

International Law Relevant to UN PKO



Main Teaching Points (MTP)

- Background
- Origins
- Application of International Humanitarian Law
- Responsibilities: Individual, Commanders, States
- The International Humanitarian Law
- The Law of Armed Conflict



Background

- International Humanitarian Law (IHL) also known as:
 - Law of Armed Conflict (LOAC)
 - Law of War
- Is law that applies in times of armed conflict
- Aims to limit the negative impact of armed conflict, especially on civilians
- Protects persons who are not (or are no longer) participating in the hostilities
- Also restricts the means and methods of warfare



Origins of International Humanitarian Law



Battle of Solferino - 1859



Jean Henri Dunant
(1828-1910)

Origins of International Humanitarian Law

- Modern international humanitarian law is made up of two historical streams:
 - The law of Geneva, or humanitarian law; and
 - The law of The Hague, referred to in the past as the law of war proper.
- The Hague Conventions of 1899 and 1904 limited the means by which belligerent states could conduct warfare
- The Charter of the United Nations (1945) stipulates that the threat or use of force against other states is unlawful, except in the case of self-defence
- Following World War II, the Geneva Conventions of 1949 further limited the means of warfare and provided protections to non-combatants, civilians, and prisoners of war



Origins of International Humanitarian Law

- In the aftermath of the atrocities of the Holocaust, the Genocide Convention of 1948 outlawed acts that were carried out with the intention of destroying a particular group.
- Sources of International Humanitarian Law:
 - Customary International Humanitarian Law; and
 - Treaties and International Accords



Application of International Humanitarian Law?

- IHL applies only during times of armed conflict.
 - “Armed conflict” divided into sub-parts:
 - “International armed conflict” involves conflict:
 - Between two or more nations; and
 - For national liberation from colonial powers, occupation by alien forces and against racist regimes.
 - “Non-international armed conflict” involves conflict:
 - Between governmental forces and insurgents inside their country; and
 - Between various rebel forces fighting inside their country.



Application of International Humanitarian Law?

- Applies to the United Nations (UN) and UN peacekeeping personnel if UN forces are considered to be parties to the conflict
- If UN forces deployed in a context of armed conflict, but are not themselves involved in hostilities, they are considered civilians under IHL and are protected as such.
- The rules and principles of international humanitarian law also apply to UN peacekeeping forces.
- UN military personnel who violate international humanitarian law are subject to prosecution in their national courts.



Individual Responsibility

- Every member of a nation's armed forces, regardless of rank, has a personal responsibility to comply with International Law;
- Serious violations may be considered as war crimes;
- Could be tried at home or internationally



Commander's Responsibility

- Commanders have a duty to:
 - Ensure that their subordinates are trained and understand IHL and LOAC;
 - Give lawful and unambiguous orders;
 - Ensure that their orders are lawfully carried out by their subordinates; and
 - Report all violations (Friendly and Enemy).
- Commanders may be held to account under criminal law.



State Responsibility

- States signatory to the Geneva Conventions are responsible for all acts committed by its armed forces even if their national units are under the command of another country for a Peace Support Operation



Essential Rules of IHL

- Civilian targets cannot be attacked. Attacks only against military objectives
- Civilians and anyone no longer taking part in hostilities must be respected and treated humanely
- Anyone who surrenders or stops fighting cannot be killed
- Torture is prohibited at all times and in all circumstances
- Captured combatants and civilians must be respected and protected



Essential Rules of IHL

- Weapons or methods of warfare that are likely to cause excessive injury or unnecessary suffering are forbidden
- Wounded and sick must be collected and cared for

Medical personnel and medical establishments, transports and equipment must be respected and protected

- Red Cross and Red Crescent emblems are signs of protection and must be respected



The Law of Armed Conflict (LOAC)

Aim: To reconcile the military needs dictated by the tactical situation and the fulfilment of the mission while limiting and reducing as much as possible suffering and destruction.



Primary Concepts of LOAC

- Military necessity
- Humanity
- Chivlry



Distinction

An attack is legitimate:

- Against persons and objects that by nature, location, purpose and use contribute to a military effort
- And whose partial or total destruction, neutralisation or capture offers a definite military advantage in those circumstances



Distinction

Thus, military objectives are:

- Combatants
- Compounds, positions or buildings where combatants and their material are located
- Vehicle carrying combatants and their material
- Any other object used for military purpose



Distinction

Implications : Categorisation between who and what may be attacked and who and what may not be attacked

Combatants can be:

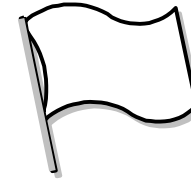
- Armed and security forces
- Resistance movements
- Militias
- Rebel movements
- Distinguish themselves from civilians somehow
- Civilians and direct participants
- Or simply carrying weapons openly and fighting



Principles of LOAC - Distinction

Protected Persons

- Person(s) no longer a participant:
 - Civilian population + Refugees + IDPs
 - Out of combat (wounded, POW, Shipwrecked)
- Persons/objects under special protection :
 - Civilian and military medical services
 - If captured => “retained” to care of the POW
 - Religious personnel If captured => “retained” to meet the spiritual needs of detainees
 - Bearer of red cross/crescent emblem
 - Members of the civilian defence (Slide 22)
 - Bearer of flag of truce



LE PERSONNEL SANITAIRE ET RELIGIEUX

Principles of LOAC - Distinction

Bearers of the emblem Red Cross / Crescent / Crystal

- Civilian and military medical personnel (doctors, nurses, first-aiders, dentists etc), equipment and facilities.
- ICRC and Red Cross personnel
- Military religious personnel or attached to civilian medical units

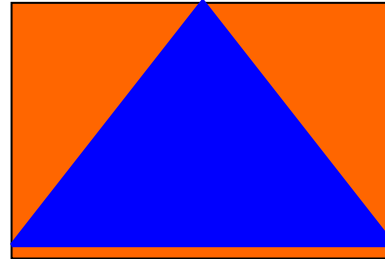


Note: Med personnel may be armed with light individual weapons for their own protection or for the protection of the wounded and sick in their care

Principles of LOAC - Distinction

Civil Defence

- Warning
- Evacuations
- Shelters
- Rescue
- Fire Fighting
- Medical Services
- Emergency Accommodation
- Emergency Disposal of Dead
- Emergency Repairs



May be armed with light individual weapons for their own protection and to maintain law and order

Principles of LOAC - Distinction

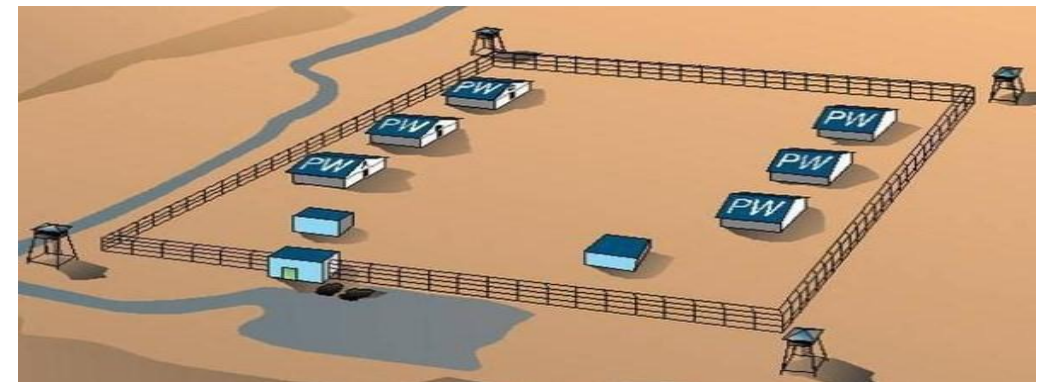
Protected Objects

Medical Buildings, facilities and vehicles

- Red Cross, Crescent, Crystal

Secure areas

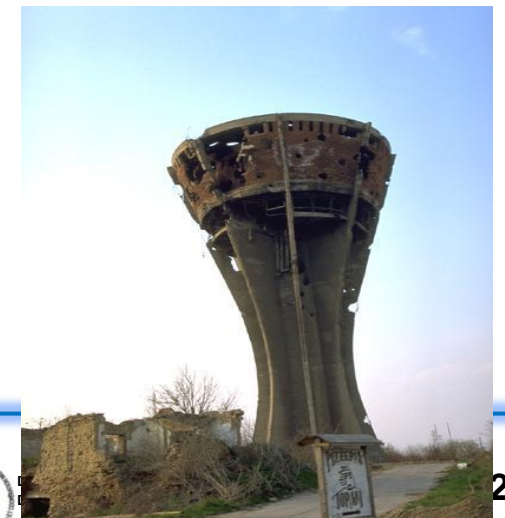
- Refugees, IDP Camps, Protected Zones, open city Camps for PW



Principles of LOAC - Distinction

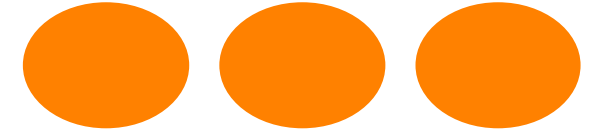
Protected Objects

- Civilian objects and property not used for military purpose and necessary for survival of the population
- Foodstuffs, agricultural areas, crops, cattle, livestock, water pumps, irrigation systems
- Other: houses, schools, bridges, roads



Principles of LOAC - Distinction

Protected Objects



Installations Containing Dangerous Forces.

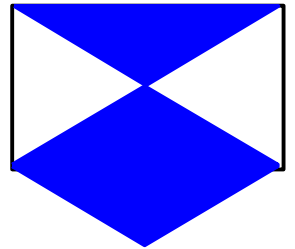
- Nuclear power stations, dams, dykes.
- Other NOT protected but precautions, ie deposit of oil, chemical plants, power plants, containing polluting Forces



Principles of LOAC - Distinction

Protected Sites

Cultural Property representing a high cultural or religious value, ie places of worship, historical monuments, archaeological sites, museums, archives, libraries, cemeteries.



Principles of LOAC - Proportionality

What does it mean?

An action is Proportionate when it doesn't cause

- Too much UNINTENDED collateral civilian casualties
- UNINTENDED damage excessive in relation to the expected military advantage

Offensive : Attack and conquer his objective WITH a minimum of victims and damage

Defensive : Adapt the reaction to the attack WITH a minimum of victims and damage

Principles of LOAC - Proportionality

Mines

- In the close vicinity of military objectives
- Take necessary measures to protect civilians e.g. warning signs, sentries, fences
- Detectable by standard equipment
- If possible with self-destruct devices and backup self-deactivation features
- Clear all mine fields as soon as the hostilities have ceased (Record and Map)



Principles of LOAC

Distinction



- Who and what I may attack?
- Who and what I may not attack?
- Who and what I have to protect?

Limitation



- What kind of means and methods I may use?
- What kind of means and methods are prohibited?

Proportionality



- How do I accomplish my mission without causing excessive damage?

Application of International Human Rights Law

Certain principles and rules (e.g. prohibition of torture or right to a fair trial) apply to all persons in all situations

Others human rights apply to those States which have ratified treaties

All UN entities must promote and protect human rights

UN peacekeeping should be conducted in full respect of international human rights law



Refugee Law and Guiding Principles on IDPs

International refugee law guarantees human rights of refugees and spells out obligations of States to protect refugees living in their territory.



Summary

- Compliance with the Law is likely to enhance its observance by the other parties or “other side”
- Violation of fundamental ethical and legal standards in situation of armed conflict, whether or not they are war crimes, have a disproportionate negative effect on the international and national public support



QUESTIONS ?



National
Defence

Défense
nationale

CANADIAN ARMY
COMMAND AND STAFF COLLEGE



COLLÈGE DE COMMANDEMENT ET
D'ÉTAT-MAJOR DE L'ARMÉE CANADIENNE



Directorate of Military Training and Cooperation – Canada
Direction de l'instruction et de la coopération militaire – Canada