



# THE LAW OF ARMED CONFLICT

Non-international armed conflict



ICRC



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NON-INTERNATIONAL ARMED CONFLICT



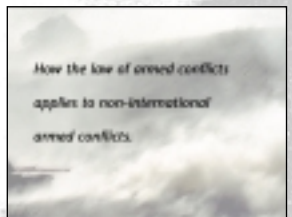
## AIM

## [Slide 2]

The aim of this lesson is to describe how the law of armed conflict applies to non-international armed conflicts.

The lesson will cover:

1. Background.
2. The law in outline.
3. The law in detail.
4. Completing the picture.



## INTRODUCTION

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Let us start by defining the term non-international armed conflict. You may recall that in our very first lesson we described non-international armed conflicts as those taking place within the territory of a State and in which the armed forces of no other State participate. One example is protracted armed violence between the armed forces of a State and those they regard as dissident, rebel or insurgent groups. Another is fighting between two or more armed groups within a State but not necessarily involving government troops; protracted armed violence is again a condition.

As you will see in greater detail during the lesson, non-international armed conflicts are governed by specific provisions of the law. Under treaty law, slightly different provisions apply when the internal opposition is better organized in terms of command and control of territory, enabling it to carry out sustained and concerted military operations and to implement the law. These provisions only apply if government troops are involved in the fighting.

## 1. BACKGROUND

### WHY TWO SETS OF RULES?

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As soldiers, you might well ask why there have to be separate rules for a conflict taking place in your own country. Does this not make life very complicated? Surely it would be simpler and more straightforward to have one set of rules that apply to all conflict situations?

From the humanitarian and military points of view, is there really much difference between international and non-international armed conflicts? Civilians and their property must still be protected. Food supplies need to get through front lines. Those fighting, either on the government side or for the opposition, should benefit from and apply the basic provisions of the law of armed conflict, for example if they are injured or captured.

In non-international as in international armed conflicts, indiscriminate attacks are likely to be launched against towns and villages, and of course mostly the same weapons are used. These might also have indiscriminate effects or might aggravate the suffering of the victims by their wounding effect. You will probably agree that such practices are unacceptable in international armed conflicts and hence also in non-international armed conflicts.

Indeed, surely we are not going to adopt lower standards in dealing with a conflict that involves our own people than we would in dealing with an external enemy!

## HISTORICAL ASPECTS

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In the past, the States brooked no interference in the way they dealt with their domestic affairs, including internal conflict. The principle that States must refrain from intervening in matters which international law recognizes as being purely domestic was widely accepted. It is reflected in the **1945 United Nations Charter, Article 2(7) of which declares** that nothing in the Charter enables the United Nations to intervene in matters which are essentially the internal affairs of any State unless there is a threat to peace, a breach of peace or an act of aggression, in which case the United Nations is entitled to have recourse to **enforcement measures under Chapter VII of the Charter**.

Traditionally, therefore, non-international armed conflicts have fallen outside the scope of the law of armed conflict.

**Therein lies the problem; but we have still not answered the question, "Why have two sets of rules?"**

This State reluctance to subject internal matters to international codification has been gradually eroded over the years, probably because of the extreme violence and cruelty characterizing many internal armed conflicts. The States have come to accept that there are some situations which cannot be treated as purely internal; on the contrary, they are of concern to the international community as a whole. This change in attitude has allowed rules to be codified governing non-international armed conflicts, but the process of codification has been much slower than for international armed conflicts. The combined effect has therefore been to have separate and fewer rules applicable to non-international armed conflicts.

The first step in the process was the adoption of the four Geneva Conventions in 1949; they included a provision introducing the minimum standards of humanity it was hoped would be observed in future non-international conflicts. In order to "develop and supplement" those standards, Protocol II additional to the Geneva Conventions (Geneva Protocol II) was adopted in 1977.

## IS THE LAW OF NON-INTERNATIONAL ARMED CONFLICT REALLY RELEVANT TO ME?

Before turning to the details of the law, let us clear up any nagging doubts you might have as to its relevance. Just look around you, turn on your television or radio, cast a glance at the newspaper. How many international armed conflicts do you see, hear or read about? Now ask the same question about non-international armed conflicts. I think you get the point. Soldiers today are much more likely to be involved in internal conflicts. They must therefore familiarize themselves with the rules that apply, and doing so is no big deal. There are a few major differences (for example, the rules on combatant or POW status do not apply to non-international armed conflicts), but the other rules and principles are no different from those we covered in earlier lessons. We can learn them quickly, so let's make a start.

## 2. THE LAW IN OUTLINE

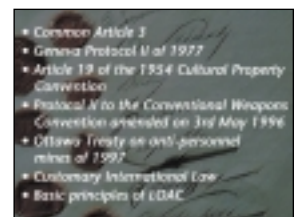
### [ Slide 3 ]

In a non-international armed conflict, each party is bound to apply, as a minimum, the fundamental humanitarian provisions of international law contained in **Article 3 common to all four Geneva Conventions**. Those provisions are developed in and supplemented by **Geneva Protocol II of 1977**. Both common Article 3 and Geneva Protocol II apply with equal force to all parties to an armed conflict, government and rebels alike.

In addition, government troops and rebel forces must apply a number of other specific treaty rules relating to internal conflicts, namely:

- **Article 19 of the 1954 Cultural Property Convention and its Second Protocol of 1999** (the latter protocol has not yet entered into force at the time of writing);
- **Protocol II to the Conventional Weapons Convention, on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996;**
- **the Ottawa landmines treaty of 1997.**

The rules of customary international law certainly apply as well, in particular the **basic principles of the law of armed conflict** we covered in detail in earlier lessons, namely distinction, proportionality, military necessity, limitation, good faith and humane treatment.



### 3. THE LAW IN DETAIL

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#### ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS

Article 3 common to all four Geneva Conventions represents the first attempt to lay down rules governing non-international armed conflicts. It has been described as a “convention in miniature” because it contains within it the basic minimum standards of international humanitarian law applicable in conflict situations. The International Court of Justice reinforced this view, stating that **the rules in common Article 3 reflect elementary considerations of humanity applicable under customary international law to any armed conflict.**

Common Article 3 does not attempt to define exactly what is meant by a non-international armed conflict. International tribunals have, however, ruled that it applies whenever there is protracted armed violence within the territory of a State between government forces and organized armed groups or between such groups.

Common Article 3 emphasizes that the introduction of these minimum rules does not affect the legal status of the parties. This means that the fact of applying Article 3 does not in itself constitute recognition by the *de jure* (legal) government that the opposition has authority of any kind. The government authorities are still entitled to suppress an insurgency by all legitimate means under domestic legislation. Common Article 3 in no way affects the government’s right to prosecute, try and sentence its adversaries for their crimes, for example treason or common crimes, according to its own laws. Under national legislation, any person can be prosecuted for the mere fact of participating in armed hostilities. This is important to us. It means that in non-international armed conflicts there is no such thing as combatant status. Consequently, captives are not entitled to POW status as defined in international armed conflict. However, as we will cover in greater detail later, they are still protected by the law.

**In practice, it would be advisable for a soldier in a tactical situation to treat captured members of the opposing force as if they were POWs.**





### The protection provided by common Article 3

#### Common Article 3 reads as follows:

“In the case of an armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall apply as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b. taking of hostages;
- c. outrages upon personal dignity, in particular humiliating and degrading treatment;
- d. the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.”

Common Article 3 also provides that “an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict”.

We have mentioned that non-international armed conflicts are subject to a different and more limited legal regime than international conflicts. Nevertheless, the law of international armed conflicts can still be applied. Common Article 3 provides for this by encouraging the parties to the conflict “to endeavour to bring into force, by means of special agreements, all or part of the other provisions of the Geneva Conventions”.

## GENEVA PROTOCOL II OF 1977

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[Slide 5]

Protocol II is the outcome of a serious endeavour to define the protection afforded in non-international armed conflicts in greater detail. Its aim was “to develop and supplement common Article 3”. In many ways it achieves this; in others it does not go as far as one might have wished. Again, the desire of States not to have others interfering in their internal affairs was a major obstacle.



### Definition of non-international armed conflicts

Protocol II defines a non-international armed conflict for the purposes of the Protocol as one **“which takes place in the territory of a Party to the Protocol between its armed forces and dissident armed forces or other organized armed groups”**.

It then stipulates that the dissident forces must be **“under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”**.

Protocol II states quite clearly that it **“shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature,”** as these are not considered to be armed conflicts.

### Summary of the levels of conflict to which common Article 3 and Geneva Protocol II apply

Before we look at Protocol II in greater detail, we should perhaps scrutinize the levels of conflict to **which each applies. Are common Article 3 and Protocol II the same or do they cover different types of internal conflict? As soldiers, we must be in no doubt about what law applies where and when.**

If you are involved in internal conflicts, you can expect that your State, through your commander in chief, will clearly stipulate the rules it expects you to obey. It is unlikely that reference will be made to either common Article 3 or Protocol II in the orders you receive for operations. However, these orders and subsequent rules of engagement (ROE) will undoubtedly be based on the law we are discussing. As far as the armed forces are concerned, it would be safest to apply the rules governing

non-international armed conflicts whenever the threshold of internal disturbances and tensions is crossed. **The inquisitive soldier wondering which law applies where and when can be answered as follows:**

Common Article 3 speaks of an armed conflict not of an international character but does not define its character more precisely. Protocol II, which was designed to “develop and supplement” common Article 3, defines the lower threshold by excluding certain types of sporadic violence. This suggests that **neither common Article 3 nor Protocol II apply to internal disturbances and tensions**. The law that applies in these situations will be covered in our next lessons.

**We can say, however, that Protocol II has a more limited scope of application than common Article 3 in two respects.**

**Firstly**, whereas common Article 3 applies to any armed conflict not of an international character, Protocol II has quite strict requirements regarding command of the dissident forces, control of territory and the ability to carry out sustained and concerted operations, i.e. it applies to situations that are at or very close to the level of a full-blown civil war. The additional requirements of Protocol II are limited to the Protocol; all other codified rules dealing with non-international armed conflicts are based on the broader concept of common Article 3.

**Secondly**, whereas Protocol II applies only to a conflict between a State’s armed forces and rebel or dissident movements, common Article 3 is broader and covers a conflict between the same sorts of groups competing for power within a State when the government is not involved or, in the case of fragmented States, has ceased to exist. Guerrilla or partisan forces constantly on the move and lacking any fixed location from which to exercise control are also covered by common Article 3 rather than Protocol II.

### Rules of Geneva Protocol II

In broad terms, the effect of Protocol II is that in the event of a non-international armed conflict, the forces of both sides must behave in accordance with the minimum requirements of the law of armed conflict applicable to international armed conflicts. Much of what we have covered in earlier lessons is repeated in Protocol II. However, in some important areas the law is slightly different. For example, combatant status does not exist, captured persons and children are sometimes treated according to other rules. In other cases, rules are not mentioned but are part of customary international law. While not repeating every rule in detail, we will now cover the most important ones and highlight the differences.

### Scope of the Protocol

We have already discussed the types of conflict covered by Protocol II. The following points also relate to the scope of the Protocol.

**No adverse discrimination** – Protocol II applies without any adverse distinction founded on race, colour, sex, language, religion or other opinion, national or social origin, wealth, birth or other status, or any similar criteria, to all persons affected by an **armed conflict** as defined by the Protocol.

GP II, Art. 2 (1)

The provision defines the personal field of application of Protocol II's rules by indicating who benefits from them and for whom they are intended. It lays down that persons protected by the rules of the Protocol must be treated equally.

**Non-intervention** – reflecting the principle of non-intervention in the internal matters of States which we have already mentioned, Protocol II specifically stipulates that its rules may not be invoked to affect the sovereignty of the State or the right of the government to make use of all legitimate means to maintain or re-establish law and order within the State or to defend its national unity or territorial integrity.

GP II, Art. 3

The aim of the Protocol is purely humanitarian. It does not affect the right of States to take appropriate measures to maintain or restore law and order and to defend their national unity and territorial integrity. This is the responsibility of governments and is expressly recognized here. However, only legitimate means may be used. Thus, imperative needs of State security may not be invoked to justify breaches of the Protocol's rules. The State's freedom of action is limited by rules it accepted as binding when it ratified the Protocol, and it cannot subsequently claim that compliance with those rules constitutes an infringement of State sovereignty.

### Fundamental guarantees

All persons not directly participating in the conflict or who have ceased to do so because, for example, they are *hors de combat* or have surrendered are entitled to be treated humanely and to receive respect for their person, religious practices, honour and convictions without adverse distinction.

GP II, Art. 4 (1)

Under Protocol II it is prohibited to order that there will be no survivors (*no quarter*).

GP II, Art. 4 (1)

In addition, Protocol II contains a catalogue of fundamental guarantees prohibiting at any time and anywhere:

- violence to life, health and physical or mental wellbeing of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- collective punishments;
- taking of hostages;
- acts of terrorism;
- outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- slavery and the slave trade in all their forms;
- pillage;
- threats to commit any of the foregoing acts.

GP II, Art. 4 (2) (a)-(h)

### Protection of children

Children must of course be protected in any armed conflict, and as we have seen, the law does indeed do this. In non-international armed conflicts, children tend to be more vulnerable and are often separated from their parents or other members of their family. One tragic example was Rwanda and the subsequent exodus of the Hutu population into what was then Zaire in the mid-1990s.

Protocol II's provisions on children take account of this greater vulnerability. They stipulate that children must be provided with the care and aid they require, and in particular with an education, including religious and moral education, in keeping with their parents' or guardian's wishes.

All appropriate steps must be taken to facilitate the reunion of families temporarily separated. Many will recall the efforts made by humanitarian organizations such as Save the Children, the United Nations High Commissioner for Refugees and the International Committee of the Red Cross to that end during the crises in Rwanda and Kosovo.

Where necessary, measures should be taken to remove children temporarily out of conflict areas to safer places. This should be done, whenever possible, with their parents' or guardian's consent. The move should be within the same country and the children should be accompanied by persons who are responsible for their safety and well-being.

Children under 15 must not be recruited into the armed forces or groups or allowed to take part in hostilities. (Note that this is stronger language than that used by the rules governing international armed conflicts, which mention "all feasible measures" to ensure children under 15 do

not take part). If, despite this rule, children do take part in hostilities and are captured, they remain fully protected by the law.

GP II, Art. 4 (3) (a)-(e)

### The treatment of internees and detainees

#### [Slide 6]

Protocol II seeks to provide for the proper treatment and care of all those in the hands of an opponent or whose liberty has been subjected to any restriction, for reasons related to the armed conflict.



The wounded and sick are to be treated humanely and receive such medical care as their condition requires, without discrimination; in particular, the fact that they fought on the other side must in no way lead to their being treated less well than their condition demands. The only grounds for discrimination are medical, i.e. the severity of the illness or the wound.

All persons deprived of their liberty must receive food and water and enjoy safeguards in terms of health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict. They must be allowed to receive individual and collective relief, including, for example, from local organizations such as the Red Cross or Red Crescent Society. They must be allowed to practise their religion and, if they so request, to receive spiritual assistance from those performing religious functions. If made to work, they must benefit from the same working conditions and safeguards as those enjoyed by the local civilian population.

GP II, Art. 5 (1) (a)-(e)

The authority responsible for the detention or internment is under the obligation, unless family members are detained together, to hold men and women separately, with women under the direct supervision of members of their own sex.

All persons deprived of their liberty are entitled to send and receive letters and cards, subject to any restriction in quantity the detaining authority considers necessary.

Places of internment or detention must not be located close to the combat zone. If they become particularly exposed to danger, the detainees must be evacuated to safer places, if their evacuation can be carried out under adequate conditions of safety.

Detained and interned persons must receive the benefit of medical examinations. Their physical and mental health and integrity must not be endangered by any unjustified act or omission. In particular, they

must not be subjected to any medical procedure which is not indicated by their state of health and which is not consistent with generally accepted medical standards.

GP II, Art. 5 (2) (a)-(e)

When detained and interned persons are released, the holding authority is obliged to take the steps necessary to ensure their security, which may well be gravely endangered if they are released among those loyal to that authority.

GP II, Art. 5 (4)

### Trial and punishment: restrictions and guarantees

As regards the trial and punishment of those charged with criminal offences related to the conflict, no sentence shall be passed or penalties executed for offences related to the conflict except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality.

GP II, Art. 6 (2)

#### **In particular, the accused must:**

- be informed of the particulars of the offence with which they have been charged and before and during their trial be given all the necessary rights and means of defence;
- not be convicted of an offence except on the basis of individual penal responsibility;
- not be found guilty of an act which was not an offence at the time it was committed;
- not be given a punishment more severe than that which was applicable at the time the offence was committed; if, after the offence was committed, a lighter punishment was introduced, the accused should benefit from it;
- be presumed innocent until proven guilty;
- have the right to be present at the trial;
- not be compelled to testify against themselves or to confess guilt.

Convicted persons must be informed of the judicial or other remedies and the time limits involved (the right to appeal and how long they have to do it).

GP II, Art. 6 (3)

The death penalty must not be pronounced on persons who were under the age of eighteen years at the time of the offence and must not be carried out on pregnant women or mothers of young children.

GP II, Art. 6 (4)

### Amnesty encouraged

In an effort to try and speed up a return to normality once the hostilities have ended, the authority in power must try to grant the broadest possible amnesty to persons who have participated in the conflict or been deprived of their liberty for reasons related to it.

GP II, Art. 6 (5)

### The wounded, sick and shipwrecked

The rules here are essentially the same as those applicable in international armed conflicts. This is a good opportunity to review them.

[ Slide 7 ]

**Protection and care** – the wounded, sick and shipwrecked must be respected and protected. They must be treated humanely in all circumstances. Every effort must be made to ensure they receive prompt medical assistance based on their needs and the severity of their wounds, not on whether they are on your side or your opponent's.



GP II, Art. 7

**Search** – whenever circumstances permit and particularly after any engagement, every effort must be made, without delay, to search for and collect the wounded, sick and shipwrecked. They must be protected against pillage and any ill-treatment. The dead must be collected, the bodies must not be despoiled and they must be decently buried.

GP II, Art. 8

It is also sensible military practice to try and identify bodies before burial or cremation and record the details for the civil authorities.

[ Slide 8 ]

**Medical and religious personnel** must be respected and protected at all times. They must be given all available assistance to carry out their duties. They must not be compelled to carry out duties which are not compatible with their humanitarian mission. Medical personnel must not be required to give priority to any person except on medical grounds.



GP II, Art. 9

**General protection of medical duties** - under no circumstances must any person be punished for having carried out medical duties compatible with medical ethics. No medical personnel may be compelled to perform acts contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics, or any other rules in the Protocol relating to



the care of the wounded and sick. This provides further protection against medical personnel in non-international armed conflicts resorting to medical experiments on those in their care.

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**Medical units and transports** are protected at all times and must not be attacked. As in international armed conflicts, protection ceases if the units or transports are being used for hostile purposes outside their purely humanitarian function, but not before adequate warning has been given allowing them time to react and comply and only if the warning goes unheeded.

[Slide 10]

**The distinctive emblem** – subject to the authorization and supervision of the competent authorities, the emblem of the red cross, red crescent (or red lion and sun) may be displayed on buildings and vehicles and worn by medics and religious personnel. It must be respected in all circumstances and must not be used improperly.

The use of the emblem is optional; medical personnel and medical units and transports are protected in any event (see Arts. 9 and 11). However, it is in the direct interest of those enjoying protection to ensure that they can be identified, not only by the adverse party, but also by the armed forces or armed groups of their own side, particularly in a non-international armed conflict where, in most cases, the area of confrontation and front lines are not well defined or shift frequently.

### The civilian population

**Protection of the civilian population** – in non-international armed conflicts civilians are to be protected against the dangers arising from the fighting. The same rules apply as in international armed conflicts.

**The civilian population as such and individual civilians must not be made the object of an attack.**

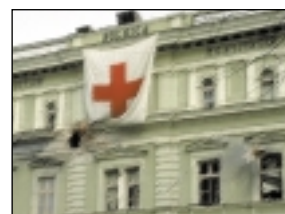
**Acts or threats of violence against them, the primary aim of which is to spread terror, are prohibited.**

**Civilians enjoy all the protection mentioned above, unless and for such time as they take a direct part in hostilities.** We will return to this point later and also clarify exactly how soldiers should deal with members of an armed opposition group.

GP II, Art. 10



GP II, Art. 11



GP II, Art. 12

GP II, Art. 13

**Civil defence personnel, facilities and equipment** are not mentioned in the rules governing non-international armed conflicts. However, as civilian organizations they must be protected and opposition groups must allow them to get on with their work unhindered. Similarly, military personnel assigned solely to civil defence tasks must be respected by opposition groups and protected. While on assignment they should wear the international distinctive sign for civil defence.

**Protection of objects indispensable to the survival of the civilian population** – starvation of civilians as a method of combat is prohibited. It is prohibited to attack, destroy, remove or render useless for that purpose, objects considered indispensable to the survival of the civilian population such as foodstuffs, agricultural areas, livestock, drinking water installations, irrigation works and similar objects.

As in international armed conflicts, **it is prohibited to attack:**

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- **works and installations containing dangerous forces;**

[Slide 12]

- **cultural objects and places of worship, or to use these in support of military operations.**

**Prohibition of forced movement of civilians** – civilians must not be displaced unless it is for their own security or for reasons of imperative military necessity. In that case, all possible measures must be taken to ensure that satisfactory arrangements are made in the new location for shelter, hygiene, safety and nutrition. It is also forbidden to compel civilians to leave their own territory for reasons connected with the conflict.

**Relief societies and relief action** – relief societies such as the National Red Cross or Red Crescent Society located in the country may offer their services to the victims of the conflict.

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Similarly, as we mentioned in relation to common Article 3, the International Committee of the Red Cross may offer its services to the

GP II, Art. 14



GP II, Art. 15



GP II, Art. 16  
HCCP, Art. 19

GP II, Art 17

GP II, Art. 18



parties to the conflict to distribute relief supplies, visit detainees in accordance with the ICRC's standard procedure, provide medical assistance, etc.

#### 4. COMPLETING THE PICTURE

We have just about covered all the rules relating to non-international armed conflicts. As you can see, there may be slight differences in emphasis when it comes to, for example, the protection of children or terminology. Overall, however, there is nothing really new.

But as soldiers do we really have the full picture? Are there some gaps that need to be filled in before we are confident that we can deal with this type of conflict?

**What of combatant status?** As a soldier, how do I deal with those who take up arms against the armed forces of my country?

As you might have picked up, the law does not tell us very much about the **conduct of operations**.

In general, it is silent on **weapons** in non-international armed conflicts.

**Customary international law** has been mentioned. What gaps does it fill in the overall picture?

Finally, what about **breaches** of the law?

**Let us now close these gaps and complete the picture.**

#### MEMBERS OF OPPOSITION GROUPS AND CIVILIANS TAKING PART IN MILITARY ACTION

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As soldiers, you will need to know how to deal with members of opposition groups and civilians who take up arms against you.

**Combatant status does not apply** – a striking feature of the rules governing non-international armed conflicts is that they do not establish combatant status. The reason is that national legislation makes rebellion a crime and on that basis no one has the right to “participate in hostilities”, which as we know is an essential feature of combatant status. The legitimate armed forces of the State may of course fight a rebellion under domestic legislation, but those they oppose, for the reasons outlined above, do not have the right to take up arms.

In non-international armed conflicts, soldiers may be placed in a rather difficult position. The situation is by no means as clear-cut as in

international armed conflicts, where combatants normally wear uniforms and insignia and carry their arms openly. In an internal armed conflict, opposition fighters might indeed do just the contrary.

**The important point for us to understand is that the law of non-international armed conflict does not protect people on the basis of their status but rather of their actual activities.**

So we come back to the law, both customary international law and the law of non-international armed conflict mentioned above.

**A distinction must be made between those who take a direct part in hostilities and may therefore be attacked (during the time of their participation), and those who do not and are therefore protected from attack.**

GC I-IV,  
common Article 3  
GP II, Art 13 (3)

The following are some examples of opposition fighters considered to be taking a direct part in hostilities:

- those attacking a government position;
- those laying an ambush against government forces;
- those caught transporting arms and ammunition, for example at a road block;
- those caught in an opposition base and who might be fighting to defend their position;
- snipers engaging your forces.

There are a number of consequences. As far as the opposition is concerned, remember that opposition fighters attacking you have not committed a war crime or violated the law of armed conflict. Under domestic legislation, however, the same act regularly constitutes a serious crime.

A soldier who kills a dissident in circumstances that are not clear cut (there is some doubt as to whether the dissident was actually taking a direct part in hostilities) may have to justify what he did in a national court and may be liable to a charge of homicide.

The captured member of a dissident force is not entitled to POW status. He or she must be dealt with according to the law of the State and the provisions of common Article 3 and Protocol II discussed above.

Soldiers captured by the dissidents are not entitled to POW status either. The dissidents must, however, treat them as laid down in common Article 3 and Protocol II.

**In either case, the captives should be given treatment equivalent to that accorded to POWs.**

## THE CONDUCT OF OPERATIONS IN NON-INTERNATIONAL ARMED CONFLICTS

The remaining sections of this lesson are very much a repetition of earlier lessons on basic terminology, conduct of operations and weapons. As such, the points are made in outline only. If you feel more detail is required or if you want further information, please refer to the relevant lessons.

Customary international law dictates how military operations are to be conducted. The basic rules contained in Lessons 3 and 4 on the conduct of hostilities must be applied. We will not repeat the whole lesson, but it is of the utmost importance that the forces involved in non-international armed conflict situations be aware of the key rules.

**Remember, when we use the term “attack” we are referring to all phases of warfare that involve acts of violence against the opponent – offence and defence, siege and manoeuvre.**

**Never make the civilian population as such or individual civilians taking no direct part in hostilities the object of an attack.**

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Always **distinguish** between civilian objects and military objectives.

**Indiscriminate attacks** are prohibited.

**Proportionality in attack** – it is prohibited to launch an attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination of these, which would be excessive in relation to the concrete and direct military advantage anticipated.

**Precautions in attack** – means and methods of warfare must be chosen that avoid or at least minimize incidental loss of civilian life, injuries and damage to their property. Remember to consider the timing and direction of the attack, the choice of precision weapons, etc. All will help minimize unnecessary damage and destruction. Check that targets are military objectives and not specially protected. Cancel or suspend an attack if it becomes apparent that the objective is not a military one or is specially protected, or that the attack would cause disproportionate collateral damage. If you have a choice of targets and each gives you the same tactical advantage, choose the one that will cause the fewest civilian



casualties and least damage. Always try to give advance warning prior to an attack that will affect the civilian population.

**Precautions against the effects of attack** – each party must take feasible precautions to protect the civilian population and civilian objects under its control against the effects of attack. Take all feasible measures to avoid locating military objectives within or near densely populated areas or objects of special protection. Try by all feasible means to remove protected persons and objects from the vicinity of military objectives.

**Human shields** – it is prohibited to use protected persons as human shields.

**Protected zones** – the rules on protected zones applicable in international armed conflicts should be applied by analogy.

**Deception – ruses of war** are allowed, but **perfidy** is prohibited.

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**The white flag** – The rules regarding the use of this customary tool of warfare are the same as in international armed conflicts.



**Pillage** is prohibited.

**Reprisals** are severely restricted in international armed conflicts, but the concept does not apply in non-international armed conflicts as such. Reprisals can never be used to justify unlawful conduct in non-international armed conflicts.

## THE LAW IN RELATION TO WEAPONS

As we mentioned at the beginning of this lesson, it would be illogical for States to use weapons within their own territory and yet prohibit or limit their use in international conflicts. Despite this, States have systematically refused to accept proposals explicitly extending such prohibitions to non-international armed conflicts. Recently, however, there has been a slight shift in attitude.

**The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996 (Protocol II)**, also applies to non-international armed conflicts. It bans in particular anti-personnel landmines which are undetectable and remotely delivered anti-personnel mines without self-destruct/deactivating mechanisms.

**The Ottawa landmines treaty of 1997** bans anti-personnel landmines in both international and non-international armed conflicts.

In addition, international customary law provides in general that it is prohibited:

- to use weapons of a nature to cause unnecessary suffering or superfluous injury;
- to use weapons which by their nature are indiscriminate.

It is explicitly prohibited to use the following weapons:

**[ Slide 16 ]**

- poison or poisoned weapons;
- chemical weapons, including riot control agents;
- biological weapons;
- bullets that explode in the human body;



**[ Slide 17 ]**

- expanding bullets;
- weapons primarily designed to injure by non-detectable fragments;
- blinding laser weapons.



The use of weapons is further governed, in particular, by the following restrictions:

- landmines may not be used indiscriminately;
- minefields must be mapped and recorded;

**[ Slide 18 ]**

- incendiary weapons may not be used where there is no clear separation between your opponent and civilians;



**[ Slide 19 ]**

- objects entitled to special respect under the law of armed conflict must not be booby-trapped and booby traps may not be used in circumstances in which civilians or other protected persons are likely to be killed or injured.



## BREACHES OF COMMON ARTICLE 3 AND ADDITIONAL PROTOCOL II

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Lastly, what does the law have to say about breaches and enforcement in non-international armed conflicts?

When the States adopted common Article 3 and Protocol II, they did not provide for the penal repression of violations thereof, again out of reluctance to see any interference in a State's internal affairs.

Today things have changed. As we have seen in this lesson, many of the rules governing non-international armed conflicts are recognized as being part of customary international law, common Article 3 in its entirety. The concept of individual criminal responsibility in non-international armed conflicts has also become part of customary international law.

Violations of common Article 3 and many of the provisions of Protocol II committed by individual members of a party to an internal conflict are thus criminal offences under international law. Such crimes may be – and indeed are – already being tried by the international tribunals for Rwanda and the former Yugoslavia. The International Criminal Court will reinforce this trend. The 1998 Rome Statute of the International Criminal Court lists the violations of the law applicable in a non-international armed conflict.

It is recommended that the instructor highlight a selection of the serious violations and issue the remainder as a handout to the class. For ease of use, the list is given on a separate page.

**Questions from the class.**



### SERIOUS VIOLATIONS IN NON-INTERNATIONAL ARMED CONFLICTS

This following is an excerpt from the Statute of the International Criminal Court. It uses the paragraph numbering of the Statute for ease of cross-referencing if required.

#### ARTICLE 8 (2)

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

Taking of hostages;

The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as, riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or

peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

Pillaging a town or place, even when taken by assault;

Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

Killing or wounding treacherously a combatant adversary;

Declaring that no quarter will be given;

Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

**(f)** Paragraph 2(e) applies to armed conflict not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State where there is a protracted armed conflict between governmental authorities and organized armed groups or between such groups.

## APPENDIX

### Questions from the instructor to the class to consolidate the lesson

1. Rebel forces have secured the northern part of your country. Two villages on the new border between you and the rebels are being terrorized and used as a jump-off point for rebel operations against your forces. You are the military commander in the region. You decide to recommend to your superiors that the civilians from the border areas be evacuated.

- a. Is your recommendation legally sound?
- b. If your recommendation is agreed, how will you go about the evacuation?

### Answer

- a. Civilians must not be displaced unless it is for their own security or for reasons of imperative military necessity. In this case, the military commander is justified in recommending such action.
- b. The military commander should:
  - give ample warning to the villagers of the impending move;
  - provide every assistance possible to help them move, e.g. transport;
  - ensure that the new location has adequate shelter (tents might be required), is hygienic and safe and that adequate food is available/provided;
  - ensure that the move itself is conducted safely, perhaps by providing escorts;
  - ensure that the people are able to return to their villages as soon as the situation stabilizes.

2. Armed opposition fighters are cornered by your company in a deserted building. After a fierce gun battle in which three of your men are killed, a white flag appears from a window of the building. You hear one of your forward platoon commanders shout: "Ignore the white flag, these are traitors – continue firing!"

Do you agree with the platoon commander's decision?

### Answer

You should not agree. The white flag must be respected in non-international armed conflicts. Those showing it must be dealt with in exactly the same way as in international armed conflicts. You should countermand the order and allow the flag party to come forward under the rules we have already covered. They must be protected and must not be harmed.

3. The ICRC has no right to work in situations of non-international armed conflict, which are purely internal matters for the State. True or false?

**Answer**

Although the ICRC does not have the same right to intervene as it does in international armed conflicts, it may offer its services to the parties to the conflict. If they agree, then the ICRC can offer a range of services, from visiting those in detention to relief operations.

**SOME EXAMPLES OF RECENT NON-INTERNATIONAL ARMED CONFLICTS**

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You might as an instructor be asked to give examples of non-international armed conflicts. A non exhaustive list of recent examples are:

Liberia, Lebanon (1980s)

Chechnya, Congo, Rwanda, Somalia (1990s)

Afghanistan following the Russian withdrawal

Sierra Leone and Sri Lanka (ongoing at time of publication)



# LAND

