

Law Relating to Air and Naval Warfare

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Law Relating to Air Warfare

- Air warfare has evolved considerably in line with technological advances.
- Air space and Air ships are initially used for reconnaissance, then gradually as a powerful strike force during the 20th century
- Air power has become a vital instrument in the zero casualty wars conducted by the US and its allied

Law Relating to Air Warfare

- A doctrine aimed eliminating war on land or subordinating it to air strikes:
 - Ex: The first Gulf War 1991
 - Strikes against the Federal Republic of Yugoslavia in 1999
 - Air Strikes in Afghanistan in 2001/2002 and in Iraq in 2003

Law Relating to Air Warfare

- Technological developments such as electronic means of target recognition and evaluation, “intelligent” munitions or unmanned aerial vehicles may promote respect for traditional principles
- However, they can also give the individuals who have to apply the rules an illusion of diminished responsibility with regard to IHL respecting

Law Relating to Air Warfare

- Since 7 December 1903 when Orville Wright successfully carried out a 52-second flight over a distance of 260 metres, mankind has tried to make optimum use of airspace as a medium, and of aircraft as instruments.



Law Relating to Air Warfare

- In the early days air warfare was not subject to any specific legal regulations.
- In 1899, in the First Hague Declarations prohibited the launching of projectiles and explosives from balloons or by other similar new means.
- This prohibition was justified by the inaccuracy of such methods in striking their objectives, which meant a high probability of collateral damage.

Law Relating to Air Warfare

- The air warfare is a set of offensive and defensive aerial operations carried out using the air force with the intention of imposing one's will on the adversary by achieving a sufficient degree of aerial superiority.
- The weapons that may be used are governed by the principle of limitation and military necessity as laid down in IHL.

Law Relating to Air Warfare

- The First WW saw potential of air warfare as a major weapon of war.
- Article 22 and 24 of the Draft Hague Air Rules represent an attempt to control bombing of civilians.
- During the Second WW and subsequent international conflicts, bombing from the air has caused a large number of civilian casualties and damage to property.

Law Relating to Air Warfare

Hague Rules of Air Warfare, 1923

- Article 19: The use of false external marks on an aircraft is forbidden.
- Article 22: Aerial bombardment for the purpose of terrorizing the civilian population, or destroying or damaging private property not of military character, or injuring non-combatants is prohibited.

Law Relating to Air Warfare

- Article 24: The bombardment of cities, towns, villages, dwellings or buildings not in the immediate neighbourhood of the operation of land forces is prohibited.
- Additional Protocol I of 1977—Article 49—prohibits all attacks from the air against objectives on land.

Law Relating to Air Warfare

- It prohibits indiscriminate attacks, like saturation bombing, reprisal raids, attacks on civilian objects, and installations containing dangerous forces.
- Protocol III to the 1981 UN Conventional Weapon Convention—it is prohibited to make any military objective located within a concentration of civilians the object of attack by air delivered incendiary weapons.

Law Relating to Naval Warfare

Law Relating to Naval Warfare

- The conduct of sea warfare is governed largely by customary international law developed from the practice of States.
- A number of conventions drawn up at Hague in 1907 are concerned with the sea warfare - but generally related to the development of submarine as a weapon of war.
- The Hague Convention (VIII) of 1907, relative to the Laying of Automatic Submarine Contact Mines.

Law Relating to Naval Warfare

It is forbidden:

- To lay unanchored automatic contact mines, except when they are so constructed as to become harmless within one hour after the person who laid them ceases to control them;
- To lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings;

Law Relating to Naval Warfare

- To use torpedoes which do not become harmless when they have missed their target. [Article 1]
- It is forbidden to lay automatic contact mines off the coast and ports of enemy, with the sole object of intercepting commercial shipping. [Article 2]
- The regime of the seas has recently been the subject of a major revision at the Law of the Sea Conference sponsored by the UN.

Law Relating to Naval Warfare

- It led to the Montego Bay Convention 1982 which makes amendments to the 1958 Geneva Conventions on the Law of the Sea. It will come into force when there are at least sixty States party to it.
- The Second Geneva Convention of 1949 deals with the wounded, sick and shipwrecked, which is supplemented by the First Protocol of 1977 (Article 49). But these treaties are silent about sea-to-sea attacks.

Law Relating to Naval Warfare

- Today's duty to warn neutral ships derives both from the Hague Convention VIII; the Geneva Convention 1958 on the High Seas; and the 1982 Law of the Sea Convention.
- These treaties lay down already existing rules of international law.
- Mines at sea are not made illegal by the UN Conventional Weapons Convention of 1981.

Armed Conflict at Sea: Blockade



Armed Conflict at Sea: Blockade

- A blockade shall be declared and notified to all.
- The declaration shall specify the commencement, duration, location, extent of the blockade and the period within which vessels of neutral States may leave the blockade coastline.
- A blockade must not bar access to the ports and coasts of neutral States.

Armed Conflict at Sea: Blockade

- A declaration of blockade is prohibited if it has the sole purpose of starving of civilian population or denying it other objects essential for its survivals.
- The blockading belligerent shall allow the passage of medical supplies for the civilian population or for the wounded and sick members of armed forces, subject to the right to search.

Methods of Warfare

- Geneva Conventions of 1949 and Additional Protocol I and II of 1977
- Hague IV Regulations 1907
- Rome Statute of ICC, 1998
- UN Flag Code and Regulations 1947
- Conventional Weapons Convention 1980
- UN Bulletin of 1999

Methods of Warfare

- Restraints on the Conduct of Combatant
- 1977 AP I, Art 35 (1): Basic Rules:

In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.

Methods of Warfare

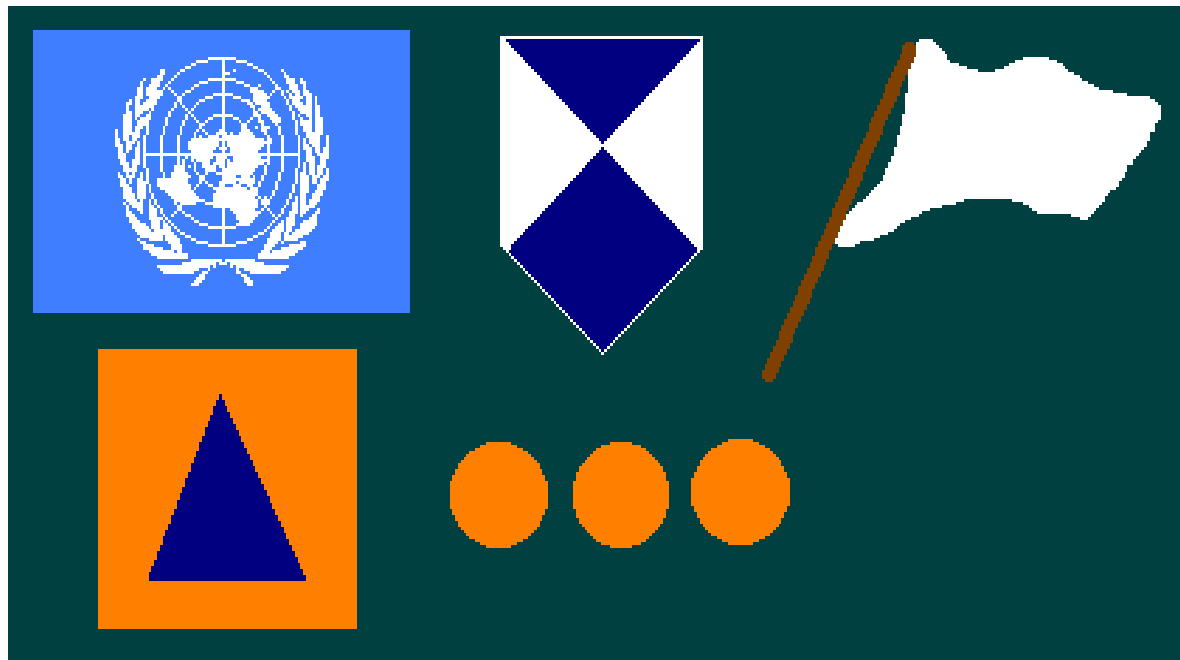
- Prohibited Methods of Combat - Perfidy is prohibited.
 - It is prohibited to kill, injure or capture an adversary by resort to perfidy.
 - A combatant cannot feign and create a false impression of legal entitlement to immunity from attack.

Methods of Warfare

- Perfidy
 - Feigning of an intent to negotiate under a flag of truce or of a surrender.
 - Feigning of an incapacitation by wounds or sickness.
 - Feigning of civilian or non-combatant status.
 - Feigning by protected status (UN member, belonging to a neutral State).

1. Prohibited Methods of Combat

B. Use of Protective emblems, Flags and Uniform (Art 38 AP I)



Protected Emblems

- Recognised Emblems:
 - Red Cross / Red Crescent
 - Flag of Truce
 - Cultural Property
 - UN
 - GC symbols: PW, Hospital / Safety Zone, Civil Defence, Dangerous Forces
- It is prohibited to make improper use of any of the protective emblems.

Prohibited Methods of Combat

C. Persons *Hors de Combat* (Art 41)



Airborne Troops?

A parachutist from an aircraft in distress, reaching the ground in enemy-controlled territory, must be given an opportunity to surrender 'unless it is apparent that he is engaging in a hostile act' .

Article 42 (2), AP I

Prohibited Methods of Combat

D. No Quarter (Art 40 AP I)

An order of no quarter means an order that there should be no survivors of the opposing side in a military action. Such order is unlawful under the IHL.

Prohibited Methods of Combat

Indiscriminate attacks are prohibited. These attacks are:

1. Which employ a method of combat which cannot be directed at a specific military objective
2. Which employ a method the effect of which cannot be limited. Art 51 (4), AP I.

Prohibited Methods of Combat

F. Starvation of civilians as a method of warfare is prohibited [AP I Art 54(1), AP II Art 14].

It is prohibited:

- To attack, destroy, remove or render useless objects indispensable to the survival of the civilian population such as foodstuffs, crops, livestock, drinking water installations etc.**

Access to relief for Civilians?

- Parties... shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel ... even if such assistance is destined for the civilian population of the adverse Party [AP I Art 70(i)].

LAWFUL TARGETS

- **MILITARY OBJECTIVES**
 - **COMBATANT PERSONNEL**
 - **OBJECTS**
 - **CONTRIBUTE TO THE ENEMY' S WARFIGHTING/WAR-SUSTAINING EFFORT**
 - **DESTRUCTION WOULD CONSTITUTE A DEFINITE MILITARY ADVANTAGE**
 - **INCLUDES BOTH MILITARY AND ECONOMIC TARGETS**

TARGETING ANALYSIS

- **IS IT A LAWFUL TARGET?**
 - **MILITARY OBJECTIVE**
 - **MISUSED PROTECTED PLACE**
- **IS IT NECESSARY TO DESTROY TARGET?**
- **WHAT IS THE APPROPRIATE WEAPON TO USE?**
- **WILL ATTACK CAUSE EXCESSIVE INCIDENTAL INJURY/COLLATERAL DAMAGE?**

DECEPTION

**THOSE MEASURES DESIGNED
TO MISLEAD THE ENEMY BY:**

- **Manipulation,**
- **Distortion, or**
- **Falsification of evidence to induce them to react in a manner prejudicial to their interest.**

DECEPTION

- **RUSES AND STRATAGEMS**
 - **LAWFUL DECEPTIONS**
 - **EXAMPLES**
 - **DECOYS**
 - **FALSE COMMUNICATION**
 - **SURPRISE**
 - **CAMOUFLAGE**
 - **FEIGNED MOVEMENT OF TROOPS**

Ruses of war and camouflage are Permitted (Tricks which confuse or mislead the enemy)



Ruses of war are Permitted

(Art 37 AP I)

Acts which are intended to mislead an adversary or to induce him to act recklessly.

Example: Use of camouflage, decoy, mock-operations, misinformation.



Prohibited Practices

- Taking of Hostages - GC IV/34
- Outrages upon dignity - API / 76
- Pillage, plunder, looting - GC IV/33
- Murder, extermination, torture or biological experimentation - GC I,II/12

Pillage

- It means looting (or plundering) of enemy private or public property by individuals for ‘private’ ends. [GC I (Art 19), II (Art 18), IV (Art 16, 33), Hague Regs (28, 47), Rome Statute (Art 8) and Hague Cultural Property Conv. 1954]
- Capt X, while deployed in Iraq did not take the property himself but handed it over to a charitable institution—will it be pillage?

Destruction and Seizure of Enemy Property



- Cardinal question—whether the destruction is required by “necessities of war”.

Destruction of Enemy Property

- Destruction of property is an inevitable feature of warfare.
- Not to do destroy or seize the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war.
- Hague Rules 23 (g).

Law of Bombardment

- **The basic principle: bombardment must be directed to legitimate military objective and must not be indiscriminate in effect.**
- **1977 AP I, Articles 48, 51, 52 and 57.**



Reprisals

Definition

- An action taken by a party to conflict, that would otherwise be unlawful for purpose of forcing another party to the conflict to comply with IHL.

Rule

- Prohibited to conduct reprisals against persons & objects protected by IHL.

Protection of Civilian

- IHL limits permissible means and methods of warfare by parties to an armed conflict and requires them to respect and protect civilians.
- The Additional Protocol I of 1977 to the Geneva Conventions and the 1907 Hague Regulations lay out the law that protects civilians during armed conflict.

- The two fundamental tenets of international humanitarian law are those of “civilian immunity” and “distinction.”
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- They impose a duty, at all times during the conflict, to distinguish between combatants and civilians, and to target only the former.
- In general, the law prohibits direct attacks against what are by their nature civilian objects, such as homes and apartments, places of worship, hospitals, schools, or cultural monuments, unless they are being used for military purposes.

- IHL prohibits indiscriminate attacks.
- Indiscriminate attacks are “of a nature to strike military objectives and civilians or civilian objects without distinction.”
- Examples of indiscriminate attacks are those that “are not directed at a specific military objective” or that use means that “cannot be directed at a specific military objective.”

- **Article 51(4) and Article 51(5) of Protocol I enumerate five kinds of indiscriminate attacks. Those:**
 - 1. are not directed at a “specific military objective,”**
 - 2. cannot be directed at “a specific military objective,”**
 - 3. have effects that violate the AP I,**
 - 4. treat separate urban military objectives as one (carpet bombing), or**
 - 5. violate the principle of proportionality.**

INCIDENTAL INJURY/ COLLATERAL DAMAGE

- NOT UNLAWFUL IF INCIDENT TO ATTACK ON MILITARY OBJECTIVE/COMBATANT PERSONNEL
- MUST NOT BE EXCESSIVE IN LIGHT OF MILITARY ADVANTAGE ANTICIPATED BY THE ATTACK
- COMMANDER' S OBLIGATION TO MINIMIZE

CHILD SOLDIER



- Today children are main victims of armed conflict.
- In the recent decades, about half of the casualties in armed conflicts are children.
- An estimated 20 million have been forced to flee their homes and are living as refugees or are internally displaced.
- More than 2 million have died as a direct result of armed conflict over the last decade and more than three times that number, at least 6 million children, have been permanently disabled or seriously injured

CHILD SOLDIER

- Definition: Persons under the age of 18 taking a direct part in hostilities.
 - UN CRC Optional Protocol

Minimum age for recruitment in SA countries?

- PROHIBITED:
 - Use of children in armed forces to take a direct part in hostilities
 - AP I Art 77; AP II Art 4(3)(c); UNCRC [NB: Age restriction in these provisions is 15 years]
 - Recruiting of children under 15
 - AP I Art 77; AP II Art 4(3)(c) ; UNCRC Art 37; UNCRC Opt Prot Arts 2 & 4

Children in Armed Conflict

- UNICEF website (2007): Children in Emergency and Conflict.
- Available online at:
http://www.unicef.org/protection/index_armedconflict.html

Development of New Weapons

- Article 36 of Protocol I:
 - In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

- Article 36 requires each state to determine whether the employment of “a weapon, means or method of warfare” that it studies, develops, acquires or adopts would, “in some or all circumstances”, be prohibited by international law applicable to the state.

The material scope of the Article 36

- Weapons of all types - be they anti-personnel or anti-materiel, “lethal” or “nonlethal” - and weapons systems;
- The ways in which weapon will be used;
- All weapons to be acquired by the state;
- An existing weapon that may be modified;
- An existing weapon where a State has joined a new international treaty which may affect the legality of the weapon.

Development of New Weapons

Few States have constituted Expert committee to determine:

1. What is the purpose of the new weapon?
2. What are the factors which favour the introduction of the new weapons?
3. What is the damage mechanism of the new weapon (blast, fragmentation, etc.)?
4. Is the new weapon specifically designed to cause injury to personnel?

5. What human injuries will the new weapon be capable of inflicting?
6. What other weapons, if any, would be capable of fulfilling the same purpose as the new weapon?
7. Has the new weapon been adopted by the armed forces of other States or by other agencies in the country or overseas and, if so, by which one?
8. Is evaluation data concerning the new weapons available from the armed forces of other States or from other agencies.

- In 2006, ICRC has issued
- “A Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Measures to Implement Article 36 of AP I of 1977”.

ANY QUESTION ?????