



THE LAW OF ARMED CONFLICT

Weapons



ICRC



ICRC

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

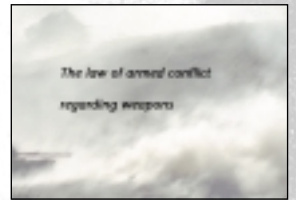
WEAPONS



AIM

[Slide 2]

The aim of this lesson is to explain the law of armed conflict regarding weapons.



INTRODUCTION

[Slide 3]

Let us now consider the law of armed conflict as it relates to weapons. A commander today has incredible firepower at his disposal. Used properly, it can achieve his mission quickly and efficiently. Used wrongly, it can wreak havoc and cause massive and unnecessary loss of life, injury and destruction.

Weapons are the main tools of your profession. It is therefore important for combatants and their commanders to be thoroughly conversant with the provisions governing their use. What weapons are allowed in battle and what, if any, **restrictions** limit their use? What weapons are **prohibited**? The answers to these questions are also important to staff officers involved in the procurement and production of weapons.

Weapons and the principles of the law of armed conflict

In our consideration of the law governing weapons, you will see that the principles we covered in lesson 1 continue to apply.

You may wish to use the CD-ROM illustrations accompanying the principles from lesson 1 again.

Distinction – Civilians must not be the object of attack. You must therefore never use any weapon or weapons system which does not enable you to distinguish between combatants and civilians and between military objectives and civilian objects.

Proportionality – When a military objective is attacked, civilians and civilian objects must be spared from incidental or collateral damage to the maximum extent possible. Such damage must never be excessive in relation to the direct and concrete military advantage you anticipate from your operations.

When you plan an attack, you cannot assess the risk of incidental or collateral damage unless you are familiar with the weapons or weapons system which will be employed. An attack that is lawful with one weapon may be unlawful with another weapon. For example, an attack that may be lawful if “smart” bombs such as precision laser-guided munitions are used may be unlawful if “dumb” bombs such as free-fall 1000-pound bombs are used.



Limitations - The weapons and methods of warfare that may be used are limited. Weapons that are of a nature to cause combatants unnecessary suffering or superfluous injury (i.e. designed to cause or which may foreseeably cause such effects) are prohibited and should not be issued to armed forces. The use of some weapons is specifically regulated.

Let us now consider the weapons themselves.

THE LAW AS IT RELATES TO WEAPONS

EXPLOSIVE BULLETS

The 1868 St Petersburg Declaration prohibits the use of any projectile weighing less than 400 g and which is either explosive or charged with fulminating or inflammable substances. The Declaration states that such projectiles *"would uselessly aggravate the suffering of disabled men or render their death inevitable"*. It outlaws so-called "exploding" bullets which detonate on impact with the human body. This treaty is an early expression of the now customary rule prohibiting the use of weapons causing superfluous injury or unnecessary suffering.

Since then, technological developments have changed State practice. Exploding bullets weighing less than 400 g are regularly used against material and other hard surface objects.

However, the prohibition on the use of bullets which explode upon impact with the human body remains valid.

The object and purpose of the St Petersburg Declaration and the prohibition on the use of weapons causing injury or suffering beyond what is required to take a soldier out of action are important elements of the law of armed conflict.

This ban does not prevent the use of tracer rounds for spotting or range finding, even when mixed with normal bullets.

H IV, Art. 23 (e)

EXPANDING BULLETS

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The Hague Declaration of 1899 banned the use of expanding bullets, which are also commonly known as **"dum dum" bullets**. These are bullets that expand or flatten easily in the human body, causing massive



and often fatal wounds. Examples are bullets with a hard outer covering which does not entirely cover the softer lead core or bullets that have incisions across the tip.

Soldiers must be instructed not to modify their ammunition to achieve this effect.

POISON

Customary law bans the use of poison, the poisoning of arrow tips or spears being good examples, and the Hague Regulations of 1899 and subsequently those of 1907 made the ban a part of treaty law.

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CHEMICAL AND BACTERIOLOGICAL (BIOLOGICAL) WEAPONS

The use of chemical and bacteriological weapons is prohibited by treaty and customary international law. The ban applies not only to direct use against enemy combatants, but also to the toxic contamination of water supply installations, foodstuffs and other similar uses. The ban also extends to the use of riot control agents and toxins in armed conflict as a method of warfare.

1899 HR II,
Art. 23 (a)
1907 HR IV,
Art. 23 (a)



Geneva Gas Protocol 1925

1972 Convention on
Production and Stockpiling
of Bacteriological and
Toxin Weapons

1993 UN Convention
on Chemical Weapons

GP I, Art. 54 (2)

GP II, Art. 14

CERTAIN CONVENTIONAL WEAPONS

1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects

The Convention on Certain Conventional Weapons, often referred to as the **CCW**, is a cornerstone in the regulation of conventional weapons. It governs weapons which may have indiscriminate effects or cause unnecessary injury. In an attempt to limit the suffering of both civilians and combatants in armed conflict, it prohibits certain types of weapons while strictly regulating others. It therefore provides commanders and staff with very useful and clear guidelines.

The Conventional Weapons Convention is sometimes referred to as a **framework** onto which individual protocols on specific weapons can be added as and when required. Remember, we said the law was dynamic. As at 1 May 2001 there were four protocols to the CCW. Let us now look at the weapons they cover.

PROTOCOL I – NON-DETECTABLE FRAGMENTS

It is prohibited to use any weapon the primary effect of which is to injure by fragments which cannot be detected by X-rays.

Protocol I is aimed at weapons like grenades that are made of plastic or similar material that does not show up on X-rays and that would therefore be extremely difficult to locate and remove surgically. The Protocol is an application of the **principle prohibiting weapons causing superfluous injury or unnecessary suffering**. Such weapons not only put combatants out of action, they hinder treatment and recovery. There is no military justification for that.

PROTOCOL II – MINES, BOOBY TRAPS AND OTHER DEVICES

This topic is likely to be of great interest to your audience. You must, however, take into account two important factors when preparing the lesson.

1. The audience's level of expertise. Senior officers, staff officers and engineers will be interested in all the details. For junior officers and lower ranks, you might well decide to keep to only the most important points affecting them.
2. Exactly which treaties regarding these weapons your State has signed or ratified (ask your legal or engineering corps). If it has signed or ratified the 1997 Convention on the Prohibition of Anti-personnel Mines (Ottawa treaty), then you can simplify the lesson on anti-personnel mines, as they are now banned. The provisions of CCW amended Protocol II regulating anti-tank mines, booby traps and other devices must still be explained, however, as those devices are not covered by the Ottawa treaty.

If your State is party only to CCW amended Protocol II, you must of course cover its provisions on anti-personnel mines, anti-tank mines and booby traps. You should also discuss the basic provisions of the Ottawa treaty, which is now widely accepted and recognized as the international norm governing anti-personnel mines. In addition, as the Ottawa treaty contains far-reaching prohibitions, it may have implications for States not party to it but involved in collective security arrangements or joint operations with States which are party thereto.

If a State is not a party to either treaty, amended Protocol II includes and builds upon the obligations found in customary law. Thus, its basic obligations are the minimum rules which should be followed by all States.

All aspects are now covered for you below.

With the possible exception of anti-personnel mines, these categories of conventional weapons remain the basic tools of your trade and so the rules regarding their use should be known by every professional soldier. Protocol II was updated in 1996. It applies to both international and non-international armed conflicts. The rules presented here are from the amended version of that instrument.

Let us first see how these various weapons are defined. The definitions generally accepted are given below. For purposes of clarity some definitions may vary slightly from those contained in the CCW.

Mines

[Slide 6]

You are well aware that there are two main types of mines: anti-tank mines, now also commonly referred to as anti-vehicle mines, and anti-personnel mines. Generally, a mine is a munition placed under, on or near the ground and designed to be exploded by the presence of, proximity to or contact with a person or vehicle. **Anti-vehicle mines** are, as the term implies, designed to destroy or disable vehicles or tanks. **Anti-personnel mines**, on the other hand, are designed to incapacitate, injure or kill people. The main feature of both types is that they are **victim-activated**.



Booby traps

[Slide 7]

These are devices or materials which are designed, constructed or adapted to kill or injure and which function unexpectedly, when a person disturbs or approaches an apparently harmless object or carries out an apparently safe act (such as opening a letter or door, entering or driving a vehicle), i.e. they are deliberately disguised in or as harmless objects or involve what would seem to be a safe act.



Other devices

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By this we mean devices and munitions placed manually which are designed to kill, injure or damage when they are set off. They can be activated by hand (by lighting a fuse, by remote control when attached



to a long wire and electrically detonated, or by transmitter). They can also be set off automatically if a timing mechanism is attached to the device. **A key difference between these and the devices mentioned earlier (mines and booby traps) is that they are deliberately set off by the user, whereas the others are victim-activated and lie silently in wait for someone or something to set them off.**

Remotely delivered mines

[Slide 9]

These are mines delivered by artillery, missile, rocket or mortar, or dropped from an aircraft. They can be anti-tank or anti-personnel mines. For purposes of the CCW, mines delivered from a land-based system from less than 500 metres are not considered to be remotely delivered.



So much for the definitions. Let us now turn to what the law has to say about their use. We will look first at the general rules covering all these weapons and then at some of the specific provisions relating to each.

GENERAL RULES

The rules below apply to all types of mines, booby traps and other devices.

Prohibitions

It is prohibited in all circumstances to direct these weapons against civilians or civilian objects.

CCW amended Protocol II,
Art. 3 (7)

Their indiscriminate use is prohibited. This refers to placement which:

- is not directed at a military objective;
- uses a means of delivery which cannot be directed at a specific military objective;
- may cause loss of life, injury or damage to civilians or damage to civilian property in excess of the military advantage anticipated.

CCW amended Protocol II,
Art. 3 (8)

It is prohibited in all circumstances to use any mine, booby trap or other device (such as a nail bomb) which is designed or of a nature to cause unnecessary suffering or superfluous injury.

CCW amended Protocol II,
Art. 3 (3)

It is prohibited to use mines, booby traps and other devices which explode when a commonly available mine detector is passed over them.

CCW amended Protocol II,
Art. 3 (5)

Regulations on recording and precautions in use

The regulations on recording and precautions in use listed below must be followed for mines, booby traps and other devices.

All feasible precautions, including advance warning (if the tactical circumstances permit), must be taken to protect civilians from the effects of these weapons.

CCW amended Protocol II,
Art. 3 (10 & 11)

Records (e.g. maps, diagrams, aerial photographs, satellite images) must be kept of where these weapons have been laid or dropped.

CCW amended Protocol II,
Art. 9 and Technical
Annex

The parties are responsible for all mines, booby traps and other devices that they use. At the end of active hostilities, all such weapons must be cleared or steps taken to ensure clearance.

CCW amended Protocol II,
Arts. 3 (2) & 10

As you can see, the general rules require you as soldiers, commanders or staff officers to bear in mind two things when using these weapons.

First, the civilian population must be protected from their effects.

Second, they must be used with a high degree of professionalism, meaning minefields must be marked, and clear records kept at operational and staff levels of where you have actually placed them. Recording locations and posting warning signs will help to limit the effects of mines so that after the conflict they can be quickly found and cleared. Advance warning to civilians, if the circumstances permit, will also help limit casualties.

The general rules, you might agree, are simple and straightforward. But how often are they obeyed? Look at the problems faced in the aftermath of conflict in Afghanistan, Angola, Cambodia, the former Yugoslavia and North Africa. In the fog of battle, or with fluid front lines, the rules are often difficult to follow or forgotten and records are not kept or are simply lost. Long after the battle is over, mines remain a threat to us all if they were not used properly in the first place. The general rules we have covered tell you how they should be used. It is your duty as professionals to follow them.

SPECIFIC RULES

All mines

Some mines are designed to deactivate after a specific period of time so that they no longer pose a threat once their military usefulness has expired. In some cases, these mines may have **anti-handling devices**

attached to them, to prevent them being moved during battle by an opponent. If this is the case, then the anti-handling device must be designed in such a way that it will no longer function once the parent mine is rendered harmless through deactivation.

CCW amended Protocol II, Art. 3 (6)

All anti-personnel mines

All anti-personnel mines (i.e. mechanically or hand-laid, scatterable or remotely delivered) **must be detectable** using normal issue mine detection equipment, so that mined areas can be more easily cleared and returned to civilian use. To that end, all anti-personnel mines must contain the equivalent of at least 8 g of iron.

CCW amended Protocol II, Art. 4 & Technical Annex 2 (a) & (b)

It is prohibited to use anti-personnel mines **unless they are equipped with self-destruct and self-deactivation mechanisms** to ensure they do not pose a long-term threat to civilian populations. These features must be sufficiently reliable so that at least 90% of the mines will have self-destructed within 30 days and no more than one in 1,000 will function as a mine 120 days after emplacement.

CCW amended Protocol II, Arts. 5 (2), 6 (2) & Technical Annex 3 (a) & (b)

The rules on self-destruction and self-deactivation apply unless the mines are:

- Manually or mechanically laid anti-personnel mines (or anti-personnel mines scattered to a distance under 500 m) laid in a clearly marked and fenced area which is monitored by military personnel to keep civilians out and cleared before the area is abandoned or the party taking over accepts responsibility for the maintenance of protective devices or clearance.
- Directional anti-personnel mines used specifically for close protection (e.g. by a patrol in an ambush position or an observation post (OP)). In such cases, directional mines without self-destruct and self-deactivation features may be used for a maximum period of 72 hours. The mines thus used must be designed to propel their fragments in a limited arc (less than 90 degrees), e.g. a claymore-type directional mine, and they must be removed by the patrol or OP when it completes its task and leaves the area or position. The mines must also be located in the immediate proximity of the patrol or unit employing them and be monitored by military personnel to ensure civilians are not affected.

CCW amended Protocol II, Art. 5 (2) (a) & (b)

CCW amended Protocol II, Art. 5 (6)

Manually placed anti-vehicle mines

Although such mines are not specifically mentioned in the Protocol, the general rules outlined above apply equally to manually placed anti-vehicle mines. In particular, it should be stressed that such weapons cannot be directed at civilians and their indiscriminate use is prohibited. In addition, all feasible precautions must be taken to protect civilians from the effects of these weapons. Such precautions should include the marking and monitoring of areas where these mines are placed as well as warnings to the civilian population.

CCW amended Protocol II,
Art. 3 (7), (8), (10) & (11)

Remotely delivered anti-vehicle mines

In addition to the general rules just mentioned in relation to manually placed anti-vehicle mines, all remotely delivered anti-vehicle mines are, to the extent feasible, to be equipped with an effective self-destruct or self-neutralization mechanism and a back-up self-deactivation feature. (States and their armed forces should make every effort to ensure this is done.)

CCW amended Protocol II,
Art. 6 (3)

Practical guidelines on the recording of mines, booby traps and other devices

[Slide 10]

We have mentioned the importance of recording the position of these categories of weapons. Here are some guidelines to help you.

Anti-tank and anti-personnel mines (non-remotely delivered) – The location of mined areas must be accurately recorded on operational maps and the information transmitted to headquarters. Diagrams or even photographs are also helpful. Mark on your map the grid reference of at least two reference points. From these mark out the exact dimensions, perimeter and extent of the minefield. When recording these details, remember to use fixed reference points (hills, river lines, etc.) whenever possible and not removable features such as trees.

CCW amended
Protocol II, Art. 9 and
Technical Annex 1 (a)

The record must also contain the details of the type of mine used, the fuse and its lifetime. Do the mines have anti-handling devices? Also record the pattern used to lay them, how they were placed (by hand or mechanically), the number of mines and the date they were laid.



Remotely delivered mines – In this case, recording is a much more complicated task as these mines can be fired or launched from a distance and scattered over large areas. Delivery can be affected by the strength of the wind at the time, making accurate records a problem. Estimated locations and areas covered by these mines must be recorded by using coordinates of reference points (normally corner points). Whenever possible, these boundaries must be marked on the ground at the earliest possible opportunity. The total number, type, date laid and self-destruction time periods must also be recorded.

CCW amended
Protocol II, Art. 9 and
Technical Annex 1 (b)

International signs for minefields and mined areas

[Slide 11]

Protocol II (as amended) describes the sign to be used to ensure that mined areas are visible and can be recognized by the civilian population.

Size and shape – a triangle or square no smaller than 28 centimetres (11 inches) by 20 centimetres (7.9 inches) for a triangle, and 15 centimetres (6 inches) per side for a square.

Colour – red or orange with a yellow reflecting border.



CCW amended
Protocol II,
Technical Annex 4

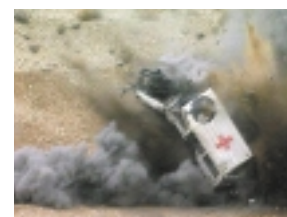
Protection of United Nations forces and humanitarian organizations from the effects of mines, booby traps and other devices

[Slide 12]

Protocol II (as amended) requires that the parties to a conflict protect the following from the effects of mines, booby traps and other devices:

- United Nations peacekeeping forces or observer missions;
- any of the following if they have the consent of the country in whose territory they are operating:
 - missions operating under Chapter VII of the United Nations Charter;
 - United Nations humanitarian or fact-finding missions;
 - missions of the International Committee of the Red Cross or National Red Cross or Red Crescent Societies, their International Federation or similar humanitarian missions;
 - any mission of an impartial humanitarian organization;
 - fact-finding missions established pursuant to the 1949 Geneva Conventions or their Additional Protocols.

The degree of protection will depend on the circumstances and the tactical situation, but generally field commanders at all levels, liaison



officers and staff officers who might be briefing these organizations will need to bear in mind that, if so requested by the head of a force or humanitarian mission, they **are obliged** to take measures to protect these missions from the effects of mines, booby traps and other devices. This includes the clearance of these munitions or at least of lanes or routes so as to permit safe passage.

Any information provided is to be treated in strict confidence by the recipient and not released outside the force or mission without the express authority of the information provider.

CCW amended
Protocol II, Art. 12

You should point out to the class that Article 12 is quite complex. While we have tried to distil its main provisions, those that are going to be directly involved with United Nations operations would be advised to study the article in detail before deployment.

The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction (the Ottawa treaty)

[Slide 13]

The Ottawa treaty is **NOT** a part of or a protocol to the CCW. It is a separate treaty. It is placed here because of its importance to the regulation of anti-personnel mines.



Check whether or not your State is a party to this treaty. If it is, then anti-personnel mines are a prohibited weapon and your audience will need to know all the details. If it is not, you should still discuss the treaty, as it is widely accepted and has implications for States not as yet a party to it. If, for example, your forces are involved in UN operations or other operations with States which have ratified the treaty, those States will not be allowed to assist in the use, stockpiling and transit of anti-personnel mines. This is explained further below.

It is most important that we cover the very latest instrument relating specifically to anti-personnel mines. The Ottawa treaty is now **the norm** governing anti-personnel mines. It was adopted in response to the widespread human suffering caused by these weapons and because many States felt that the rules of CCW Protocol II (as amended in 1996) were too complex and did not address the problem adequately.

The Ottawa treaty is considered by many to be a landmark convention aimed at eliminating, once and for all, the suffering and casualties caused by anti-personnel mines.

States which are party to the treaty undertake **never under any circumstances**, including both international and non-international armed conflicts:

- to use anti-personnel landmines;
- to develop, produce, acquire, stockpile, retain or transfer anti-personnel landmines, directly or indirectly;
- to assist, encourage or induce, in any way, anyone to engage in any activity prohibited by the Convention.

Ottawa treaty, Art. 1

These are comprehensive prohibitions aimed at eliminating all use of anti-personnel mines. They forbid both direct and indirect involvement in any of the activities listed above. For example, they prohibit a State to which the treaty applies from transporting anti-personnel mines on behalf of a coalition partner which is not bound by the treaty. They also prohibit participation in planning to use the weapons in joint operations even if the actual use is by a non-party State, or any other similar assistance.

States must also:

- destroy or ensure the destruction of all their stockpiles of anti-personnel mines;
- clear mined areas under their jurisdiction or control;
- if in a position to do so, provide assistance for mine victims, for mine clearance and for stockpile destruction.

Art. 4

Art. 5

Art. 6

Under the Ottawa treaty, an anti-personnel mine means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.

Art. 2

This definition includes, and the treaty therefore prohibits, explosive devices constructed, altered or adapted to function as anti-personnel mines.

Command-detonated munitions (such as claymore-type mines) are permitted by the treaty but only if they are not equipped with a trip wire or similar victim-activated fuse.

Art. 2

Anti-vehicle mines, including those equipped with anti-handling devices, are not covered by the treaty. However, an anti-vehicle mine with a fuse which will be triggered by the presence, proximity or contact of a person is covered by the Ottawa treaty.

States are allowed to keep a limited number of anti-personnel mines specifically for the development of and training in mine-detection or mine-clearance techniques. The number must, however, not exceed the minimum necessary, which is generally understood to mean no more than several thousand. Many States have decided not to retain any anti-personnel landmines for this purpose.

Art. 3

Booby traps and other devices

Having looked at the Ottawa treaty, let us now return to Protocol II of the CCW and the law applicable to booby traps and other devices.

[Slide 14]

Some States have adopted domestic legislation prohibiting the use of munitions constructed, altered or adapted to be person-activated, thus excluding the use of some explosive booby traps. These are considered to be anti-personnel mines under the definition contained in the Ottawa treaty.



The rules specifically governing these weapons provide that it is prohibited in all circumstances to use booby traps and other devices which are in any way attached to or associated with:

- internationally recognized protective emblems, signs or signals, such as the red cross, red crescent (or red lion and sun), the protective sign for cultural property, etc.;
- sick, wounded or dead persons (for example, you must not booby-trap an enemy's mortal remains);
- burial or cremation sites or graves;
- medical facilities, equipment, supplies or transports;
- children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
- food or drink;
- kitchen utensils and appliances except in military establishments, military locations or military supply depots (meaning you can booby-trap utensils in a military cookhouse but not in a civilian restaurant);
- objects clearly of a religious nature;
- historic monuments, works of art or places of worship, in other words cultural property;
- animals or their carcasses.

CCW amended
Protocol II, Art. 7 (1)

It is also prohibited to use booby traps or other devices in the form of apparently harmless portable objects, e.g. a portable radio, a packet of cigarettes or a camera, which are specifically designed and constructed to contain explosives.

PROTOCOL III – INCENDIARY WEAPONS

[Slide 15]

The term “incendiary weapon” refers to any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to people through the action of flame, heat or a combination of both, produced by a chemical reaction of a substance delivered on a target. Flame throwers and napalm bombs immediately spring to mind.

The term does not cover munitions that have an incidental incendiary effect, such as parachute illuminating flares, tracer ammunition, smoke grenades or signalling cartridges, or munitions that combine penetration, blast or fragmentation effects with an additional incendiary effect, such as armour-piercing shells (HEAT – high explosive anti-tank – or HESH – high explosive squash head – rounds), fragmentation shells and explosive bombs.

Specific rules governing use

Protocol III lays down the following rules for the use of incendiary weapons.

It is prohibited in all circumstances to make civilians or civilian property the object of an incendiary weapons attack. This prohibition is an application of the basic principle of distinction.

Protocol III then distinguishes between **air-delivered** weapons, meaning aircraft bombing, close air support attacks or surface-to-ground rocket attacks, and **ground-launched** attacks, for example using infantry, armour or even artillery. One factor is the relative accuracy with which the weapons can be delivered to their target.

Air-delivered incendiary weapons

[Slide 16]

It is prohibited in all circumstances to use air-delivered incendiary weapons against a military objective located within a concentration of civilians.

For the purposes of the Protocol a “concentration of civilians” means any permanent or temporary concentration of civilians, such as the inhabited parts of cities, inhabited towns or villages, camps, columns of refugees or groups of nomads.



Ground attacks with incendiary weapons

The law here takes into account the principles of distinction and proportionality.

The use of ground-launched incendiary weapons against a military objective which is located within a concentration of civilians is prohibited, except when the attack is directed against a target which is clearly separated from any civilian concentration and all feasible precautions are taken to minimize death and injury to civilians and damage to their property.

This point must be absolutely clear. Incendiary weapons may be employed against combatants, their equipment or other military targets in an inhabited town or city or other concentration of civilians. Such use however is subject to **severe limitations or conditions**. The attack must be ground-based and the military target must be clearly separate from any grouping of civilians in the area. **Separation is therefore the key** to using ground-based versions of these weapons in populated areas.

Protocol III ends with a reference to forested areas. It is prohibited to make forests or other kinds of plant cover the object of attack by these weapons, except when they are being deliberately used to shield or conceal combatants or other military objectives.

CCW Protocol III,
Arts. 1 & 2

PROTOCOL IV – BLINDING LASER WEAPONS

This protocol was added to the framework of the Convention in 1995, in an obvious endeavour to keep pace with modern technology and weapons development. It prohibits the employment of laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to the naked eye or to the eye with corrective eyesight devices, e.g. glasses or contact lenses. The term “permanent blindness” means irreversible and irreparable loss of vision which is seriously disabling with no prospect of recovery.

Protocol IV prohibits anti-personnel laser weapons designed to permanently blind combatants. Military equipment that uses lasers for other purposes, e.g. range finders or target marking for laser-guided munitions, is not banned, because its primary purpose is not to blind an opponent. However, all feasible precautions must be taken when using these other laser systems to avoid causing blindness. This includes training operators properly in their use.

CCW Protocol IV,
Arts. 1-4

NUCLEAR WEAPONS

[Slide 17]

The use of nuclear weapons is not within the remit of junior officers, and mention of them at this level might well be omitted. Senior officers and staff will, however, be interested in the subject.



Numerous multilateral and bilateral treaties are designed to prohibit the proliferation or stationing of nuclear weapons, reduce their numbers, restrict their testing and establish nuclear-free zones. Their objective is to limit the level of nuclear armament and to prevent the outbreak of nuclear war.

The international law in force does not, however, contain any explicit prohibition of the use of such weapons.

Nonetheless, nuclear weapons are not free of all legal limitation. The basic principles of the law of armed conflict certainly apply to them, as the International Court of Justice affirmed in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons. On the basis of the evidence submitted to the Court, the ICRC has stated that it is difficult to imagine how the use of nuclear weapons could be compatible with the principles and rules of the law of armed conflict.

Some armed forces might consider the use of tactical nuclear weapons to be lawful in certain situations, such as against a military objective situated well away from civilian concentrations. One has to bear in mind, however, that the use of even a tactical nuclear weapon may well be the starting point of an uncontrollable escalation in nuclear weapons use by the parties to a conflict. The result could go well beyond humanitarian law violations.

NON-LETHAL WEAPONS

[Slide 18]

The term “non-lethal” weapon is becoming more and more common in military circles. What types of weapons are we referring to? In theory, they are not designed to kill but to incapacitate an opponent for a limited period of time while minimizing fatalities. As commanders and staff officers, it is quite possible that you will be asked for your advice on the use



of such weapons or even be involved in their development and procurement. Such weapons include wooden batons or truncheons, rubber or baton rounds, stun grenades, nets, slippery surfaces and more futuristic weapons such as acoustic and electro-magnetic pulse weapons.

At first sight, these weapons seem very attractive. Is it not more in keeping with the principle of humane treatment to put someone out of action temporarily than to kill them with conventional weapons? Closer examination reveals, however, that the use and development of each proposed “non-lethal” weapon requires serious scrutiny. Some weapons, such as blinding lasers, incapacitating anti-personnel mines (under the Ottawa treaty) and riot control agents, have already been prohibited under the law of armed conflict. As commanders and staff officers you must ensure that all “non-lethal” weapons comply with the rules of the law. Specifically, they:

- must not cause unnecessary suffering or superfluous injury;
- must be capable of being directed against a military objective and must not be used in an indiscriminate manner;
- must not cause disproportionate incidental damage;
- must not be prohibited by other specific legal provisions such as the ban on chemical weapons.

It is also important to remember that soldiers will need careful training in the use of such weapons.

NEW WEAPONS

It is important to note that in the study, development, acquisition or adoption of a new weapon (including “non-lethal” weapons) or a new means or method of warfare, States are under an obligation to determine whether use of that weapon would, in some or all circumstances, be prohibited by the rules of international law, including the rules of the law of armed conflict, that apply to that State.

GP I, Art. 36

Questions from the class.

APPENDIX

Questions from the instructor to the class to confirm the lesson

1. Lt. Green is out on patrol with his platoon. They come upon a small stream that runs through the enemy fortified area. All attempts to break into the enemy fortifications have failed. After weighing all the alternatives, Lt. Green decides to poison the water, considering that:
- a. such action is permissible since killing the defenders inside will give his forces a military advantage.
 - b. the rule of military necessity allows the use of poison in the circumstances.
 - c. poison may be used provided the defenders are warned.
 - d. None of the above.

Answer: **d. The use of poison is prohibited in all circumstances.**

2. During recent engagements an infantry company commander expressed dissatisfaction with the small arms ammunition on issue. "Its obviously a poor batch", he says. "It doesn't stop the enemy unless it gets them in a vital spot". His subordinates suggest that the ammunition be altered.
- a. The hard tips of the bullets could be cut with incisions so that they would flatten out on impact.
 - b. The tips of the bullets could be flattened slightly, producing the same effect.
 - c. The commander must not allow the ammunition to be tampered with in any way.
 - d. a. and b. above.

Answer: **c. Expanding or dum dum bullets are banned by the Hague Declaration of 1899.**

3. Private Bold is issued with a backpack flame thrower (incendiary weapon). His platoon has secured a town and is involved in house-clearing operations. The enemy is known to be hiding in cellars. Many civilians are also taking shelter where they can in the town. Private Bold hears sounds of movement from a cellar opening. He fires his flame thrower into the opening. The sounds cease.
- a. The action was justified in the circumstances.
 - b. The action was wrong as it broke the rules on the use of such weapons.

Answer: **b. Ground-based use of incendiary weapons is prohibited unless there is a clear separation of civilians and military objectives. In**

this case, it may have been civilians hiding in the cellar who have been killed or burned.

4. You are a captain on the staff of the G5-Civil Military Cooperation (CIMIC) cell in your field headquarters. The head of a humanitarian organization operating in your area pays you a visit and requests information on mines in the area.
 - a. You refuse to give any information as it might breach your units' security.
 - b. You refuse to give information but offer to provide military escorts and protection for the humanitarian organization when it is operating in suspected mined areas.
 - c. You provide the necessary information on a confidential basis to the head of the humanitarian organization.

Answer: Some organizations would appreciate answer b. Others, like the ICRC, which prefers to distance itself from the military in order to maintain its neutrality and independence, would decline option b. and prefer c.

EXAMPLES AND CASES

Incendiary weapons

Gulf War, 1991. Iraqi trenches filled with oil were attacked with napalm. Fuel-air explosives were used to clear minefields.

Source: International Herald Tribune, 23/24 February 1991; A.P.V. Rogers, Law on the Battlefield, Manchester University Press, Manchester, 1996.

Further considerations on certain uses of incendiary weapons. Some legal experts and many States have expressed the view that incendiary weapons used intentionally for anti-personnel purposes cause superfluous injury or unnecessary suffering. Such use, they hold, is therefore prohibited.

Mines

India-Pakistan wars, 1947-48, 1965 and 1971. The mine warfare carried out by both parties was almost unique in the way in which it was conducted. Minefields were carefully mapped and the maps made available by both parties after the conflict, allowing the early removal of the mines and the return of the land to food production soon after the end of hostilities. Because of the professional and disciplined way in which the mines were laid and removed, civilian casualties were reported to be negligible.

Source: ICRC, Anti-personnel Landmines – Friend or Foe? Geneva, 1996.

Angola, 1975 to the present. Mines were laid in Angola by the Cuban army, the government forces, UNITA and the South African Defence Forces. Very few minefields were marked or accurately mapped. Angola is now probably the most mine-infested country in Africa.

Source: ICRC, Anti-personnel Landmines – Friend or Foe? Geneva, 1996.

Mozambique, 1976 - 1993. Mines were laid by the Portuguese army and later by FRELIMO and RENAMO, the South African and Rhodesian armies, and special forces. None of the parties involved marked or mapped their mined areas. Mine maps were apparently kept by FRELIMO but never handed over to United Nations mine-clearance headquarters. No significant marking of minefields has been found.

Source: ICRC, Anti-personnel Landmines – Friend or Foe? Geneva, 1996.

Iran-Iraq War, 1980-1989. Both parties used mines freely. Probably the most extensive use was in Kurdistan, which was the scene of many large-scale attacks by the Iranian army against entrenched and heavily

fortified positions. In the absence of modern means, the minefields were sometimes breached by "martyrs", including children, who would storm across the minefields to open the way for professional forces. The casualties this entailed were regarded as acceptable. Few of the mines used by either side were marked or mapped, nor have they since been cleared.

Source: ICRC, Anti-personnel Landmines – Friend or Foe? Geneva, 1996.

Cambodia and Afghanistan are notable examples of countries burdened by the scourge of mines. Again, few records exist of where the mines were laid. In the case of Afghanistan, the use of scatterable butterfly mines was widespread. Made of turquoise (blue/green) plastic material, these mines are particularly attractive to young children who unknowingly pick them up, with fatal consequences. Mine-awareness programmes run by the United Nations and the ICRC in these and other countries, as well as mine-clearance operations conducted by specialist organizations, are helping to solve a problem that will take many years to eliminate.

World War II. A number of people continue to be killed every year in such places as Poland and Libya by mines and other munitions left over from the Second World War.

Chemical Weapons

Iran-Iraq Conflict

A. In 1988, missions were dispatched by the United Nations Secretary-General to investigate allegations that chemical weapons had been used in the conflict between the Islamic Republic of Iran and the Republic of Iraq. The missions concluded that chemical weapons had been used throughout the conflict and with growing intensity and frequency against Iranians. The Security Council subsequently adopted resolution 620 (1988) condemning such use.

Source: UN Doc. S/RES/620 (26 August 1988).

B. In 1988, the ICRC issued the following press release: "In a new and tragic escalation of the Iran-Iraq conflict, chemical weapons have been used, killing a great number of civilians in the province of Sulaymaniya. The use of chemical weapons, whether against military personnel or civilians, is absolutely forbidden by international law and is to be condemned at all times".

Source: ICRC, Press Release No. 1567, 23 March 1988.

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