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The Soldier's Handbook on the **Law of Armed Conflict** Applicable to Land Warfare

Canada 



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INTRODUCTION

When conducting land warfare, Canadian Armed Forces (CAF) members may not always have immediate access to legal advisors, particularly in the context of large-scale land warfare against a peer or near-peer State military.

The aim of the Soldier's Handbook on the Law of Armed Conflict Applicable to Land Warfare is to provide CAF members with a clear and concise summary of the Law of Armed Conflict (LOAC) rules that apply, and, when necessary, empower them to make LOAC-compliant decisions without the benefit of real-time legal support.

The Handbook complements existing LOAC doctrine, such as The Code of Conduct for CF Personnel (B-GG-005-027/AF-023) and The Law of Armed Conflict at the Operational and Tactical Level (B-GG-005-027/AF-021).

The Handbook is issued under the authority of the Judge Advocate General, who is the legal advisor to the Governor General, the Minister of National Defence, the Department of National Defence, and the CAF in matters relating to military law. Suggestions for modifications should be submitted to the Directorate of International and Operational Law at p-otg.jagdiol@forces.gc.ca.



LIST OF ACRONYMS

CAF	Canadian Armed Forces
CDS	Chief of the Defence Staff
DPH	Direct Participation in Hostilities
LEGAD	Legal Advisor
LOAC	Law of Armed Conflict (also known as International Humanitarian Law)
OJAG	Office of the Judge Advocate General
PW	Prisoner of War
ROE	Rules of Engagement



DEFINITIONS TABLE

Term	Definition	Ch #
Attack	An act of violence against the enemy, whether in the context of offensive or defensive military operations.	5
Civilian	Anyone who is not a combatant.	3
Civilian Object	Any object that is not a military objective.	4
Combatant	In general, “combatant” is to a member of the armed forces of a party to an international armed conflict.	3
Detainee	Anyone not consensually in the care, custody or control of a party to an armed conflict.	8
<i>Hors de combat</i>	A combatant who: • has fallen into the hands of the enemy force; • clearly expresses an intention to surrender; <u>or</u> • is incapable of defending themselves because of wound <u>or</u> sickness; <u>and</u> who abstains from any act of hostility and does not attempt to escape.	3



Term	Definition	Ch #
Military objective	Any object that: • effectively contributes to enemy military action because of its nature, location, purpose <u>or</u> use; <u>and</u> • offers a specific military advantage if totally or partially destroyed, captured <u>or</u> neutralized.	4
Wounded and sick	Any person: • whether military or civilian; • who is in need of medical assistance or care due to trauma, disease, physical or mental disorder or disability; <u>and</u> • who refrains from any act of hostility.	7

CHAPTER 1

LOAC FUNDAMENTALS

SECTION 1

INTRODUCTION

1. LOAC is the body of international law that regulates the conduct of hostilities during armed conflict. LOAC is found in international agreements, such as the 1949 Geneva Conventions and their Additional Protocols, as well as in customary international law. LOAC places obligations on Canada when Canada is a party to an armed conflict. The Government of Canada meets these obligations by ensuring that CAF members respect LOAC.
2. In any given instance, the specific LOAC obligations that apply will depend in part on the nature of the armed conflict and the domain in which it is being fought. This Handbook focuses on LOAC applicable to land warfare during traditional State-on-State armed conflict, also known as international armed conflict.

SECTION 2

LOAC PRIMARY CONCEPTS

3. Two primary concepts underpin LOAC: military necessity and humanity. LOAC is often described as a “balancing” of these two concepts.
4. Military necessity is the concept that parties to armed conflict are justified in using force that is necessary to make the enemy submit at the earliest possible moment and with the least possible cost in terms of lives and

resources. Military necessity does not justify violation of LOAC.

5. Humanity is related to military necessity and is the concept that parties to armed conflict are forbidden from inflicting suffering, injury or destruction that is unnecessary to make the enemy submit.

SECTION 3 APPLYING LOAC

6. In applying LOAC, CAF members will be required to make decisions in urgent and difficult circumstances. CAF members will not be held to a standard of perfection in reaching such decisions. Ultimately, what is required is that CAF members make each decision honestly and reasonably based on the relevant information available at the time.

SECTION 4 RELATIONSHIP BETWEEN LOAC AND RULES OF ENGAGEMENT

7. Rules of engagement (ROE) are orders specifying when CAF members may use force in the context of specific operations, including operations to which LOAC applies. ROE are binding on CAF members and CAF members must obey them.
8. ROE will be consistent with LOAC but are not a source of LOAC. ROE will not authorize the use of force in violation of LOAC. However, ROE may be more restrictive than LOAC if political, diplomatic, operational or other factors so require.

CHAPTER 2 RESPONSIBILITIES OF COMMANDERS

SECTION 1 RESPONSIBILITIES

1. CAF commanders must comply with LOAC and ensure that those they command comply with LOAC. In particular, CAF commanders must:
 - respect LOAC;
 - ensure that those they command are aware of their LOAC obligations;
 - prevent those they command from breaching LOAC;
 - report potential breaches of LOAC to competent authorities; and
 - address breaches of LOAC when they occur (e.g. take disciplinary and/or penal action).¹
2. CAF commanders who fail to meet these responsibilities may face disciplinary and/or penal consequences.²

SECTION 2 LEGADs

3. CAF commanders have access to legal advice to support them in meeting their responsibilities. Legal Advisors (LEGADs) from the Office of the Judge Advocate General (OJAG) provide advice and support to CAF commanders on the application of LOAC and on the appropriate LOAC training to be given to CAF members.³

SECTION 3 PRACTICAL CONSIDERATIONS

4. In meeting their LOAC responsibilities, CAF commanders are expected to:
 - plan for LOAC compliance by integrating LOAC into all phases of an operation from planning to execution, and by anticipating and preparing for LOAC scenarios that may arise;
 - train subordinates on their LOAC obligations through the use of scenario discussions or other means that encourage and empower them to confidently apply LOAC consistent with their commander's intent, especially in situations with no clear-cut answers; and
 - establish necessary procedures to keep informed of and to address matters under their command, including those aspects of an operation that may pose an elevated risk of LOAC violations, such as detention.

SECTION 4 INTEROPERABILITY

5. Not all States are party to the same LOAC treaties as Canada. In some cases, LOAC obligations that apply to CAF members may differ from those that apply to allied or partner forces. To facilitate interoperability, CAF commanders should take steps to understand these differences and appropriately factor them into training and operational planning.
6. CAF commanders who become aware of potential LOAC violations by allied or partner forces are to report these up the CAF chain of command. Orders will specify any additional direction and guidance that may be necessary to address the context of specific operations.

CHAPTER 3 PEOPLE

SECTION 1 INTRODUCTION

1. In general, every person in an international armed conflict is either a combatant or a civilian. Different rights, obligations and protections apply to combatants and civilians under LOAC.

SECTION 2 COMBATANTS

DEFINITION

2. In general, combatants are members of the armed forces of a party to the international armed conflict.
3. In certain circumstances, members of militia or other groups may also qualify as combatants. Orders and ROE will specify when this is the case.⁴
4. CAF members are combatants.

PRIMARY RIGHTS, OBLIGATIONS AND PROTECTIONS

5. Combatants generally have the right to participate in hostilities. They cannot be held criminally or civilly liable for conduct that is lawful under LOAC. However, CAF commanders may limit the ability of CAF members to participate in hostilities via orders and ROE if operational or other factors so require.⁵

6. Combatants may be lawfully attacked anywhere and at any time (e.g. when sleeping), with one exception. Combatants may not be attacked if they are hors de combat.
7. Combatants are *hors de combat* if they:
 - have fallen into the hands of the enemy force (e.g. detained);
 - clearly express an intention to surrender; or
 - are incapable of defending themselves because of wounds or sickness;

and provided that they abstain from any act of hostility (e.g. attacking or directing attacks on the enemy; passing intelligence on enemy positions to their own forces) and do not attempt to escape (see Ch 7).
8. Combatants may be detained at any time to prevent their further participation in hostilities. If detained, combatants are entitled to prisoner of war (PW) status (see Ch 8).

MEDICAL AND RELIGIOUS PERSONNEL

Different rules apply to military members who are exclusively assigned to medical or religious duties, whether on a permanent or temporary basis.

Military medical and religious personnel do not have the right to participate in hostilities. However, military medical personnel may carry and use small arms for self-defence or the protection of their patients. CAF policy is that CAF religious personnel will not bear arms.⁶

Military medical and religious personnel may not be attacked, with one exception. They may be lawfully attacked if they commit acts of hostility outside their humanitarian functions (e.g. performing non-medical/religious duties such as reconnaissance). However, they may only be attacked after a warning has been given and ignored.⁷

To reduce the risk of misidentification, military medical and religious personnel generally wear a distinctive emblem consisting of the Red Cross, Red Crescent or Red Crystal (see below). CAF medical and religious personnel wear the Red Cross.⁸

If detained, permanent military medical and religious personnel must be returned to their armed forces unless they are retained to provide care to PWs. Temporary military medical and religious personnel become PWs.⁹



SECTION 3 CIVILIANS

DEFINITION

9. A civilian is any person who is not a combatant.

PRIMARY RIGHTS, OBLIGATIONS AND PROTECTIONS

10. Civilians do not have the right to participate in hostilities and may be held criminally and civilly liable for doing so.
11. Civilians may not be attacked, with one exception. Civilians may be lawfully attacked if they directly participate in hostilities (DPH), but only for such time as they do so. For examples of DPH, see below.
12. Unlike combatants, who may be detained based on their status alone, civilians may only be detained in certain circumstances (e.g. if they pose a threat to force protection or mission success or to prevent them from further participation in hostilities). Orders and ROE will specify any additional direction and guidance that may be necessary to address detention of civilians in the context of specific operations.
13. If detained, civilians are generally not entitled to PW status (exceptions include civilians with authorization to accompany the armed forces, such as war correspondents, supply contractors and members of services responsible for armed forces welfare). However, detainees must always be treated humanely.¹⁰

CIVILIANS DIRECTLY PARTICIPATING IN HOSTILITIES

LOAC does not provide set criteria for determining when conduct amounts to DPH. However, violence is not necessarily required. Ultimately, each decision must be made honestly and reasonably based on the information available at the time. The following examples are intended to assist CAF members with applying their judgment.

The following are examples of conduct that will generally be considered DPH:

- attacking enemy forces, their property or materiel, including by means of drone, cyber or other emerging technology;
- deploying to a position of attack;
- exfiltrating from an attack; and
- planning, directing or approving military operations.

The following are examples of conduct that will generally not be considered DPH:

- sympathizing with the enemy;
- failing to prevent enemy activity;
- failing to report enemy activity; and
- the mere distribution of enemy propaganda.

Civilians who DPH on a repeated basis may lose their protection from attack indefinitely. However, they can regain it by clearly withdrawing from hostilities (e.g. by abstaining from hostilities for a prolonged period).

Orders and ROE will specify any additional direction and guidance that may be necessary to address the context of specific operations.

ANNEX A – SUMMARY TABLE – PEOPLE

Type of person	Right to DPH?	May be lawfully attacked?	PW status	Comments
Combatant	Yes	Yes, unless <i>hors de combat</i>	Yes	
Civilian Includes: 1. civilian medical and religious personnel; 2. humanitarian relief personnel; 3. journalists; 4. civilians authorized to accompany the armed forces, such as war correspondents; supply contractors; and members of services responsible for armed forces welfare; and 5. mercenaries	No ¹	No Exception: if and for such time as they DPH	No ²	¹ Can be prosecuted for the mere participation in hostilities ² No.4 entitled to PW status.

Type of person	Right to DPH?	May be lawfully attacked?	PW status	Comments
Medical and religious personnel	Military	No Exception: if they commit acts of hostility outside their humanitarian function ¹	If <u>permanent</u> : No ² If <u>temporary</u> : Yes	¹ Protection ceases only after a warning has been given and ignored. ² Considered retained personnel.
	Civilian	No Exception: if and for such time as they DPH ¹	No	¹ Protection ceases only after a warning has been given and ignored.

ANNEX B – SUMMARY GRAPHIC – PEOPLE

PEOPLE

3

Civilian

- No right to directly participate in hostilities
- Protected from attack unless they DPH
- Can be prosecuted for doing so
- No PW status (see exceptions in Annex A)



Combatant

- Right to directly participate in hostilities
- Cannot be prosecuted for doing so
- May be lawfully attacked unless *hors de combat*
- Entitled to PW status



CHAPTER 4 OBJECTS

SECTION 1 INTRODUCTION

1. In general, every object in an international armed conflict is either a military objective or a civilian object.
2. The status of an object determines the protections that apply to it under LOAC.

SECTION 2 MILITARY OBJECTIVES

DEFINITION

3. A military objective is any object that:
 - (1) effectively contributes to enemy military action because of its nature, location, purpose or use; and
 - (2) offers a specific military advantage if totally or partially destroyed, captured or neutralized.¹¹
4. In general, an object effectively contributes to enemy military action because of its:
 - nature if the object is fundamentally military in character (e.g. military weapons, equipment, vehicles and bases);
 - location if the land or other area is militarily significant because it must be denied to the enemy or because the enemy must be made to retreat from it (e.g. an enemy staging ground); and
 - use or purpose if the enemy uses or intends to use the object for military reasons (e.g. a commercial airfield that the enemy is using or intends to use for military aircraft).¹²

5. The destruction, capture or neutralization of an object generally offers a specific military advantage if there is an honest and reasonable expectation, based on something more than speculation, that military action against the object will make a meaningful contribution to the success of the overall military operation. Military advantage can include a variety of considerations, including the force protection of the attacking armed forces.¹³

PRIMARY PROTECTIONS

6. Military objectives may be lawfully attacked anywhere and at any time.

MILITARY MEDICAL ESTABLISHMENTS

Different rules apply to military medical establishments.

Military medical establishments may not be attacked, with one exception. They may be lawfully attacked if they are used to commit acts of hostility outside their humanitarian function (e.g. a military hospital that the enemy is using as an operational headquarters). However, they may only be lawfully attacked after a warning has been given and ignored.¹⁴

To reduce the risk of misidentification, military medical establishments will generally display a distinctive emblem consisting of the Red Cross, Red Crescent or Red Crystal (see below). CAF medical establishments display the Red Cross.¹⁵



SECTION 3 CIVILIAN OBJECTS

DEFINITION

7. A civilian object is any object that is not a military objective.¹⁶

PRIMARY PROTECTIONS

8. Civilian objects may not be attacked.
9. However, if an object that is normally dedicated to civilian purposes is:
- being used in a way that effectively contributes to enemy military action (e.g. a school or a hotel being used as an enemy barracks); and
 - offers a specific military advantage if destroyed, captured or neutralized,

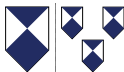
the object loses its protection from attack and becomes a military objective. This is the case even in so-called “dual-use” scenarios, where civilians continue to make use of the object (e.g. a bridge being used as a military line of communication, over which civilian traffic continues to pass).

SECTION 4 SPECIAL CASES

10. Stricter rules apply to certain objects of particular humanitarian significance or sensitivity, such as:
- dams, dykes and nuclear power stations;
 - foodstuffs, crops, livestock and drinking water;
 - hospitals; and
 - culturally or spiritually significant monuments, works of art and places of worship.



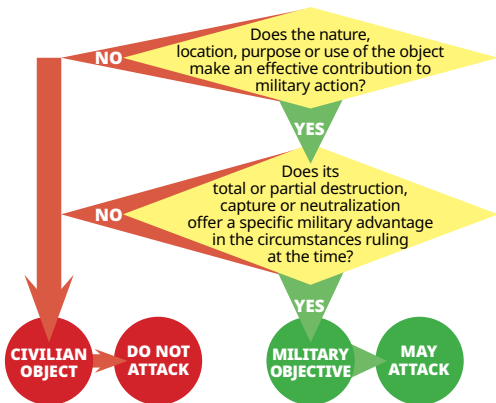
Dams, dykes and nuclear power stations



Cultural property

11. Orders and ROE will specify any additional direction and guidance that may be necessary to address these or other special cases in the context of specific operations.

ANNEX C – SUMMARY GRAPHIC - OBJECTS



CHAPTER 5

RULES OF COMBAT

SECTION 1

ATTACKS

1. An attack is an act of violence against the enemy, whether in the context of offensive or defensive military operations.¹⁷ Three primary rules govern attacks: distinction, precautions and proportionality. CAF members must apply the primary rules to all attacks against the enemy.

DISTINCTION

2. The rule of distinction requires that CAF members do everything feasible to verify that attacks are directed against people or objects that may be lawfully attacked under LOAC.
3. As explained in Chapters 3 and 4, the following people and objects may be lawfully attacked:
 - combatants (unless *hors de combat*);
 - civilians directly participating in hostilities (only for such time as they do so); and
 - military objectives.
4. CAF members must cancel or suspend an attack if they become aware that the person or object to be attacked is in fact protected. If in doubt, CAF members must consider the person or object as civilian and must not attack.¹⁸

PRECAUTIONS

5. The rule of precautions requires that CAF members take all feasible measures to avoid and in any event to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects – **“collateral damage”** – when conducting attacks.
6. Depending on the operational circumstances, examples of such measures could include:
 - conducting an attack at a time when civilians are less likely to be present; or
 - choosing a weapon that is less likely to cause collateral damage.
7. The rule of precautions also includes the requirement to provide the civilian population with advance warning of attacks that may affect them, unless operational circumstances do not permit. In some cases, the need to maintain the element of surprise may mean that the CAF cannot give a warning.¹⁹
8. CAF members must also take all feasible measures to protect civilians and civilian objects against the dangers of enemy attack. To the extent that operational circumstances permit, CAF members must avoid locating themselves, their equipment or their facilities within or near densely populated areas and must attempt to remove civilians and civilian objects from the vicinity of CAF operations.²⁰
9. The rule of precautions recognizes that it will not always be possible for CAF members to avoid collateral damage altogether when attacking. The mere fact that an attack

may cause collateral damage does not necessarily make the attack unlawful under LOAC. However, CAF members must ensure that the attack complies with the rule of proportionality.

PROPORTIONALITY

10. The rule of proportionality requires that CAF members refrain from conducting attacks that are expected to cause collateral damage that is excessive in comparison to the specific military advantage anticipated. There is no mathematical formula for determining proportionality. Ultimately, CAF members must make each assessment honestly and reasonably based on the relevant information available at the time, weighing the military interests anticipated to arise from the success of the attack on the one hand, against the expected civilian casualties and damage to civilian objects on the other.²¹
11. CAF members must cancel or suspend an attack if they become aware that collateral damage that was initially expected to be proportionate is likely to be excessive.²²

SECTION 2 OTHER TACTICS OF WARFARE

12. In addition to the primary rules of attack, LOAC also sets out other rules that complement or reinforce the primary rules and reflect LOAC's balancing of military necessity and humanity. For instance, LOAC prohibits certain tactics of warfare that undermine or are otherwise inconsistent with the concept of humanity and the protection that LOAC affords to civilians and combatants who are *hors de combat*.

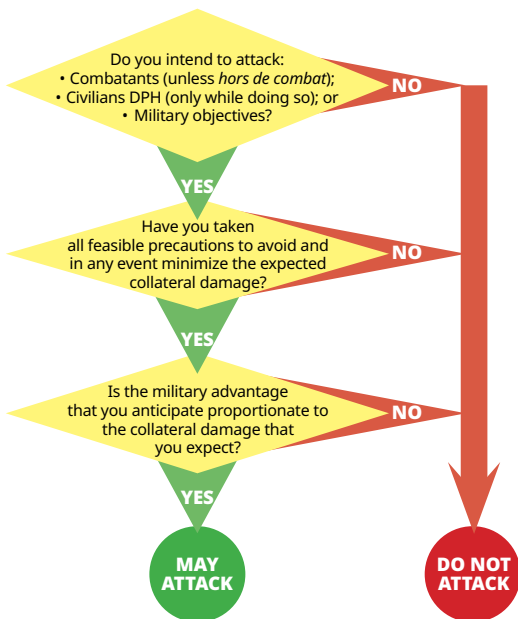
PERFIDY

13. LOAC prohibits killing, wounding or capturing the enemy by resort to perfidy. Perfidy involves inviting the enemy to believe that they are entitled to or are obliged to grant protection under LOAC, with intent to betray that belief (e.g. feigning intent to surrender; feigning incapacitation by wound or sickness; or feigning civilian status).
14. Perfidy is not to be confused with ruses of war. Ruses of war are permitted under LOAC. Ruses of war are acts that are intended to mislead the enemy but do not invite the enemy to believe that they are entitled to or are obliged to grant protection under LOAC (e.g. camouflage; decoys; mock operations; and misinformation).

OTHER PROHIBITIONS

15. Other prohibited tactics of warfare include:
 - denying or threatening to deny quarter (e.g. ordering, implying or encouraging that no prisoners will be taken);
 - improperly using recognized protective emblems, signs or signals, such as the Red Cross/Red Crescent/Red Crystal, the protective emblem of cultural property or the flag of truce; and
 - starving the civilian population.
16. LOAC also prohibits or restricts the use of certain weapons and ammunition. These are addressed in Chapter 6.

ANNEX D – SUMMARY GRAPHIC OF THE PRIMARY RULES



CHAPTER 6

WEAPONS AND AMMUNITION

SECTION 1 INTRODUCTION

1. LOAC limits the right of parties to armed conflict to choose means or methods of warfare.
2. Under LOAC, CAF members are prohibited from using certain weapons and ammunition where they are:
 - of a nature to cause unnecessary suffering or injury;
 - of an indiscriminate nature;
 - intended or may be expected to cause widespread, long-term and severe damage to the natural environment; or
 - because Canada has otherwise agreed not to use them.
3. LOAC also restricts CAF members' use of certain other weapons and ammunition.²³

SECTION 2 CAF-ISSUED WEAPONS AND AMMUNITION

4. Canada is obligated to review new weapons, means and methods of warfare for compliance with LOAC before they are authorized for CAF use. CAF commanders and members can have confidence that CAF-issued weapons and ammunition are lawful for use in their intended circumstances.²⁴

SECTION 3 PROHIBITED WEAPONS AND AMMUNITION

5. The weapons and ammunition that CAF members are prohibited from using under LOAC include:
 - explosive or flammable bullets under 400 grams weight (tracer rounds are not prohibited so long as they are used for marking);
 - bullets that expand or flatten easily in the human body (e.g. dum-dum bullets);
 - asphyxiating, poisonous or other gases;
 - poison or poisoned weapons;
 - chemical weapons (including the use of riot control agents when used as a method of warfare);
 - biological weapons;
 - weapons that injure by fragments that are undetectable by X-ray;
 - blinding laser weapons;
 - anti-personnel mines (unless they are manually or “command” detonated); and
 - cluster munitions.²⁵

SECTION 4 RESTRICTIONS ON THE USE OF LAWFUL WEAPONS AND AMMUNITION

6. Weapons and ammunition that CAF members may lawfully use but which are subject to restrictions under LOAC include: incendiary weapons, booby-traps, improvised explosive devices and mines.²⁶

7. Orders and ROE will specify the constraints and restraints applicable to the use of these weapons and ammunition when authorized for use in the context of specific operations.

SECTION 5

CAPTURED, IMPROVISED OR ALTERED WEAPONS AND AMMUNITION

8. During the conduct of hostilities, CAF members may capture weapons and ammunition from enemy forces. Operational circumstances may also lead CAF members to improvise or alter weapons and ammunition.
9. In normal circumstances, commanders should seek support from a LEGAD before authorizing the use of captured, improvised or altered weapons and ammunition. However, subject to orders, commanders may temporarily authorize the use of captured, improvised or altered weapons and ammunition without a formal legal review if urgent battlefield circumstances so require. They may only do so if satisfied that such use would comply with LOAC as set out in this chapter. For example, a commander would be required to deny authorization to use a weapon that has been altered for the purpose of increasing suffering.²⁷

SECTION 6

INTEROPERABILITY

10. In some cases, LOAC obligations that apply to CAF members' use of weapons and ammunition may differ from those that apply to the military forces of another State. For example, CAF members are prohibited from

using anti-personnel mines and cluster munitions because Canada is a party to the Anti-Personnel Mines Convention and the Cluster Munitions Convention. However, not all States are party to these conventions. For the military forces of those States that are not, the prohibition does not apply.

11. The fact that another State has not agreed to the same LOAC obligations as Canada does not necessarily prohibit the CAF from interoperating with the military forces of that State. However, certain constraints and restraints will apply. In the case of anti-personnel mines and cluster munitions, these are set out in standing CDS directives. Orders and ROE will specify any additional direction and guidance that may be necessary to address the context of specific operations.²⁸

CHAPTER 7

WOUNDED AND SICK

SECTION 1 DEFINITION

1. The term “wounded and sick” refers to any person:
 - whether military or civilian;
 - who is in need of medical assistance or care due to trauma, disease, physical or mental disorder or disability; and
 - who refrains from any act of hostility.²⁹

SECTION 2 HUMANE TREATMENT

2. All wounded and sick, whether civilian or combatant, are always entitled to humane treatment and respect for their dignity. In particular, CAF members must ensure that the wounded and sick who have fallen into the hands of the CAF are not subjected to: pillage; ill-treatment; torture; murder; extermination; biological experiments; or conditions that expose them to contagion or infection.

SECTION 3 SEARCH AND COLLECTION

3. Following combat, CAF members must without delay take all feasible measures to search for and collect the sick and wounded – whether friendly, enemy or civilian.³⁰ CAF members are not required to endanger their lives or the success of the mission to recover the wounded and sick.

4. CAF members may seek assistance from the local population and relief societies when necessary. The local population and relief societies must also be permitted to collect and care for the wounded and sick on their own initiative.³¹

SECTION 4 CARE

5. To the extent possible, CAF members must provide the wounded and sick with the medical care required by their condition. Priority of treatment must be based on medical reasons alone. There may be circumstances where a member of the enemy force must be treated before a CAF member.³²
6. Where the enemy force has left behind medical personnel and equipment to treat enemy wounded and sick, CAF members still have an obligation to provide any additional medical care and attention that may be required.³³

SECTION 5 PW STATUS

7. Wounded and sick combatants who fall into the hands of the enemy force become PWs. For more information on obligations towards PWs, see Chapter 8.³⁴

SECTION 6 ARRANGEMENTS

8. Subject to orders, CAF commanders may make arrangements with commanders of the enemy force for the exchange, removal and transport of the wounded

and sick from the battlefield. Local arrangements may also be made for the passage of medical and religious personnel and equipment on their way to besieged or encircled areas.³⁵

SECTION 7

OBLIGATION WHEN COMPELLED TO ABANDON WOUNDED AND SICK

9. If compelled to leave behind the wounded and sick (e.g. during a rapid withdrawal), CAF members must leave behind medical personnel and equipment to care for them unless it is not possible to do so.

SECTION 8

“MERCY KILLING”

10. CAF members are prohibited from killing a wounded or sick person to end their suffering. When dealing with grievously injured persons, CAF members must render whatever medical care and attention is possible in the circumstances.³⁶

SECTION 9

DEAD

11. CAF members must take all possible measures to search for the dead and to care for their remains. In particular, CAF members must:
 - examine bodies to confirm death and to establish and record identity;
 - refrain from cremating bodies except for reasons of hygiene or for motives based on the religion of the deceased;

- inter the dead individually and according to the rites of the religion to which they belong, to the extent possible; and
- mark gravesites so that they can always be found.³⁷

WOUNDED AND SICK VS *HORS DE COMBAT*

1. The mere fact that a combatant or a civilian directly participating in hostilities becomes wounded or sick (e.g. during a firefight) does not necessarily mean that they can no longer be attacked.
2. A combatant only becomes protected from attack if their wound or sickness leaves them incapable of defending themselves or if they otherwise become *hors de combat* through surrender or detention. A wounded or sick combatant remains liable to attack if they continue to fight or to engage in other acts of hostility (e.g. passing intelligence on enemy positions to their own forces) or if they attempt to escape.
3. For a civilian directly participating in hostilities, the question is whether, despite their wound or sickness, they continue to DPH. A civilian who is rendered unconscious while fighting becomes protected from attack.
4. In practice, it may be difficult for CAF members to determine the precise moment when a combatant has been rendered *hors de combat* or when a civilian has ceased to DPH because of wound or sickness. Ultimately, CAF members must make each assessment honestly and reasonably based on the relevant information available at the time.³⁸

CHAPTER 8

PRISONERS OF WAR AND OTHER DETAINEES

SECTION 1

INTRODUCTION

1. For the purposes of this Handbook, a detainee is anyone not consensually in the care, custody or control of a party to an armed conflict. Some allies and partners may use other terms (e.g. “captured person” or “CPERS”) or define the term detainee differently. Examples of detainees include combatants being held as PWs and civilians who have been apprehended for DPH.³⁹ For more examples of PWs, see Chapter 3, Annex A.
2. CAF commanders are expected to plan for how they will comply with LOAC obligations toward detainees in all phases of detention operations, including logistically.

SECTION 2

HUMANE TREATMENT

3. Detainees are always entitled to humane treatment and respect for their dignity. In particular, CAF members must ensure that detainees in the hands of the CAF are protected against: wilful killing; torture or inhuman treatment; violence, including rape and all forms of sexual violence and exploitation; intimidation; insults and public curiosity; and reprisals.⁴⁰
4. In general, the longer detainees are held, the greater the CAF's responsibility becomes to provide for their well-being and dignity.

SECTION 3 SEARCH AND INITIAL PROCESSING

5. When conducting searches, CAF members must respect the dignity of the detainee being searched. Searches must not be humiliating or embarrassing.
6. Detainees are entitled to keep their personal effects and protective equipment. Only articles posing a security risk may be confiscated.⁴¹

SECTION 4 QUESTIONING

7. CAF members authorized to question detainees must communicate with them in a language which they understand. CAF members are prohibited from using torture or any form of coercion to obtain information. This includes:
 - outrages upon personal dignity, including humiliation and degradation;
 - discriminatory treatment;
 - diet restrictions, sleep or sensory deprivation or manipulation;
 - use of animals for intimidation; and
 - any stress positions.⁴²

SECTION 5 BLINDFOLDS, EARMUFFS AND RESTRAINTS

8. CAF members may only employ blindfolds, earmuffs, restraints or similar measures when necessary for force protection or for the safety of the detainee. CAF members should never use them in a manner likely to cause pain, injury or impede breathing and never as a punishment. CAF members must not employ hooding.



9. Orders and ROE will specify any additional direction and guidance that may be necessary to address the context of specific operations.

SECTION 6 EVACUATION FROM THE COMBAT ZONE, STATUS DETERMINATION AND PROCESSING

10. CAF members must ensure that detainees are evacuated from the combat zone and away from danger as soon as possible, to a place where the necessities of life can be provided, where eligibility for PW or other status can be determined and where further processing can occur. Sick or wounded who would run a greater risk by being moved are an exception.⁴³

SECTION 7 TRANSFERS

11. The CAF is prohibited from transferring detainees to the authorities of a foreign State unless satisfied that the receiving State is willing and able to treat them humanely and respect applicable LOAC.⁴⁴
12. Orders and ROE will specify those States that are authorized for transfers in the context of specific operations as well as the detainee information that CAF members must collect before a transfer is made.
13. CAF members who become aware of mistreatment of transferred detainees must report this to the chain of command as soon as possible to ensure that the CAF can take necessary corrective action.⁴⁵

ENDNOTES

- ¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (AP I) Arts 85-87.
- ² AP I Art 86(2); Rome Statute of the International Criminal Court, Art 28; *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24, s 5; *National Defence Act*, RSC, 1985, c N-5.
- ³ AP I Art 82.
- ⁴ Geneva Convention relative to the Treatment of Prisoners of War (G III) Art 4A; AP I Art 43.
- ⁵ AP I Art 43; G III Art 99.
- ⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (G I) Arts 21-22, 24, 28, 30(1); G III Art 33(1); AP I Arts 8, 13, 43(2); *Queen's Regulations and Orders for the Canadian Forces* at 33.07(3)(a).
- ⁷ G I Art 21; AP I Art 13; for civilian medical and religious personnel, see Ch 3, Annex A.
- ⁸ G I Art 40; AP I Arts 8(I), 15-16, 18, Anx I As Amended 30 Nov 93 Arts 1-5; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) (AP III), Art 2.
- ⁹ G I Arts 24-25, 28-30; G III Art 33.
- ¹⁰ AP I Arts 48, 51(3), 75; See Ch 8 on PW.
- ¹¹ AP I Art 52(2).
- ¹² AP I Art 52(2); Reservation made by Canada at the time of ratification of AP I regarding Art 52.
- ¹³ AP I Arts 51(5)(b), 52(2), 57(2)(a)(iii); Reservation made by Canada at the time of ratification of AP I regarding Arts 51(5)(b), 52(2), 57(2)(a)(iii).
- ¹⁴ G I Art 21; AP I Art 13; for civilian medical and religious personnel, see Ch 3, Annex A.

- ¹⁵ G I Art 40; AP I Arts 8(l), 15-16, 18, Anx I As Amended 30 Nov 93 Arts 1 – 5; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) (AP III), Art 2.
- ¹⁶ AP I Art 52(1).
- ¹⁷ AP I Art 49.
- ¹⁸ AP I Arts 48, 51–52, 57(2); Reservation made by Canada at the time of ratification of AP I relative to Arts 41, 56, 57, 58, 78, 86.
- ¹⁹ AP I Art 57(2)(c); Reservation made by Canada at the time of ratification of AP I relative to Arts 41, 56, 57, 58, 78, 86.
- ²⁰ AP I Arts 57-58; Reservation made by Canada at the time of ratification of AP I relative to Arts 41, 56, 57, -58, 78, 86.
- ²¹ AP I Arts 51(5)(b), 56(3), 57(2)(a-b); 85(3)(b-c); Reservation made by Canada at the time of ratification of AP I relative to Arts 41, 51(5)(b), 52(2), 56, 57, 58, 78, 86.
- ²² AP I, Art 57(2)(b).
- ²³ AP I Arts 35, 51(4); Convention on Certain Conventional Weapons (CCW) and Protocols I–IV.
- ²⁴ AP I Art 36.
- ²⁵ St Petersburg Declaration relating to Explosive Projectiles, 1868; Hague Declaration (IV, 3) (1899); Hague Declaration (IV, 2) (1899); Hague Convention IV, Regulations, Article 23(a) (1907); Chemical Weapons Convention (1993); Biological Weapons Convention (1972); CCW, Protocol I (1980); CCW, Protocol IV (1995); Ottawa Convention (1997); CDS Directive: Anti-Personnel Mines – Restrictions on CF Personnel (1998); Cluster Munitions Convention (2008); CDS Directive – Cluster Munitions – Prohibited and permitted activities for Canadian Forces members (2015).
- ²⁶ CCW, Amended Protocol II.
- ²⁷ AP I Art 36; DM/CDS Directive Article 36 Legal Review of Weapons.

- ²⁸ CDS Directive: Anti-Personnel Mines – Restrictions on CF Personnel (1998); [CMC](#); CDS Directive – Cluster Munitions – Prohibited and permitted activities for Canadian Forces members (2015).
- ²⁹ [AP I Art 8\(a\)](#).
- ³⁰ [G I Art 15](#).
- ³¹ [G I Art 18](#); [AP I Art 17](#).
- ³² [G I Art 12](#); [AP I Art 10](#).
- ³³ [G I Art 12](#).
- ³⁴ [G I Art 14](#).
- ³⁵ [G I Art 15](#).
- ³⁶ *R v Semrau*, 2010 CM 4010.
- ³⁷ [G I Art 17](#); [AP I Art 34](#).
- ³⁸ [G I Art 12](#); [AP I Art 41](#).
- ³⁹ [G III Art 4](#); [AP I Arts 44-47](#).
- ⁴⁰ [G III Arts 5, 7, 13, 130](#); [AP I Art 75](#).
- ⁴¹ [G III Arts 14, 18, 70, 122-3](#); [AP I Art 75](#).
- ⁴² [G III Art 17](#); [AP I Art 75](#).
- ⁴³ [G III Arts 19, 20](#); [AP I Art 41\(3\)](#).
- ⁴⁴ [G III Art 12](#).
- ⁴⁵ [G III Art 12](#).

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