as follows:

- explain to your soldiers the meaning of the protective sign;
- ensure your orders include details of these sites and their protected status;
- avoid damaging cultural property, if at all possible.

If the property is misused by your opponent and for reasons of military necessity it becomes an objective which you have no choice but to target, then use the minimum force necessary to resolve the matter. The use of force should be preceded by a warning giving your opponent a reasonable amount of time to comply.

Some of you might say, "I have travelled extensively and been involved in many operations but have never seen such signs being used". This may be true – but again, don't ever expect everything to be beautifully marked on the battlefield. The signs may not have been put up or they might have been knocked down. You are a professional, intelligent soldier – act accordingly and don't look for excuses. You know very well what a temple, church or monument looks like. Art galleries and museums are usually imposing buildings. *If in doubt – wait it out.* Get confirmation from your superiors before taking action that might destroy something which is irreplaceable.

Even if you are entitled to attack an object which has, unlawfully, been placed next to an item of cultural property, it might be wiser not to do so.



HCCP & Protocol II,
Arts. 10-14

HOSPITALS AND ASSOCIATED MEDICAL SERVICES

[Slide 10]

The law gives comprehensive and detailed protection to hospitals, medical units, medical transport and medical material. **They must be respected and protected at all times, whether military or civilian. They must never be attacked.** Military medical facilities and transport will be marked with the **red cross or red crescent (or red lion and sun)**. A commander in a tactical situation may decide to do without the protection afforded by such signs and to camouflage forward medical facilities. Civilian hospitals and equipment should always be marked with the protective emblem. Under no circumstances must this medical protection be used to try and shield military objectives from attack. Medical facilities lose their protection if they are used in hostilities. In such cases, the protection only ceases after a warning has been issued giving the offenders a reasonable amount of time to respond.



GC I, Arts.
19-23 & 35-37
GC II, Arts.
34 & 38-40
GC IV, Arts.
18 & 21-22
GP I, Arts.
8, 12-14 & 21-31

PRISONER-OF-WAR CAMPS

[Slide 11]

In order to improve their safety and security, POW camps should be clearly marked with the protective sign **PW** or **PG** (the French *prisonnier de guerre*). Normally information regarding the location of POW camps is exchanged between the parties, again for reasons of safety and security.



GC III, Art. 23

INTERNMENT CAMPS

During a conflict, a State may decide to intern certain civilians in internment camps. This usually is the case in occupied territory, but it has also happened with enemy civilians on national territory. For example, the British interned Iraqi civilians during the Gulf War. The internees are basically treated like POWs. Internment is a drastic restriction of personal freedom. It is permitted only if security requirements cannot be met by less severe measures. The important point for you to remember is that internment camps are protected from attack and that they should be clearly marked with the protective sign **IC**.

GC IV, Arts. 41-43,
78 & 83

THE WHITE FLAG (OR FLAG OF TRUCE)

[Slide 12]

This is a customary tool of war and still widely used today. **The white flag is used to indicate an intention to negotiate and to protect those who are negotiating. It does not, as is often thought, necessarily indicate intent to surrender.** You may have to negotiate with an opponent for practical military reasons – to arrange a cease-fire to collect the dead and wounded or to exchange prisoners. Those using the white flag should not be harmed in the process of negotiation. The details of how the flag must be used in an operational situation will be covered later. For the present, remember that the white flag is **another protective sign** you might come across in conflict.



HR IV, Arts. 32-34

THE RED CROSS AND RED CRESCENT EMBLEMS

[Slide 13]

The Government of Iran, the only country using the red lion and sun emblem on a white background, advised Switzerland, the depositary State of the Geneva Conventions, on 4 September 1980, of the adoption of the red crescent in lieu and place of its former emblem. Given that the emblem, which is still a recognized sign, has not been used since 1980 in practice, it is added in the text only in brackets.



We will finish by recalling the significance of one of the most important distinctive emblems or signs. In times of conflict, the emblem of the **red cross or red crescent (or red lion and sun)** constitutes a visible sign of protection conferred by the law on:

- **the medical services of the armed forces;**
- **National Red Cross and Red Crescent Societies** that have been duly recognized and authorized by their governments to assist the armed forces medical services. They may use the emblem for protective purposes, but only for personnel and equipment which assist the official military medical services in times of conflict, are employed exclusively for the same purposes as the latter, and are subject to military laws and regulations;
- **civilian hospitals** recognized as such by the State;
- **all civilian medical units** (first-aid stations, etc.) recognized and authorized by the competent authorities;
- **other voluntary relief societies**, subject to the same conditions as National Societies.

The emblems also protect religious personnel.

You should develop a reflex to the emblem used as a protective device and:

- refrain from attacking any person, unit or means of transport bearing the emblem;
- respect persons bearing the emblem;
- let such persons perform their tasks;
- leave buildings marked with the emblem untouched.

[Slide 14]

The International Committee of the Red Cross (ICRC) may use the emblem at all times and without restriction to fulfil its vital tasks with regard, for example, to the treatment of the sick and wounded, POWs and the delivery of relief supplies to the victims of armed conflicts.

The ICRC enjoys special protection in the discharge of its mandate. Independent of this special protection, ICRC personnel are also always protected as civilians.



GC I, Art. 38
GC II, Art. 41
GP I, Art. 8
GP II, Art. 12

SUMMARY OF THE LESSON

As you might expect, the law contains very precise definitions of the various categories of persons and objects you can run into in a conflict environment. Some of them you will have known, others may have been new to you. Now you know exactly what they mean and how you should treat or respond to them if you come across them in battle.

Questions from the class.

NOTES

APPENDIX

Questions from the instructor to the class to confirm the lesson

- 1. In order for guerrilla units to be considered lawfully organized resistance movements, they must operate in accordance with the law of armed conflict, carry arms openly, act under the command of a responsible leader and,**
- promulgate a resistance manifesto.
 - post proclamations concerning the government of guerrilla-controlled areas.
 - refrain from appropriating food from civilians.
 - wear a distinctive sign, recognizable at a distance.

Answer: **d.**

2. A civilian:

- must never be attacked, whatever the circumstances.
- is a person who does not belong to the armed forces.
- is a person who shall not directly participate in the hostilities.
- can be attacked, if he or she takes a direct part in the hostilities and as long as this participation lasts.

Answer: **b, c and d.**

3. The following categories of captured persons are assembled at a collecting point in the rear of the battlefield:

- fourteen enemy soldiers in uniform;
- ten police officers incorporated into the enemy armed forces;
- two pilots and five paratroopers who parachuted to safety when their military aircraft was hit;
- four railway workers in their civilian uniforms who had been going about their business at a railway station and had not participated in military activities.

How should the commander of the reception camp treat each of the above categories of individuals?

- The fourteen enemy soldiers are members of the regular armed forces and are entitled to POW status.
- The ten police officers have been incorporated into the armed forces, entitling them to POW status.
- All are to be treated as POWs.
- The railway workers are considered civilians and should be released.

EXAMPLES AND CASES

Protected property/cultural property

A. **World War II.** During allied operations in Italy in 1943, the Allies gave various assurances that they would respect churches and religious institutions, provided they were not used for military purposes. The ancient Benedictine abbey at Monte Casino was included in the list of buildings to be protected. The German embassy at the Vatican gave assurances that the abbey would not be used by German troops. On 29 December 1943, General Eisenhower issued an order to all commanders drawing attention to the importance of cultural monuments in Italy, but stating that if the choice was between buildings and soldiers' lives, the buildings would have to go. The German forces included the ridge on which the abbey stood in their defensive plans, but gave instructions that the abbey itself should not be used. The decision was nevertheless made to bombard the abbey. It was based on erroneous intelligence reports of machine guns, aials, telescopes and troop movements seen at the abbey and on the supposition that the abbey made such a perfect observation post that surely no army could refrain from using it. On 15 February 1943, the abbey was bombed and shelled, leaving it in ruins and causing the death of an estimated 300-400 civilian refugees. No Germans were killed.

Source: A.P.V. Rogers, Law on the Battlefield, Manchester University Press, Manchester, 1996, pp. 54-55.

B. **The Gulf War, 1991.** The Government of Iraq used cultural property to protect legitimate targets from attack. A classic example was the positioning of two fighter aircraft adjacent to the ancient temple of Ur on the theory that Coalition respect for the protection of cultural property would preclude the attack of those aircraft.

Source: US/UK Report on the conduct of the Persian Gulf War.

C. **The war in the former Yugoslavia.** Dubrovnik was one of the most beautiful and perfectly preserved walled cities in Europe and a World Heritage Site. On 6 December 1991, it was hit by more than 500 rockets that damaged 45% of the buildings in the old city and destroyed 10%. The 15th century Rector's Palace and St . Saviour's Church were badly damaged.

Source: A.P.V. Rogers, Law on the Battlefield, Manchester University Press, Manchester, 1996, p. 84.

D. In November 1993, Bosnian Croats shelled and destroyed the Neretva Bridge in Mostar, an ancient landmark of obvious cultural significance.

Source: P. Moss in Crimes of War: What the public should know, R. Gutman & D. Rieff (eds.), W.W. Norton & Co., New York/London, p. 111.

E. **South Lebanon, 1997.** The Israeli Defence Forces turned the fortress ruins of Karkum, originally built in the Middle Ages, into a stronghold. Modern concrete fortifications were poured on top of the old fortifications and a Greek temple that once crowned the hilltop at Karkum.

Source: P. Cokburn, The Independent, 10 December 1997, p. 10.

The natural environment

The Vietnam War. Between 1965 and 1975, the United States military sprayed millions of tons of Agent Orange on the jungles of Vietnam in ADMs (airborne “area denial missions”) intended to deny cover to the Viet Cong and the North Vietnamese Army. The strategy resulted in large areas of Quang Tri province along the 38th parallel and a swath of land in the “iron triangle” of Tay Ninh province west of Saigon being stripped of all vegetation. Shortly after the end of the Vietnam War, in 1975, it became clear that a disproportionate number of Vietnam veterans and civilians were coming down with non-Hodgkin’s lymphoma and skin cancers: The Centres for Disease Control would later determine that the cause of these cancers was the dioxins contained in Agent Orange.

Source: M. Perry & E. Miles in Crimes of War: What the public should know, R. Gutman & D. Rieff (eds.), W.W. Norton & Co., New York/London, p. 132.

The 1991 Gulf War

A. Environmental concerns affected allied planning. It is reported that the allies decided not to attack four Iraqi supertankers inside the Gulf that were contravening UN Security Council resolution 665 because of the environmental consequences of doing so.

B. In January 1991 Iraq opened the oil valves of the Sea Island Terminal in Kuwait and the Mina Al-Bakr terminal in Iraq, causing massive oil spills into the Persian Gulf, and in February 1991 Iraq sabotaged hundreds of Kuwaiti oil wells, setting over 500 on fire and causing huge daily emissions of sulphur dioxide, nitrous oxide and carbon dioxide. So much smoke resulted that Kuwait City was in darkness for weeks afterwards. The smoke plume extended to India, black rain fell 600 miles away in Turkey and blackened snow fell in the Himalayas. UNESCO described the oil fires as the largest environmental catastrophe since Chernobyl.

Source: A.P.V. Rogers, Law on the Battlefield, Manchester University Press, Manchester, 1996, pp. 120-121.

Protected zones/safety zones

Chinese-Japanese War, 1937. China and Japan agreed to establish refugee zones for civilians during the fighting in northern China. These zones were generally respected. For example, in November 1937 the

district of Nantao was cleared of all troops, munitions factories and other military establishments and its boundaries were marked with flags. Nearly a quarter of a million Chinese had fled to this sanctuary by the end of November 1937.

Source: Y. Sandoz, The establishment of safety zones for persons displaced within their country of origin, ICRC, Geneva, 1995.

World War II. Neutralized zones can only be established with the agreement of all parties to the conflict. In March 1944, the Italian Government unilaterally declared Rome to be an open city, not to be used for military purposes by either side. The Allies, however, refused to recognize this status because of Rome's importance as an administrative and transportation centre.

Source: Y. Sandoz, The establishment of safety zones for persons displaced within their country of origin, ICRC, Geneva, 1995.

Dominican Republic, 1965. In 1965, an international safety zone was set up in Santo Domingo, Dominican Republic, during the fighting there. The belligerents, the United States of America and the Organization of American States (OAS) co-operated in establishing this zone.

Source: Y. Sandoz, The establishment of safety zones for persons displaced within their country of origin, ICRC, Geneva, 1995.

Vietnam War, 1975. In 1975 the ICRC was able to have a neutralized zone set up in Phnom Penh, Cambodia, during the final battle for that city. Around 2,000 foreign nationals were allowed to take refuge in Le Phnom Hotel, where the agreed zone was located and respected.

Source: Y. Sandoz, The establishment of safety zones for persons displaced within their country of origin, ICRC, Geneva, 1995.

Other examples:

Dhaka, 1971. In Bangladesh's war of independence three neutralized zones were established and respected, in a college, a hospital and the Sheraton Hotel. All were administered by the ICRC.

Nicosia, Cyprus, 1975. More than 2,000 civilians found shelter in three neutralized zones (hotels) administered by the ICRC.

Vietnam War, 1975. The HQ of the Vietnamese Red Cross and a neighbouring building in Saigon were declared neutralized zones. They gave shelter to the wounded and sick, the disabled, orphans and lost children.

Nicaragua, 1979. Protected zones were established in "cultural" refuge centres, churches, hospitals, Red Cross centres and the embassies of certain Central American countries.

Port Stanley, 1982. In the Falklands/Malvinas conflict a neutralized zone was created in the centre of Port Stanley. At sea a neutralized zone measuring 20 nautical miles across was established for hospital ships (the Red Cross Box).

Northern Iraq, 1991. Protected zones were created in accordance with UN resolution 688 of 5 April 1991 for Operation Provide Comfort to protect the Kurds.

The class may ask why Srebrenica, in the former Yugoslavia, is not included as an example of a safe or protected area. The agreement between the parties broke down. The Bosnian Serbs accused the Bosnian Muslims of using the UN Protected Zone for military purposes. Although this was denied, the key ingredients – mutual trust and agreement – just did not exist.

Works and installations containing dangerous forces/proportionality

Vietnam War, 1972. The United States planned to attack a hydroelectric plant at Lang Chi that it estimated supplied up to 75 per cent of Hanoi's industrial and defence needs. However, it was thought that as many as 23,000 civilians could die if the dam at the site were breached. President Nixon's military advisers said that the use of laser-guided bombs would give the mission a 90 per cent chance of success without breaching the dam. The President of the United States authorized the attack on that basis and the electricity generating plant was successfully destroyed without breaching the dam. *Source: Parks, Air War, pp. 168-9.*

The former Yugoslavia, 1993. The Peruca Dam was a huge construction that before the break-up of Yugoslavia had been part of the country's second biggest hydroelectric complex. Serb forces had controlled it since the beginning of the war in 1991. Now Croatian forces were massing for an attack on Peruca, and the 641 million cubic metres of water behind the dam represented a mortal danger to civilians in the town of Omnis, some 40 kms downriver. On 28 January 1993, Serb troops in control of the dam detonated between 30 and 37 tonnes of explosives in different parts of the dam. Peruca had been shaken to its foundations, but it seemed to be holding. Had its walls been breached, the mass of water would have raced in a giant wave down the river canyon, crushing the villages down river and completely wiping out Omnis. Fortunately for the people of Omnis, a Croatian counterattack was successful.

Croatian military engineers reached the dam, opened its sluice gates, and allowed the water level to fall and the pressure to abate. Their action and that of Captain Mark Grey, a British officer serving with the United Nations as a military observer, probably saved the lives of between 20 and 30,000 people. In October 1992, while the Serbs still held Peruca, Grey on his own initiative opened one of the sluice gates following heavy rains, thus lowering the water level by six metres.

Source: E. Rathfelder in Crimes of War: What the public should know, R. Gutman & D. Rieff (eds.), W.W. Norton & Co., New York/London, p. 116.

The Red Cross and Red Crescent emblems

A. Attacks on ambulances. On 21 December 1987, in the course of a military operation which took place near Nabatiyeh in southern Lebanon, two ambulances, one from the Lebanese Red Cross and the other from the Risali Movement, suffered direct hits from helicopter gun fire. The vehicles were clearly marked with the red cross and red crescent. A Red Cross first-aid worker was wounded, while two Boy Scout first-aiders and a patient in the other ambulance were killed. The ICRC delegation in Lebanon appealed to the parties concerned to respect everywhere and at all times the emblems of the Red Cross and Red Crescent, "which protect those who provide assistance to all victims of the Lebanese conflict". *Source: ICRC press release, 23 December 1987.*

B. Misuse of the emblem. In its 1 June 1997 issue, the American weekly magazine *Newsweek* published an article concerning the counter-revolutionary forces in Nicaragua and entitled "The New Contras?". The article was accompanied by a photograph showing a group of soldiers disembarking from a helicopter bearing the emblem of the Red Cross. A caption stated the helicopter was carrying military supplies.

Source: I. Vichniac, Le Monde, 19 June 1987.

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