



THE LAW OF ARMED CONFLICT

Conduct of operations – Part A



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THE CONDUCT OF OPERATIONS/PART A

COMMON FEATURES OF THE LAW APPLICABLE
TO ALL OPERATIONS

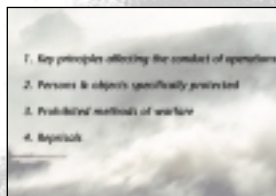


AIM

[Slide 2]

The aim of this lesson is to explain how the law of armed conflict relates to the conduct of operations in general. The following main topics will be covered:

1. The key principles affecting the conduct of operations.
2. Persons and objects specifically protected in all operations.
3. Methods of warfare prohibited in all operations.
4. Reprisals.



INTRODUCTION

We have spent some time looking at the background to the law of armed conflict. The scene has therefore been set, the time has come for us to enter the battlefield. We will now turn to the law of armed conflict that governs the conduct of operations by armed forces, including air and sea operations affecting targets on the ground. We will look at this subject in two parts:

- in lesson 3 we will look at the principles and key factors that affect all military operations;
- in lesson 4 we will concentrate on applying those common factors to the conduct of attack, defence, siege and manoeuvre operations.

1. THE KEY PRINCIPLES AFFECTING THE CONDUCT OF ALL MILITARY OPERATIONS

All of the principles of the law of armed conflict we have covered remain relevant during the conduct of operations. Two principles, however, are of paramount importance. It is vital that you understand and apply them in the planning and conduct of any military operation.

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THE PRINCIPLE OF DISTINCTION

[Slide 4]

You must always clearly distinguish between combatants and civilians or the civilian population as such. Both notions are familiar to you, we covered them in lesson 2. Combatants may of course be attacked unless they are out of action, i.e. *hors de combat*. Civilians are protected from attack but lose this protection during any period in which they take a direct part in hostilities. The protection of civilians applies to both enemy civilians and one's own civilians.



Similarly, you must also distinguish between military objectives and civilian objects. Only military objectives may be attacked. Civilian objects must not be made the object of attack unless they have become military objectives.

Acts or threats of violence whose primary purpose is to spread terror among the civilian population are prohibited.

GP I, Art. 48
GP I, Art. 51 (2)
GP I, Art. 52

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As a consequence of the principle of distinction, indiscriminate attacks are prohibited. These are:

- attacks which are not directed at a specific military objective;
- attacks that employ a method or means of combat which cannot be directed at a specific military objective;
- attacks that employ a method or means of combat the effects of which cannot be limited as required by the law of armed conflict.

Examples of indiscriminate attacks are firing artillery or launching a missile in the general direction of the target (e.g. the use of the V2 missiles during the Second World War) or area bombardment in populated areas rather than the selection of individual, clearly separated military objectives located there. This prohibition does not prevent the denial to the enemy of an area of land which is a military objective by, for example, artillery fire or by laying anti-tank mines, though the rule of proportionality would apply in such cases.



GP I, Art. 51 (4)

THE PRINCIPLE OF PROPORTIONALITY

[Slide 6]

When military objectives are attacked, civilians and civilian objects must be spared incidental or collateral damage to the maximum extent possible. Incidental damage must not be excessive in relation to the direct and concrete military advantage you anticipate from your operation. Such use of excessive force quite clearly violates the law of armed conflict and is a war crime.

This means that when you plan or carry out operations **you are not allowed to engage in disproportionate attacks** even with regard to combatants and military objectives. You have to take into account the likely effect on civilians and their property. If it is apparent that the harm that might be caused to them in attacking a military objective with a particular weapon would be disproportionate in relation to the military advantage anticipated, then either use a different weapon which would not cause disproportionate harm to civilians or their property, or do not carry out the attack.

Clearly, to stay within the law requires good intelligence, planning and clear rules of engagement, all three of which are, after all, the product of good training and professionalism in any military force. It also makes eminent sense not to waste your own lives, time and ammunition in disproportionate attacks.



HR IV, Arts. 22 & 23
GP I, Arts. 51 (5b) & 57

RELATING THE PRINCIPLES TO THE CONDUCT OF HOSTILITIES

Before we move on, we need to look a little more closely at what the law actually means by some of the key words used in the definitions above. **What exactly is meant by an attack? And what is a military objective?**

DEFINITION OF ATTACK

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The law defines the term “attack” broadly as **an act of violence against the adversary, whether in offence or defence**. To us soldiers this might seem confusing or an oversimplification. Logically, however, even when we are in a defensive position that is being attacked we are certainly required to act with violence to repel the adversary. So the term covers a whole range of situations, from the case of a single soldier opening fire to an artillery bombardment or major offensive. It also includes counterattacks, raids and fighting patrols and all types of defensive operations.

As soldiers we do not use such simple terminology. We train for and conduct a range of operations. We certainly launch attacks, but also we conduct defensive operations, siege operations, manoeuvre operations, relief-in-the-line operations, tactical withdrawal operations, and so on. In none of these do we adopt a non-aggressive posture. All of them involve an element of violence against the enemy – hence the logic in the law of referring to them all under the umbrella term “attack”.



GP I, Art. 49

DEFINITION OF MILITARY OBJECTIVE

We have stated that civilians or civilian objects must not be made the object of attack. Military operations are only to be directed against military objectives. So what are they?

They are defined as **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 prevailing at the time, offer a definite military advantage**. Although the definition refers to objects, enemy combatants may also, of course, be attacked.

In other words, following from the requirement of a definite military advantage, it is **not lawful** to launch an attack which only offers potential or indeterminate advantages. Those ordering or executing the attack

must have sufficient **intelligence information** available to take this requirement into account.

If you are in doubt about whether an object which is normally used for civilian purposes is being used to make an effective contribution to military action, presume that it is not being so used.

GP I, Arts. 48, 51 (4),
52 (2) & 57 (2b)

The concept of military objective is not a simple one to understand. Even in recent conflicts, from the Gulf War in 1991 to Kosovo in 1999, disputes, arguments and misunderstandings have occurred over exactly what constitutes a legitimate military objective. The section below is intended to explain what they are in more detail. It can be used in two ways: you might wish to cover all the points in full, or simply to use the information to draw out a discussion from the class on the various types of military objective.

What does all this mean? In effect, it means that you can target things of which the enemy is making effective military use, where putting an end to that use would clearly be an advantage to you at the time of the attack.

Remember, the requirement is that the destruction, capture or neutralization of an objective must offer a definite military advantage at the time it is attacked. What is a military objective today might not be one tomorrow, because of a change in circumstances. Remember, too, that neutralization does not necessarily mean complete destruction. It means whatever is necessary to put the objective out of action or make it inoperable.

There are various issues you need to think about. Some things are obvious military objectives and others are obviously prohibited targets of attack. But what about an object that is usually protected – such as a school or a place of worship – but which is being used for military purposes? We will answer this shortly.

Examples of military objectives

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The examples given below do not constitute an exhaustive list of all military targets. They all, however, must meet the conditions for any military objective:



- enemy combatants, their locations, bases, headquarters, defensive positions, their weapons, equipment, vehicles, munitions and fuel stores;
- in some cases, areas of land such as hills and defiles, and physical features affecting communications, e.g. roads, tunnels and canals;
- in certain circumstances, installations, e.g. metal, engineering, chemical works or oil refineries, if being used for military purposes.

If, on the facts, something is clearly a military target but civilians are present or in the vicinity, does that matter?

The law should not be misunderstood to mean that civilians have absolute immunity from attack in all cases. They certainly have immunity from direct attack. **However, military objectives do not stop being military objectives just because civilians are present; the latter share the danger of being there.** Care must nevertheless be taken, as we know, to limit civilian collateral damage to the absolute minimum. For example, civilians working in a munitions, weapons or aircraft factory run a risk by being there and are very much part of a legitimate military objective. The civilian driver of an oil tanker vehicle being used for military purposes, however, is only part of a legitimate objective while piloting the tanker. The same applies to workers when they are at home or outside their factory; they are then protected against attack.

The good commander must try to attack such obvious military targets in a way or at a time that minimizes the risks to civilians, if practicable, but there is no doubt that they can be targeted.

What about civilians living in the vicinity but not actually working in the munitions factory? Here the commander **MUST** take into account the risk of foreseeable civilian casualties outside the target area. This will affect the weapons with which he can attack and again perhaps the timing of the attack. These are examples of factors to be taken into account. If the target can only be attacked in a way that will cause disproportionate casualties, then it must not be attacked.

Clearly, prohibited targets include places of religious worship, schools, hospitals and homes, none of which can be targeted while being used for their normal purposes.

Let's come back to the initial question. What if a target that is usually protected is being used for military purposes, e.g. a sniper in the tower of a church or the minaret of a mosque? What if a school playground is being used as a landing point for a military helicopter?

By virtue of the use made of them, they have forfeited their protection. **But beware.** You must be very sure that your information is reliable before you attack what is normally a protected target. **In case of doubt do not attack.** You will also need to consider whether the object is being used for a military purpose at the same time as it is being used for its other purpose. You may be able to target the church or mosque but avoid the times of services, or you may be able to target the helicopter in the school yard but avoid school hours. With modern weapons and common sense these targets can be easily dealt with without destroying anything else. With modern technology and communications it is entirely feasible to warn of an impending attack where civilians are present or even simpler to attack it at a time when minimal civilian casualties will occur.

GP I, Arts. 50-52

What about dual use targets? These are targets that are ordinarily used by both the military and civilians and from which the military obtain significant military advantage. Examples are bridges by which both the military and civilians cross rivers, and electricity generating stations producing electrical power for both the military and civilians, including hospitals.

The law does not recognize any class of dual use objects. Only military objectives are defined. Anything outside that formula is by definition a civilian object and cannot be attacked.

Bridges and electricity generating stations may, however, depending on the facts, constitute a military objective. They could, in such a case, be attacked. In carrying out the attack, the commander is required to consider the effect of the attack on civilians in the vicinity (see proportionality above). But what about the cumulative impact on civilians elsewhere? An attack on an electricity generating station may cause no casualties among civilians in the vicinity, but what if hospitals 300 miles away are dependent on the electricity? The law is not absolutely clear on this point, but a responsible commander and his staff will certainly take such possible effects into account in their planning.

Let us take a moment to summarize exactly what your responsibilities are in relation to civilians and their property during a conflict. We have made it clear that they are to be respected and protected in every way possible. We have also made it clear that if civilians take up arms they lose the protection against attacks. However, remember this is only for the time of their direct participation in hostilities. If they are present at a military objective they run a risk, because that objective is a legitimate target that may be attacked if the civilian damage is not disproportionate.

We all know that despite these clear guidelines, in conflict situations civilians will unfortunately be killed or injured. If they are, does that mean that you, as the attacker, have automatically broken the law? No, of course not. Although civilians and their property are clearly protected, they are subject to the general risks of conflict in the sense that attacks on military objectives may, despite the best planning, the best commanders and the best weapons systems, still cause incidental damage. It may not be possible precisely to limit the danger area of an artillery bombardment or an air strike. A weapon may malfunction. Even sophisticated laser-guided bombs and cruise missiles have been known to go off course or to be deflected by defensive measures. Mistakes can be made in the fog or in the confusion of battle. Intelligence information may not always be perfect and this can affect target selection. Clearly, as members of the armed forces you are not liable for such incidental damage, provided your operations are planned and carried out in good faith and in full compliance with the law of armed conflict, **in particular the principle of proportionality**, and that the mistakes were genuine and are not used to cover up intent.

Remember that the law is in no way intended to prevent all military action. No State in the world would ratify a treaty that did. However, virtually all States subscribe to the idea that it is in their interests and in those of their armed forces to put some limits on the use of violence.

The profession of arms can be a tough one. At the end of the day, very few occupations require you as a matter of duty to be prepared to lay down your life for your unit, your regiment or your country.

Soldiers in combat, on mission with the United Nations or on internal security operations are under enormous pressure. Fear, tiredness, frustration, anger, hunger, stress and the need to vent what are natural feelings can lead to thoughts of revenge or retribution. We must accept these as part of military life. We cannot hide them and no law can make them disappear, because after all is said and done we are human beings. What we certainly can do is **CONTROL** them as best we can. In a football match there are rules and a fixed set of goal posts. Imagine a game without them: it would be pointless and chaotic.

The same holds true for the conduct of operations. The rule book is the law of armed conflict and the referees enforcing those rules are court martials and the international criminal courts. As for the rules, let us now look at them in greater detail.

2. PERSONS AND OBJECTS SPECIFICALLY PROTECTED IN ALL OPERATIONS

MEDICAL AND RELIGIOUS PERSONNEL, THEIR FACILITIES AND MATERIAL

Medical and religious personnel and their facilities – both civilian and military – are covered by special rules. These need to be taken into account in the conduct of operations and in formulating the military medical plan.

Who is protected? Medical and religious personnel, both military and civilian, have protected status and must not be attacked. These persons should display the distinctive emblem of the red cross or red crescent. If military medical or religious personnel are captured and need to be retained, they are not POWs but receive POW treatment as a minimum. Medical personnel may be armed with light weapons for self-defence and the defence of those under their care.

What is protected? The law gives comprehensive and detailed protection to all civilian and military hospitals, medical units, medical transports and medical material. Religious centres and items used for religious worship are also protected. They must be respected at all times and must never be attacked. Military and civilian medical facilities and transport are usually marked with the red cross or red crescent (or red lion and sun) although for tactical reasons this may not be the case (see below). Civilian hospitals and equipment should always be marked with the distinctive emblem. If the medical or religious facilities or equipment are being used for military purposes they lose their protection, but only after a warning has been given which gives the offenders a reasonable amount of time in which to respond and after such warnings are ignored or remain unheeded. **Under no circumstances must medical or religious protection be used to try and shield military objectives from attack.**

Even if they do not use the distinctive emblem, the personnel, facilities, equipment, etc., of civilian and military medical units are entitled to protection if you are aware that that is the function they are performing.

Location of medical units. Medical units must be sited well away from military objectives. The law, however, does not lay down any specific distances. In the case of military medical units, this is obviously a matter for the commander to decide, taking into account the nature of the unit. A medical aid post or field ambulance might have to be sited well forward and will normally be camouflaged just like any other tactical unit; a field hospital or permanent military hospital sited in the rear will normally be marked with the red cross or red crescent (or red lion and sun) and have full protection under the law.

GC I, Arts.
19-24, 28, 35-37
GC II, Arts.
34, 37-40
GC III, Art. 33
GC IV, Arts.
18, 21-22
GP I, Arts.
8, 12-14, 21-31

WOMEN AND CHILDREN

In a lesson on the conduct of operations, why do we need separate sections on women and children? Are they not covered in the section on civilians? Of course, women and children are protected as civilians. They do, however, also have to be considered separately, for two reasons. First, both categories have **special additional protection** under the law, and secondly, both play an important role in combat – women legally and children illegally. Let us look at both categories in turn.

WOMEN

Civilians – women must be treated with special respect. Any attack on the physical or psychological integrity of women, in particular rape, enforced prostitution or any form of indecent assault, is prohibited. (Rape and indecent assault of men are of course also prohibited, but such attacks are more prevalent on women.) In the event of their detention, families must be kept together. Otherwise women are to be kept separate from men. If a pregnant woman or a mother with a young child is detained on suspicion of an offence, then her case is to be treated with priority. In the case of an offence related to the armed conflict, pregnant women and the mothers of young children can be sentenced to death but the death penalty should not be carried out.

[Slide 9]

Combatants – women have full combat status in many armed forces throughout the world, in frontline as well as staff or logistic appointments. As combatants they must respect and are protected by exactly the same rules as their male counterparts. If captured they must be treated with respect and not subjected to any form of violence, including sexual violence or abuse. If moved to a POW camp, they should be held separately from men.

Rape and indecent assault are prohibited and in most cases are a form of torture covered by provisions of the law we will mention later on. Rape, constituting torture or “inhumane” treatment, is a grave breach of the law and can be prosecuted by the courts of any State. Such abuse is all too common in conflict situations. Indeed, in recent conflicts, e.g. in the former Yugoslavia, systematic and organized rape appears to have become an instrument of military policy. Such conduct debases the profession of arms and, like torture, must be held beneath contempt by all soldiers. If committed, it is a clear indication that discipline has completely broken down and that commanders lack any control over their subordinates.



GC IV, Art.
27 (2) & Art. 147
GP I, Arts. 75 & 76

CHILDREN

Civilians – by children we generally mean people who are not yet 18. In the law of armed conflict, however, different provisions apply to those under 15 years of age and those between 15 and 18. In our discussion, “children” means those under 15 years of age. Children are entitled to special respect and must be protected against any form of indecent assault. Every effort must be made to provide them with the special care and aid they require.

[Slide 10]

Combatants – a particularly tragic aspect of modern conflict is the active participation of children in hostilities, both boys and girls. This would seem to have less to do with cultural traditions and more to do with expediency or the shortage of soldiers – often it is simply an excuse or abuse by those in power, in other words getting a child to do an adult’s job. These child soldiers operate with little or no training and are often fed a diet of alcohol and drugs. Of course, they can be formidable and tough foes to deal with. Deal with them you must, but with due regard and some sympathy for their plight.



The law prohibits the direct participation in hostilities of children under the age of 15, who must not be recruited into the armed forces. In recruiting those who have reached the age of 15 years but are not yet 18 years old, priority should be given to those who are the oldest.

If children are recruited into armed forces or take a direct part in hostilities, they must, if captured, be guaranteed treatment and conditions of captivity which take their age into consideration whether or not they are POWs. Certainly in no circumstances should the standard of treatment given to them be lower than that given to POWs. In particular such child soldiers must be held separately from adults, unless in a family unit.

In the case of children aged between 15 and 18, the more their treatment can be assimilated to that of those under 15, the better.

Regarding the death penalty and children, in international armed conflicts persons who were under 18 when they committed the offence can be sentenced to death, but the sentence must not be carried out. In non-international armed conflicts, persons who were under 18 when they committed the offence may not even be sentenced to death.

GC IV, Art. 24
GP I, Art. 77

HUMANITARIAN AID

[Slide 11]

Parties to the conflict must allow the free passage of all consignments of humanitarian aid which are essential to the survival of the civilian population, even if destined for the opponent's population. Examples of such aid are medical and hospital stores, essential food, clothing, bedding, materials for shelter, particular items of food and medicine required for children, expectant mothers and maternity cases.

The armed forces of both sides can make technical arrangements for transport through their territory, e.g. the routes that these convoys should take and detailed timing. The convoys can be searched, but they must be allowed through. Again, both sides must guarantee the safety of these convoys in their territory. Relief personnel and supplies must not be made the object of attack.



GC IV, Art. 23
GP I, Arts. 69 & 70,
GP II, Art. 18
GP I, Art. 37

PROTECTED ZONES

The law allows for the establishment of protected zones, the details of which we covered in lesson 2. The zones offer a range of options both inside and outside the combat zone to provide for the safety and security of the wounded and sick and of civilians who do not take part directly in hostilities. They must not be made the object of attack and are not to be used in any way for military purposes.

CULTURAL PROPERTY

[Slide 12]

We know from lesson 2 that cultural property such as historic monuments, works of art, places of worship, libraries, etc., **is not to be used for military purposes and is protected against acts of hostility**, i.e. the obligation to protect applies to both sides. As you know, a protective sign may be used to aid recognition of a building that has general protection. If such property is used for military purposes it loses its protection against attacks, but even so damage should be kept to the absolute minimum. Loss of immunity for property under General Protection should only be ordered by battalion commanders.

There may be rare cases where it is essential to use such property for military purposes, for example a historic bridge that is the only available river crossing. In such cases, there is no other feasible military option.



GP I, Art. 53
HCCP
HCCP Second Protocol,
Art. 6 (2)

THE ENVIRONMENT

Methods of warfare which may be expected to cause widespread, long-term and severe damage to the natural environment and thereby to prejudice the health or survival of the population are similarly prohibited.

GP I, Art. 55

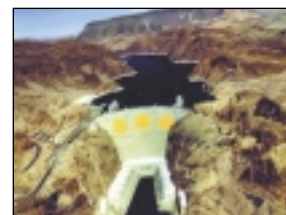
WORKS AND INSTALLATIONS CONTAINING DANGEROUS FORCES

[Slide 13]

It is prohibited to attack dams, dykes and nuclear electrical generating stations. Attacks on such installations could result in the release of dangerous forces. The only exception to the prohibition against attack is if such installations are being used in direct support of military operations and an attack is the only way to stop this. In all cases, however, the civilian population remains entitled to all the protection afforded it under international law, i.e. all feasible precautionary measures must be taken to issue warnings, minimize loss of life and limit collateral damage.

The parties to the conflict should also avoid locating military objectives in the vicinity of such works or installations. They are, however, allowed to provide close or defensive protection for them, e.g. anti-aircraft guns, guards against saboteurs, etc.

The prohibition does not apply to power stations generally or, for example, to oil refineries, but such installations are nevertheless covered by other rules such as those limiting attacks to military objectives, protecting civilians and the environment and prohibiting unnecessary destruction.



GP I, Art. 56

3. METHODS OF WARFARE PROHIBITED IN ALL OPERATIONS

STARVATION AND THE DESTRUCTION OF OBJECTS INDISPENSABLE TO THE SURVIVAL OF THE CIVILIAN POPULATION

[Slide 14]

It is prohibited to set out to starve civilians as a method of warfare, i.e. the old siege concept. It is also prohibited to direct attacks against, destroy, remove or render useless objects vital to their survival, such as foodstuffs, agricultural areas for the production of food, crops, live-stock, drinking water installations and supplies for irrigation works. This prohibition does not apply to objects that are being used solely by the



armed forces or in direct support of military action. Even then, however, if these attacks would adversely affect the civilian population, i.e. leave it with inadequate food or water, cause starvation or force it to move, then they are prohibited.

A scorched-earth policy may be implemented in exceptional cases where it is absolutely necessary to defend national territory against invasion.

GP I, Art. 54

HUMAN SHIELDS

Civilians may not be used to shield military objectives or to shield, promote or impede military operations. There are two points here. First, military objectives must not be installed in a civilian area for protection. Secondly, civilians' movements should not be directed to shield objectives or operations. In other words, the prohibition of the use of civilians as human shields applies to both sides. The following examples illustrate what you must not do in both cases:

- do not hide guns on a housing estate, fire mortars from a market place, park a military helicopter in a school yard;
- do not deploy a military unit protected by a column of refugees or direct protected persons, e.g. civilians or POWs, to strategically important locations such as a weapons position, an ammunition dump or a communications centre;
- do not seal off an important military axis or bridge by forcing civilians to gather on it.

The fact that your opponent, despite the law, uses human shields does not release you from your legal obligation as an attacker to take precautionary measures and constant care to spare the civilian population and civilian objects, in particular to ensure that such an attack would not be excessive in relation to the concrete and direct military advantage expected, i.e. the principle of proportionality.

GC III, Art. 23

GC IV, Art. 28

GP I, Arts. 12, 51

(7 & 8), 57 & 58

PILLAGE

An old-fashioned word – it means quite simply stealing, looting or plundering. While in earlier times pillage was considered a legitimate reward for the efforts of soldiering, it is **now universally prohibited**. It is the trademark of undisciplined soldiers and of very poor commanders who take advantage of the chaos of battle and use their power over defenceless combatants or civilians for personal gain. Stealing is an offence under national law and it remains an offence in operations. Let us clearly distinguish here between the taking of non-military items such as jewellery, watches, household goods, etc., which is forbidden, and the

taking of military equipment such as radios, vehicles, weapons, etc. The latter is known as **war booty** and of course can be properly collected, accounted for and used by your side. Where militarily useful equipment (e.g. radios, vehicles) belongs to civilians, it may be taken but must be returned and compensation provided at the end of hostilities.

HR IV, Arts. 28, 52 & 53
GC IV, Art. 33

You might be asked the difference between pillage as described above and the requisitioning of food, equipment, buildings, etc., by the military. The details of requisition are contained in the lesson on occupation. You might wish, if questioned, to wait until that lesson or simply to state that “the commander of a locality being occupied (note rank level – it is not in a private’s gift to requisition), given that civilian needs are satisfied, may demand requisition in kind for the need of the army of occupation”. State property can also be taken. Special rules apply to naval “prizes” (see the lesson on naval warfare).

PERFIDY

[Slide 15]

The term “perfidy” refers essentially to a breach of good faith or outright treachery. It involves a deliberate attempt to make an opponent think he cannot attack you because you are protected and then to exploit the opponent’s resultant vulnerability. **It is forbidden to commit a hostile act under the cover of legal protection with the intent to betray the confidence of the adversary.** It is prohibited to kill, injure or capture an enemy by resort to perfidy. If you do so, you destroy the faith that combatants are entitled to have in the rules of armed conflict, you show a lack of the minimum respect which even enemies should have for one another, and you damage the dignity of those who bear arms.

Perfidy consists, for example, in pretending, with the intent to exploit the opponent’s respect for the rules on protection, that:

- you want to negotiate under the white flag of truce;
- you want to surrender;
- you are wounded or sick;
- you are a civilian or non-combatant, e.g. a medic;
- you have protected status by use of flags, emblems or uniforms of the United Nations;
- you have protected status by improper use of the red cross or red crescent emblems, or any other misuse of protective emblems recognized by the Geneva Conventions or Additional Protocol I.



HR IV, Art. 23
GP I, Arts. 37 & 85 (3f)

IMPROPER USE OF ENEMY AND OTHER UNIFORMS

Closely linked with perfidy is the **prohibition against using the flags, military uniform, emblems or insignia of your opponent during attacks or to shield, favour, protect or impede military operations**, i.e. to use enemy uniforms to assist in deploying through their lines. This is because the opponent will be led to believe you are not a legitimate target of attack. For the same reason, the uniforms, etc., of neutral States or those not involved in the conflict must not be used.

Exceptionally, POWs may use enemy uniforms to help them escape. Enemy uniforms can also be used for training purposes.

GP I, Art. 39

QUARTER

It is prohibited to order that no quarter will be given, e.g. to say to your soldiers "we will take that enemy objective and I don't want any survivors". **Never issue such a command and never think of using it as a threat or of conducting operations on that basis.**

HR IV, Art. 23 (d)
GP I, Art. 40

THOSE HORS DE COMBAT (OUT OF ACTION)

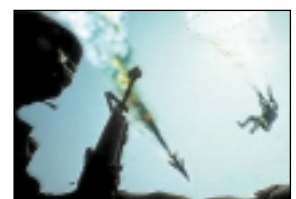
[Slide 16]

Remember, **enemy combatants who are captured, who surrender or who are out of action because of, for example, injury and therefore incapable of defending themselves must be protected. They must not be made the object of attack.** They must be treated as POWs. Wounded soldiers who carry on fighting are not protected.

[Slide 17]

Occupants of aircraft – persons parachuting from an aircraft in distress, e.g. a pilot who has ejected from an aircraft which has been hit, are not to be shot at while they are descending or when they land. They are obviously helpless and cannot defend themselves. On reaching the ground they should be given the opportunity to surrender. If they use violence then they lose their protection.

Airborne troops, on the other hand, pose a direct threat. They can be engaged in the air as they parachute onto their dropping zone.



GP I, Arts. 41 & 42

TORTURE

Torture and inhumane or degrading treatment or punishment are absolutely prohibited. Rape and sexual assault are forms of torture.

Torturing captured soldiers or civilians to obtain information, to punish, to humiliate or as a form of bullying is so unprofessional as to be beneath contempt and must play no part in the conduct of any military operation.

Torture is in any case a war crime in both international and non-international armed conflicts. It is universally prohibited, and the prohibition is stated just as unequivocally in human rights law. Any State and every State is required to bring offenders to justice. The prohibition therefore applies to all levels of conflict: international, non-international, UN missions and situations of internal violence and disturbances (internal security operations).

The argument of military necessity can never be used to justify torture.

For example, we can never say that we needed to torture someone because we knew they had vital information that might save the lives of others (sometimes referred to as “the ticking bomb scenario”). In combat, torture is not only illegal, it serves little military purpose except perhaps to vent anger. It is far more sensible to send a suspect to the rear where trained interrogators can use their skills within the law to gain information. Battlefield interrogation or as it is sometimes called “tactical questioning” can waste valuable time and in most cases will be futile. A well-trained and motivated soldier will tell you nothing or even worse try to mislead you. A frightened civilian may simply tell you what they think you want to hear. Such information is of no operational value.

Never torture. You have been warned.

HOSTAGES

The taking of hostages is prohibited. The term “hostages” refers to people who are used as bargaining counters in order to compel an opponent to act or refrain from acting in a certain way, e.g. to force him to release prisoners or cancel a military operation. In lower levels of violence, hostages are sometimes taken for ransom, i.e. payment for their release. The taking of hostages is a grave breach of the law. The prohibition extends to all armed conflicts, whether international or non-international.

GC I, Arts. 12 & 50
 GC II, Arts. 12 & 51
 GC III, Arts. 17, 87 & 130
 GC IV, Arts. 32, 100, 118 & 147
 GC, common Art. 3
 GP I, Art. 75
 GP II, Art. 4

GC IV, Art. 34
 GC IV, Art. 147
 GP I, Art. 75 (2)
 GC, common Art. 3

REPRISALS

Students may have already raised the issue of reprisals. It was not covered in earlier lessons because the term's meaning under the law is not the same as in common parlance. You should, however, use your discretion in deciding how much of the topic you cover. Reprisals are now very much restricted by the law, indeed they apply only to military targets, and may only be authorized at the highest political/military level. The summary below should provide sufficient information.

A reprisal is a breach of the law by one party in response to a breach by an opponent, the specific aim being to stop the violation and prevent its recurrence. It is not permitted to use reprisals to punish the party responsible for the breach of the law.

Reprisals are prohibited in all circumstances against:

- prisoners of war;
- the wounded, sick and shipwrecked;
- medical and religious personnel;
- civilians;
- civilian objects;
- protected buildings, equipment and vessels;
- cultural property;
- objects indispensable to the survival of the population;
- works containing dangerous forces;
- the natural environment.

The scope for reprisals is therefore severely limited by the law. Reprisals can in fact only be meted out against enemy combatants who have not surrendered, military equipment and military objectives, and they are legitimate targets anyway. A reprisal is by definition action that is normally considered unlawful.

Reprisals may be ordered in these limited circumstances only:

- in the last resort to make an opponent comply or fall in line with the law;
- if they are used against the most serious and blatant abuses of the law by your opponent;
- if they are preceded by a clear warning to the opponent regarding the action which is regarded by you as a serious and blatant abuse of the law (formal warnings will leave the opponent in no doubt about the likely consequences of the action and enough time to stop the violation);

GC I, Art. 46
GC II, Art. 47
GC III, Art. 13
GC IV, Art. 33
GP I, Arts.
20 & 51 - 56
HCCP, Art. 4.

- if they are proportionate to the breach committed by the adversary;
- if they cease when the opponent stops the violation.

Reprisals can only be ordered at the highest political and military level – they are not the tool of a platoon commander.

Questions from the class.

APPENDIX

Questions from the instructor to the class to confirm the lesson

1. Retreat/surrender

Lt. Green has disabled an enemy tank. The tank crew climbs out and begins running towards its own lines, taking with it a wounded soldier. Lt. Green fires on the fleeing enemy, inflicting casualties. As Lt. Green advances on the enemy, the survivors raise their hands. Only then does Lt. Green cease firing.

Has Lt. Green violated the law of armed conflict? Why or why not?

Lt. Green did not violate the law, as it is not apparent that he directed his fire at the wounded soldier. The presence of a wounded soldier does not prevent him from firing on unwounded enemy soldiers. Soldiers are not protected from further attack merely because their vehicle is disabled. It is true that an enemy soldier who is shipwrecked by the sinking of his vessel during combat or who parachutes from a disabled aircraft in an emergency may not be fired upon. However, until the contrary is indicated, a soldier may assume that the crew of a combat vehicle will continue to fight when outside its vehicle. The disabling of a military vehicle does not generally indicate that the crew is defenceless. Only the enemy who clearly indicates a desire to surrender is protected from further attack. In our case, the tank crew continued to resist capture by trying to flee to its own lines. It could therefore be fired on until its members raised their hands in surrender.

The law of armed conflict does not prohibit attacks on retreating enemy forces. At the level of small units, for example, once an objective has been seized, an attacking force is trained to fire on the retreating enemy to discourage or prevent a counterattack.

“Attacks on retreating enemy have been common throughout history. Napoleon suffered some of his worst losses on his retreat from Russia, as did the German Wehrmacht more than a century later. It is recognized

by military professionals that a retreating force remains dangerous. The United States 1st Marine Division and British Royal Marines in the famous 1950 march out of the Chosin River in North Korea, fighting outnumbered by a 4:1 margin, turned its retreat into a battle in which it defeated the 20th and 26th Chinese Armies trying to annihilate it, much as Xenophon and his 'immortal 10,000' did as they fought their way through hostile Persian forces to the Black Sea in 401 BC".

Source: "United States Defence Dept. Report to Congress on the Conduct of the Persian Gulf War. Appendix on the Role of the Law of War", (10 April 1992), in ILM, Vol. 31, 1992, pp. 612 and 641-644.

2. Enemy uniforms/spying

You are wearing an enemy uniform, have infiltrated enemy lines for reconnaissance purposes, and are subsequently captured.

What is your status now?

You have lost your entitlement to POW status, will be treated as a spy and tried accordingly.

3. General

According to the law of armed conflict:

- a. The civilian population shall under no circumstances suffer from any injury or loss of life.
- b. Military operations must be conducted only against combatants and military objectives.
- c. The civilian population and civilian objects shall not be the object of attack.

Which statement is correct?

b. and c.

EXAMPLES AND CASES

The 1991 Gulf War

Targeting – military objectives

“On 13 February, the *al-firdus* bunker”... (sometimes referred to as the *al-amariyah* bunker)“ in Baghdad, Iraq, was destroyed with loss of civilian lives. The bunker had been built during the Iran-Iraq War as an air raid shelter, but had been converted to a military command and control (C2) bunker. It was situated in the middle of a populated area. While normally the entrances to an air raid shelter permit easy and rapid entrance and exit, barbed wire had been placed around the *al-firdus* bunker, its entrances had been secured to prevent unauthorized access, and armed guards had been posted. It had also been camouflaged. Knowing Coalition air attacks on targets in Baghdad took advantage of cover of darkness, the Iraqi authorities permitted selected civilians – apparently the families of officers working in the bunker – to enter it at night and use the former air raid shelter part of the bunker, located just above the command and control centre. The Coalition authorities were unaware of the presence of these civilians in the bunker complex. The attack on the bunker, a legitimate military target, resulted in the unfortunate deaths of some 300 Iraqi civilians who had taken refuge above the C2 centre”.

Source: “US/UK Report on the Conduct of the Persian Gulf War”, in ILM, Vol. 31 (3), 1992, pp. 612-644.

Targeting – dual use

The Coalition forces had to attack all segments of the Iraqi communications system in order to destroy Iraq’s command and control system. The C2 system was crucial to Iraq’s integrated air defence system; it was of equal importance to Iraqi ground forces. Iraqi C2 was highly centralized, military commanders were authorized to do only that which had been ordered by the highest authorities. Destruction of C2 capabilities would therefore make Iraqi combat forces unable to respond quickly to Coalition initiatives.

Bridges crossing the Euphrates river contained the multiple fibre-optic links that provided the high command with secure communications to their southern forces. Attacks on these bridges severed those secure communications links and restricted the movement of military forces. Civilians using those bridges at the time of attack were at risk of injury incidental to the legitimate attack of those targets. The attacks on these dual use targets led to the following unfortunate civilian casualties:

- Nasiryy: 100 civilians killed;
- Falluja: 130 civilians killed in a market place at the bridgehead (the British Royal Air Force immediately expressed public regret for the civilian casualties but did not concede that the attack had been unlawful; it said it would investigate what had gone wrong and subsequently confirmed that three laser-guided bombs had malfunctioned and become virtually free-fall bombs);
- Samava: more than 100 civilians killed at a market place at the bridgehead.

Source: "US/UK Report on the Conduct of the Persian Gulf War", as above.

Targeting – military objectives/civilian objects – shields and perfidy

“One reason for collateral damage to civilian objects and injury to civilians during Operation Desert Storm lay in the policy of the Government of Iraq, which purposely used both Iraqi and Kuwaiti civilians and civilian objects to shield military objects. Military assets (personnel, weapons and equipment) were placed in areas populated by civilians and next to protected objects (mosques, medical facilities and cultural sites) in an effort to protect them from attack. Iraqi military helicopters were dispersed for the same purpose into residential areas and military supplies were stored in mosques, schools and hospitals in Iraq and Kuwait. Similarly, a cache of Iraqi Silkworm missiles was found inside a school in a populated area in Kuwait City. UN inspectors uncovered chemical bomb production equipment at a sugar factory in Iraq. The equipment had been moved to the site to escape Coalition air strikes. This intentional mingling of military objects with civilian objects naturally placed the civilian population living nearby, working within or using those civilian objects at risk from legitimate military attacks on those military objectives”.

Source: "US/UK Report on the Conduct of the Persian Gulf War", as above.

Human shields

A. The 1991 Gulf War. In August 1990 Iraq deported 101 civilian expatriates who had been working in Kuwait. They were held as hostages at strategic military targets throughout Iraq. They were eventually released on 6 December 1990.

Source: Press / TV coverage at the time.

B. The former Yugoslavia. In the face of NATO bombing threats, Bosnian Serb forces took a number of UN soldiers and held them as human shields. Television pictures at the time showed Canadian soldiers chained to the door of a munitions factory. A Polish officer was handcuffed

outside a radar site. In another case, a Spanish officer spent ten days sitting in the middle of a runway at the main Bosnian Serb air base hoping that NATO would not call the Serb bluff. It did not. The next NATO bombing campaign, which led to the Dayton agreement, took place when UN soldiers were no longer vulnerable to capture.

Source: TV and press coverage at the time.

Perfidy

The 1991 Gulf War. According to the Pentagon's Final Report, "Iraqi tanks entered Ras Al-Khfi with their turrets reversed, turning their guns forward only at the moment action began. Media speculation to the contrary notwithstanding, this was not an act of perfidy; a reversed turret is not a recognized indication of surrender per se. Some tactical confusion may have occurred, since Coalition ground forces were operating under a defensive posture at the time, and were to engage Iraqi forces only upon clear indication of hostile intent, or some hostile act".

Sources: Pentagon, Final Report to Congress on the Conduct of the Persian Gulf War, April 1992, Apps. A-S, 0-21; G. Best, War and Law, p. 293.

Improper use of enemy uniforms/United Nations peacekeepers

A. World War II – the trial of Otto Skorzeny and others. "The ten accused in this trial were all officers of the *Wehrmacht's* 150th Panzer Brigade commanded by the accused Skorzeny. They were charged with 'the improper use of American uniforms by entering into combat disguised therewith and treacherously firing upon and killing members of the armed forces of the United States'. They were also charged with participation in wrongfully obtaining from a POW camp United States uniforms and Red Cross parcels consigned to American POWs. Skorzeny's special force was to infiltrate through American lines as part of the Ardennes offensive. They were ordered to wear American uniforms and to attack specified objectives in the rear of the enemy. The special brigade received training in English, American mannerisms, driving of American vehicles and the use of American weapons. During subsequent operations several witnesses saw members of Skorzeny's brigade wearing American uniforms but the evidence included only two cases of actually fighting in American uniforms". The accused were acquitted of all charges against them.

Source: The UN War Crimes Commission, Law Reports of Trials of War Crimes, Vol. IX, 1949, pp. 90-93.

B. The former Yugoslavia, 1995. *Quote from an article by H. F. Martin, Financial Times, 31 May 1995.* "Troops on the ground in Sarajevo are on heightened alert because of the threat of Serb infiltration into their camps. In taking nearly 400 UN hostages, the Serbs have also managed to secure 21 armoured personnel carriers, six light tanks and three armoured cars. Serbs, dressed in stolen French uniforms and flack jackets, took over a UN controlled bridge in the heart of Sarajevo on Saturday; now the motto is: trust no one. All UN soldiers are on amber alert, donning flack jackets and helmets and blocking the main gates of their various bases with armoured personnel carriers."

C. The former Yugoslavia, 1995. *Quote from D. Rohde, author of the Fall of Srebrenica and 1996 Pulitzer Prize winner.* "Following the fall of Srebrenica, the menfolk of that city decided their best option was to try and make a breakout to reach their own Bosnian government lines. Many joined a three-mile-long, single-file column of fifteen thousand mostly unarmed men trying to make their way across thirty miles of enemy-held territory. Many were ambushed on route. At one point, Bosnian Serb soldiers wearing stolen United Nations uniforms and driving stolen United Nations vehicles announced over megaphones that they were UN peacekeepers, that they were prepared to oversee the Bosnian Muslim surrender and guarantee they would not be harmed. Disorientated and exhausted, many Bosnian Muslims fell for the trick. It was only after they had surrendered that they discovered their fatal mistake. For in surrendering, they were going to their deaths. Those whom the Serbs got their hands on were killed by firing squad."

Source: D. Rohde in Crimes of War: What the public should know, R. Gutman & D. Rieff (eds.), W.W. Norton & Co., New York/London, p. 270.

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